Securing a National Water Policy in Guatemala: Understanding Barriers and Potential Implementation Strategies through Comparison with the Establishment of Regional Mining Laws †

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Abstract: Guatemala has proven an informative case study into the many barriers which inhibit the establishment of comprehensive national water policies (NWPs) in low- to middle-income countries (LMIC). The country has formally established the right to adequate sanitation and drinking water many times over: through the ratification of three international treaties, two water-specific constitutional articles, and regulatory bodies for infrastructural projects. Despite these measures, the existing water policy is piecemeal, and each of the at least 13 attempts to establish an NWP over the last century has stalled in Congress. As a result, poor infrastructure and industrial abuse of waterways have made water accessibility and sanitation constant concerns for generations of Guatemalans. Here, we investigate the many factors which have led to the recurring failure to establish an NWP in Guatemala. Following this investigation is a comparative analysis between barriers inhibiting the establishment of an NWP and those which face another Central American sector historically rife with human rights abuses: mining. Notably, major gains have been made with regard to the mitigation of harms enacted by the mining industry in several Central American countries, with the closing of several major mines in Guatemala, a pit-mining ban in Costa Rica, and the world’s first blanket ban on metal mining in El Salvador. We identify factors which have led to the success of the mining ban in El Salvador—namely, coordinated community involvement from campesinos to the traditional oligarchy, grassroots strategizing which snowballed from local referenda to national policy, and the leveraging of international attention—and make suggestions for their implementation with respect to the establishment of an NWP in Guatemala. This project is part of an ongoing, mixed methods research endeavor examining factors impacting water security in Northern Triangle countries (Guatemala, El Salvador, and Honduras), especially as the region’s weather patterns become more erratic and intensified under climate change.

Keywords: Guatemala; El Salvador; water; mining

1. Introduction

The implementation of a national water policy (NWP) is long overdue for the Republic of Guatemala. The country’s natural weather patterns result in a high quantity of but highly variable rainfall, with each year cycling between rainy and dry seasons often marked by drought and tropical storms. The intense seasonality of surface water availability alone makes a compelling case for the institution of an NWP, given its contribution to inequity in water access. Additionally, however, the development of such a law is explicitly written into the 1985 Constitution, which defined water as a public good to be regulated by a national law [1]. Despite this constitutional mandate, 13 proposed NWPs have stalled in Congress since 1985 [2], with the most recent, Iniciativa 5253, still under review four years after its proposal [3]. Though Guatemala has signed a number of international agreements, treaties, constitutional provisions, and internal water resolutions which clearly state its
support for the human right to clean water [4], state performance regarding the issues of water and sanitation are poor, with the 2016 environmental report by the Ministry of Environment and Natural Resources (MARN) showing evidence of contamination in the majority of water basins, contributing to frequent generalized water contamination notices, shortage problems, and poor sanitation and drinking water services [2,5].

Here, we investigate the many factors which contribute to the recurring failure to establish an NWP in Guatemala. We argue that a democracy characterized by weak institutions and corruption fueled by local and international business influence has inhibited both the formation of an NWP and the effective regulation of water resources according to existing laws. We also include a comparative analysis between barriers inhibiting the establishment of an NWP and those which have faced another Central American sector historically rife with human rights abuses: mining. Notably, major gains have been made with regard to the mitigation of harms enacted by the mining industry in several Central American countries, with the closing of several major mines in Guatemala, a pit-mining ban in Costa Rica, and the world’s first blanket ban on metal mining in El Salvador. We identify factors which have led to the success of the mining ban in El Salvador—namely, strategic network-building on the part of anti-mining activists, the leveraging of international attention, particularly after the ICSID Pac Rim case, and the late-stage restructuring of antimining organizations—and make suggestions for their implementation with respect to the establishment of an NWP in Guatemala.

2. An NWP-Sized Hole in Existing Water Policy

Though Guatemala has not yet approved an NWP, it is far from bereft of water policies. A number of international, national, and regional regulations have been enacted since the establishment of the 1985 constitution [4,6,7]. The Constitution itself includes a number of provisions which either directly address or imply the right to safe water and sanitation [4,6–11]. Article 127 of the Guatemalan Constitution explicitly calls for the management of water resources, which are classified as a public good, through national legislation [10].

However, the current model for water regulation and management within the country is highly piecemeal, with a number of significant policy gaps and contradictory or overlapping responsibilities attributed to various agencies [12]. In particular, gaps exist in the national regulation of water, sanitation, and hygiene (WASH) services, with little common guidance for municipalities and departments, which are tasked with the regulation and provision of such services. Both central and municipal governments play a role in the construction of water management, making it difficult to assign accountability and limiting improvements, particularly for rural areas, for the sector [12].

These factors bring us to ask three essential questions: (1) What are the variables inhibiting the implementation of an NWP? (2) What factors might improve the likelihood that such a law comes into being? (3) What are the variables contributing to Guatemala’s inability to effectively implement existing water laws? We argue that a democracy characterized by weak institutions and corruption expressed through the disproportionate lobbying power of the elite and business influence has strongly inhibited the formation of an NWP as well as the effective regulation of water resources according to existing laws. As evidenced by anti-mining activism in El Salvador, a strong, strategic social movement with support from citizens and international organizations across socioeconomic sectors may be key to its establishment.

3. Weak Institutions

Though Guatemala’s Constitution and political institutions greatly resemble those of more equitable democracies in their formulation, the influence of relatively recent internal armed conflict and military dictatorship have profoundly shaped the social and political structure of the nation, compounding the social and political exclusion, military privilege, and lack of accountability at the heart of the country’s poor water law enforcement and
lack of success in establishing an NWP [13]. Worldwide Governance Indicators (WGI) have placed Guatemala in the lowest quartile worldwide in government effectiveness, rule of law, and political stability, with only negligible improvements over the last two decades [12]. In addition, Guatemala’s institutions ranked in the lowest quartile for key components of a number of indices, including political stability, conflict of interest regulation, and incidence of corruption, with the percentile ranking of institutions deteriorating for a number of indicators in recent years [8]. The country ranked in the 28th percentile in exposure to unsafe drinking water with 43% of the population exposed [8].

A major contributor to the country’s inability to effectively legislate and implement water policy is its dysfunctional regulatory and management model, which leaves the country halfway between decentralized and centralized management of water services. The decentralization plan left each of Guatemala’s 340 municipalities responsible for the maintenance and provision of these services with little in the way of national standards or guidelines; though the Ministry of Environment and Natural Resources (MARN) and Ministry of Health and Social Assistance (MSPAS) do set some national standards, they only partially regulate drinking water quality and wastewater treatment and discharge, and are predominantly occupied with the management of urban areas. Additionally, the decentralization plan failed to assign clear responsibility for the construction of WASH systems. While the Municipal Code establishes that municipalities are tasked with the regulation, provision, maintenance, expansion, and improvement of WASH services within their jurisdiction, they do not have the power to set national tariffs for their funding. Both the central government and municipalities spend well below the regional average for WASH services [8].

Central institutions tasked with water management have only partial responsibilities when it comes to WASH systems: where MSPAS is tasked with the issuing of regulations for the construction of WASH systems, the Municipal Development Institute (INFOM) has historically aided in the design and implementation of rural systems through the Executing Unit of the Rural Aqueducts Program (UNEPAR). Presently, UNEPAR is not allocated sufficient resources to continue in this role, and there is no coordinated supervision which ensures that standards are being met [8]. MARN and MSPAS are jointly tasked with regulating and monitoring urban water sources, but neither is clearly tasked with the monitoring of rural water resources [8]. Neither institution has the budget or capacity to effectively regulate WASH services countrywide [8].

These capacity constraints stem from a disempowered sector authority and incomplete regulation. National regulators have little power to enforce compliance among municipalities; MSPAS lacks the capacity to establish national WASH policies, enforce guidelines, or implement interventions, and the territorial coverage of MARN is insufficient to cover both rural and urban areas [8]. There are no centrally defined standards of service nor minimum levels of quality for WASH services, and municipalities are effectively left to self-regulate with minimal support from central institutions. Furthermore, the multitude of disconnected administrative units, regulators, programs, and projects creates a constraint on proper planning, budgeting, and execution of WASH-related programs [8]. In short, the design, construction, and supervision of WASH systems is not controlled by a central mandate or institution, and municipalities are not empowered to create plans or budgets which would enable their adequate planning and monitoring [8].

4. Corruption: Lobbying Power of the Elite and Foreign Business Influence

Corruption has influenced both the government’s capacity to pass, and its interest in passing, an NWP [14]. Some of the most powerful pressures put on government bodies to not pass stronger laws and to not enforce existing ones come from multinational corporations (MNCs) and CACIF (Coordinating Committee of Agricultural, Commercial, Industrial, and Financial Associations)-affiliated businesses. CACIF is an employers’ association made up of the Guatemalan elite with considerable political power.
The agricultural and mining sectors are two of the primary users and abusers of water resources in the region. Agriculture accounts for 13.5% of Guatemala’s GDP and employs 31% of the labor force [15] and is dominated by fruit MNCs Dole, Chiquita, and Del Monte [16]. The agricultural sector used 60% of water resources in 2010, marking a 6322 million m$^3$ increase over 10 years, despite a 0.7% decrease in GDP contributions over the same period (from 9.7% to 9%) [17]. Agricultural MNCs have a large financial stake in the continued abuse of water resources and neo-liberal interpretation of water-related legislation. The permitting of re-routing waterways on privately owned land even to the detriment of those downstream is a clear case in which private land rights have functionally superseded the constitutional claim to water as a universal good [18]. In addition, MNCs benefit greatly from the fact that free-flowing water (i.e., flowing directly from rivers or otherwise unpiped) is unlikely to be measured or charged for. Of all the water flowing through the economy in 2010, only 1.2% was distributed through managed systems and capitalized upon, marking an extreme loss of potential revenue to empower municipalities and central institutions [17].

Not only is agriculture the sector with the highest raw water inputs, but it also contributes substantially to water pollution in the country. Large monoculture crops, such as banana, sugarcane, and oil palm, are heavy users of inputs such as fertilizers and pesticides, which make their way into rivers and can drain into lakes. Studies of the lake Atitlan, for example, have demonstrated a direct negative correlation between lake water quality and agrochemical runoff, which has contributed to mass fish death events and eutrophication [18].

Though the use of water in mining pales in comparison to agriculture [17], it is not insignificant; for example, the leaching process at Guatemala’s Marlin I mine required 250,000 per hour [19], or over 8000 times the average daily water use of a family in that region. Mining is also a significant polluter; gold mining, for example, requires that ore be treated with a mix of water, lime, and sodium cyanide, and drainage of acid contaminates local waters with heavy metals [19]. Much like agriculture, the mining industry makes up only a tiny fraction of the country’s GDP, though it is a major international moneymaker [20]. Additionally, many jobs produced by the industry are not given to locals, but to foreign specialists [20–22].

Corruption in the global mining industry and in the Guatemalan state have been well-documented, with mining recognized as the sector fourth-most susceptible to corruption (behind construction, utilities, and real estate), and frequent corruption scandals shaking the Guatemalan state [15,22,23]. Corruption, as it relates to water resource management, can be found particularly in key moments of environmental governance, such as the approval of environmental impact assessments (EIAs) [22]. Bribery of and threats toward state officials tasked with approving and reviewing production licenses are commonplace, and the stance of the Presidential administration is likely to determine the speed with which an EIA is approved. This ‘top-down’ approach to EIA approval has resulted in the shuffling of at least one uncooperative official away from a position with the power to approve mining licenses [22].

Finally, corruption can be found in CACIF (Coordinating Committee of Agricultural, Commercial, Industrial, and Financial Associations). CACIF is an employers’ association with considerable political power, as it unites the country’s most important economic actors. Its members, the traditional and emerging economic elites of the country, finance political campaigns and subsidize the income of ministers through bonuses known as “dobletes”, which are in some cases paid directly by large corporations [15]. Notably, once the CICIG, the International Commission against Impunity in Guatemala founded in 2006, began to investigate illegal campaign financing in 2016, sixteen CACIF members found themselves implicated in criminal activity, and a CACIF-funded group paid US lobbyists in an effort to repeal the CICIG mandate [24]. Then-president Jimmy Morales (2016–2020) and several other political figures were targeted, causing Morales to end CICIG’s mandate and fire several reformist officials, all while pushing for legislation which would provide amnesty...
to “perpetrators of crimes against humanity” [25], free several prisoners held for corruption, and limit the non-government organization involvement [25].

5. Lessons from El Salvador

Now, we turn to El Salvador’s long transition from a largely deregulated mining industry to an outright ban on metal mining, with the hope of producing some insight into potential strategies for Guatemala and the effort to establish an NWP. There are two significant similarities between the cases: first, the establishment of an NWP and that of restrictive mining legislation are both inextricably woven into concerns regarding the human right to an adequate quantity and quality of water. As noted above, one major polluter of water resources in Guatemala is the mining industry. The protection of water resources was also galvanizing concern for Salvadoran antimining activists. Restrictive mining laws contribute to improvements in water quality, at a minimum by minimizing pollution, though also potentially by reducing pressures on limited water resources.

Second, both countries have struggled with weak democracies characterized by corruption and international pressure to permit the exploitation of natural resources. El Salvador and Guatemala’s paths to democracy, though far from identical, share some common features: a long civil war, waged between a military-led junta and leftist groups, that began with an internationally backed coup d’etat and ended with the establishment of a weak democracy marked by a dominant, right-wing, military-backed party keen on cementing the interests of a transnational economic elite through neoliberal political reformation. This led to widespread deregulation and the promotion of foreign investment through tax exemptions and legal protections for foreign investors [26].

Business elites and MNCs have shaped (and continue to shape) the political trajectories of both countries through business associations, political parties, and think tanks. Furthermore, gaps between the poor and nonpoor are large in both countries: the poor are more likely to live in rural areas, belong to Indigenous groups, and have access to very little social and political capital [27–29].

6. El Salvador’s Anti-Mining Mobilization

After years of mass displacement as a consequence of the civil war, many Salvodorans returned to the regions which they had fled, forming local and regional associations to represent the interests of those living in these newly resettled areas. The anti-mining movement began through the coalescence of a number of such organizations under the national umbrella of CRIPDES (Association of Rural Communities for the Development of El Salvador), with The National Round Table Against Metal Mining (Mesa) formally launching in 2005.

The mining debate first made it onto the policy agenda in 2006 but was stymied by counterpressure through corporate manipulation of domestic political processes, corporate leveraging of the international ICSID process, and the generally neo-liberal post-war political environment marked by deregulation. The switch from a generally pro-mining government to the passage of a unanimously supported anti-mining law in congress was a function of both a long-run campaign and the specifics of the moment [28].

Though the variables impacting the passage of the antimining bill are many, several key factors are worth noting. In particular, the ongoing efforts of a well-organized anti-mining movement, the deleveraging of external pressure, and the restructuring of anti-mining leadership contributed to the final decision to ban mining twelve years after the first regulatory policy was proposed [28].

The causal mechanisms underpinning the movement-policy nexus (i.e., the effects of social movements on policy changes) are notoriously difficult to pin down [28]. However, the prolonged struggle against mining in El Salvador presents a unique opportunity for a ‘slow movement analysis,’ or the long-form tracing of strategic action and decision-making, which in turn facilitates the development of better causal relationships between
The Mesa movement had several key successes in its network-building. Activists strategically cultivated ‘weak’ or ‘bridging’ ties between groups with varied cultural and social backgrounds. This enabled community members to contribute local knowledge, while national allies provided familiarity with decision-making processes and proximity to decision-making centers [28]. Though these types of ties are frequently accompanied by social friction and mutual mistrust (in contrast to ‘strong’ or ‘bonding’ ties, which are founded on mutual experience and a shared culture), they promote multisectorialism and accelerate the diffusion of information. In this way, the strategic linking of those most vulnerable and those closest to decision-making centers created the potential for not only the humanization of hardships faced by those affected by mining, but also the development of a robust network of sympathizers across the spectrum of political power. Mesa also adopted a policy of “hablar sin hablar” or communicating while avoiding making statements that would “invite rejection and retaliation” [28] and centered cultural and artistic activities in its protest style. For example, a major rally was strategically called the “Caminata verde en defensa del agua” instead of a “marcha”, “protesta”, or other more polarizing term [28]. This kind of language made the movement more palatable to a greater number of people, serving ‘bridging’ relationships and encouraging multisectorialism.

In addition to the strategic networking of Mesa, community-level organizers also encouraged and engaged in resistance against neoliberalism through traditionalism: potentially mineral-rich land was purchased to be converted to places of worship, and strong bonds with Catholic and Episcopal leadership were forged, with the Conferencia Episcopal de El Salvador (CEDES) and the Catholic Church of El Salvador issuing a joint statement calling for the denial of new metal mining permits and a formal statement against mining, respectively [30]. Alternative options for economic empowerment through traditional microenterprises, such as fishing and the preparation of nuts for export, were encouraged in mining communities [29].

These long-form strategies worked to slowly change prevailing opinions regarding the safety and sustainability of mining in El Salvador: where 62.5% of Salvadorans responded ‘no’ when asked if El Salvador was a suitable country for mining operations in 2008, 79.5% gave the same response by 2015 [30]. Pro-mining became a less viable political stance as the business sector that had initially supported mine development lost its broad elite backing, so much so that the fourth ARENA president, Antonio Saca (2004–2009), shifted his position in defiance of Pacific Rim’s threat to file a claim despite the party’s long-standing support of mining MNCs [28].

In addition to this slow shift in public opinion as a result of anti-mining activism, two key variables rapidly changed the political viability of a mining ban: the outcome of the ICSID case filed by Canadian mining corporation Pacific Rim, and a restructuring of the hierarchy in Mesa to favor Church leadership.

The lawsuit filed by Pacific Rim played a critical role in both the delay and final passage of the mining ban in El Salvador. The case was filed in 2008, a year after President Saca announced a moratorium on new mining concessions following a study that demonstrated high levels of cyanide and sulfur leaching from a long-closed mine into the San Sebastian River [30]. Pacific Rim sued El Salvador on the grounds that the moratorium violated the Central American Free Trade Agreement (CAFTA), ultimately seeking damages for $314 million in losses of potential profit [31]. This claim and its dismissal were catalysts for the final decision to ban mining outright. After facing the threat of either a crippling payout or the internationally forced authorization of a mining concession, legislators became acutely aware of the vulnerability of their position: though Pacific Rim had failed to wrest hundreds of millions of dollars from the country as lost ‘potential profit,’ any American mining firm displeased with the country’s future mining decisions could very well file similar, if not more compelling, cases. El Salvador needed to act quickly: it did not have
the resources to fight more lawsuits in international court, nor did it have the capacity to
manage the environmental risks associated with mining [28].

After the Pacific Rim case came to an end, collaborations between the Catholic Church
and Mesa shifted to center the role of the Church. This shift worked in favor of mining
activism in several ways: first, it served to ease the “partisan identity of the cause” [30],
allowing a new proposal, written in collaboration between the Church, the Jesuit Universi-
dad Centroamericana (UCA), and policy strategists, to be presented with pre-established
support from Archbishop Escobar Alas and several legislative leaders [28,32]. The cen-
tering of the Church in politics was not without its critics, but the bad press mining had
received, coupled with the rallying of international support after the Pacific Rim case,
could not be denied. The bill was quickly and unanimously approved by legislators in
attendance [28,33].

7. Opportunities for Guatemala

We return to the case for an NWP in Guatemala with the following question: what
can be learned from El Salvador’s long struggle toward a mining ban? To begin, the politi-
cal landscape surrounding the delayed establishment of an NWP in Guatemala appears
substantially different from that of the mining ban in El Salvador; where the Salvadoran po-
itical landscape was dominated by two parties (the leftist FMNL and right-wing ARENA),
reinforcing polarization and social movement partyism on the topic of mining, Guatemala
has a multitude of relatively unstable parties, none of which have won more than one
presidential election [34]. However, it is worth noting that CACIF has remained a stable
right-wing political actor, operating as the “de facto political party of Guatemala’s economic
elites” [14] and influencing the path of Guatemalan politics toward neo-liberalism and
deregulation for decades [15]. Proponents of neo-liberal policy have a significant advantage
in that they have already coalesced into a unified front, where leftist organizations are
scattered and disorganized. Protests against the abuse of water resources in Guatemala are
far from uncommon, with at least tens of organizations organizing marches and protests for
water at one point or another; however, these organizations lack the scrupulous strategy of
Mesa and stability of CACIF, undermining their effectiveness.

Fortunately, there is evidence that Guatemalan people are not so polarized that they
cannot bridge differences and unite through trust in a common organization; that evidence
is to be found in the overwhelming popularity of CICIG [35]. Though the mandate was not
renewed after it began investigating the sitting President and his inner circle, its popularity
with the people hints at the possibilities for a future nonpartisan organization to gain
widespread approval and effect real political change. Furthermore, the two countries
share some broad cultural similarities: strong Catholic and Protestant communities with
prominent, high-ranking figures aligned with the efforts to establish an NWP [36]. Strong
traditionalist values, like those leveraged by Mesa to encourage alternative micro-enterprise
in mining communities, could likewise be leveraged in Guatemala, particularly for the large
swaths of people working in agriculture, as well as the smaller groups in mining towns.

The outcome of the Pacific Rim ICSID case is also of no small relevance, as Guatemala
is another CAFTA member country likely to be targeted by MNCs were it to deny them
the right to the exploitation of its water resources. The current neoliberal interpretation of
private land rights to water relies heavily on the absence of a national mandate asserting the
constitutional right of the people to clean, readily available water. Though the establish-
ment of an NWP may trigger lawsuits in international courts, MNCs’ reliance on an interpretation
of private land right laws which directly contradicts existing constitutional mandates
regarding both the right to and use of water leaves the outcome of such lawsuits uncertain.
The precedent set by the Pacific Rim case should not be ignored.

One significant difference between the two cases must be admitted: the 2008 mining
permitting freeze in El Salvador stemmed in part from a recognition of the state’s limited
capacity to adequately enforce mining regulation. There is no parallel for Guatemala
here; indeed, a similar concern may be used to argue against the development of an NWP
for the country. Establishing and regulating WASH services would require significant state resources and a shuffling of priorities given the limits of those resources. Finally, it must be noted that the institution of an NWP for Guatemala is a far cry from a guarantee of access to WASH services for all citizens. The variables inhibiting the establishment of such a law—particularly weak institutions and corruption—are likely to persist even after its establishment, and the difficult tasks of rooting out corruption and strengthening institutions will still need to be done. However, an NWP—depending on its contents—could work to improve the strength of both central and municipal institutions tasked with providing WASH services, and the powerful message such a move could bring should not be discounted.

In sum, we have argued that a democracy characterized by weak institutions, corruption, and international business influence has inhibited both the formation of an NWP and the effective regulation of water resources according to existing laws in Guatemala. We then brought our attention to key factors which led to the success of El Salvador’s mining ban—strategic network-building by activists, the deleveraging of international pressure, and the late-stage restructuring of anti-mining organizations—after which we sketched some suggestions for their relevance to the NWP case in Guatemala. Finally, we noted that even the successful establishment of an NWP, though a powerful message regarding the priorities and power of the Guatemalan people, is likely to amount to little more than a first step in an extended struggle to secure adequate WASH services in Guatemala.

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