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## **EXECUTIVE SUMMARY**

The Center for Economic and Social Rights conducted a fact-finding mission (CESR FFM) to Honduras in March/April 2001. The purpose of the mission was to investigate the current operation of the gold mining industry in Honduras since the passage of the General Mining Law in November 1998. This law was passed in the aftermath of Hurricane Mitch, and in a climate of substantial international economic pressure for Honduras to provide favorable conditions to foreign investment. It is estimated that one-third of Honduran land has been marked for mining activities in the last 5 years. CESR investigated the current status of economic, social and cultural rights of the Honduran people as affected by the passage of the law. The CESR FFM learned that the General Mining Law and operation of the mining industry violated Honduras' obligations under the International Covenant on Economic, Social and Cultural Rights. The specific rights under which there were violations included Article One, the right to self-determination, Article Seven, the right to favorable work conditions, Article Eleven the right to an adequate standard of living and Article Twelve, the right to health and a healthy environment.

### **VIOLATIONS OF RIGHTS**

#### **Article One: the right to self-determination**

The establishment of gold mines at San Andrés and San Martín required the relocation of communities of people. The people living in San Andrés reported feeling pressure from the Government and the mining company to relocate. They were not provided with legal representation or assistance in negotiations with the mining company. The community at San Andrés was relocated to a newly constructed community with houses that did not have any plots of land around them in which to grow crops or raise animals. This is contrary to the people's traditional lifestyle. The community was not consulted about the style of house or design of the community.

#### **Article Seven: the right to favorable work conditions**

Workers live in a compound within close proximity to a cyanide heap-leaching pad at San Martín mine in San Francisco Morazán. Those living in the compound have limited access to the community. Workers at the San Andrés mine in Copán were initially denied their worker benefits when the first company operating the mine went bankrupt. They were only paid their entitlements after substantial negotiation and pressure was brought on the incoming mining company.

#### **Article Eleven: the right to an adequate standard of living**

Community members in the San Ignacio community, close to the San Martín mine, reported that while the number of shops has increased since the opening of the mine, so has the number of alcohol outlets. In addition the numbers of people coming into the town has increased with no migration control over numbers. These increased numbers have meant that the cost of housing has increased which has forced poorer community members out of housing. The cost of building materials is more expensive and obtaining manual labor for traditional agricultural work has become more difficult.

New houses constructed for the community that was relocated in San Andrés, were built in lines, rather than in a traditional style around a central square. Additionally they were not given plots

of land for growing crops or raising animals around the houses. House owners are still waiting to be given legal title to their new houses.

## **Article Twelve: the right to health and a healthy environment**

### **Studies showing water pollution**

The CESR FFM was informed of preliminary studies, carried out under the auspices of the World Health Organization by a Municipal Water Authority, that revealed the presence of higher than normal levels of mercury, lead, iron and arsenic in rivers in the Northern and Western parts of the country. Communities drink water from and bathe in these rivers. While the studies are preliminary, the existence of a large number of mines, which release contaminated waters in these areas, suggests that the mines are polluting the river system. Another study conducted by the Center for the Research and Control of Pollution reveals the presence of heavy metals in water and fish as a result of the release of contaminated waters by the El Mochito mine. Furthermore, a study by the Center revealed problems with discharge waters from the San Andrés mine. The discharge waters were found to contain cyanide levels that contaminated the river system on 6-7 occasions in less than three years, which is not permitted under the Environmental Impact Study (EIS). The river system provides drinking and bathing water for communities lower down on the river from the mine.

### **Direct effects of mining on the health of the community members**

Houses close to the San Andrés mine in the San Miguel community are located within 42 meters of the cyanide heap-leaching pad. The fence surrounding the pad is not high enough and one animal wandered into the area and died after drinking from the cyanide pool. Additionally, community members complain of increased respiratory and skin diseases due to the high concentration of dust. Houses of the Azacualpa community located close to the San Andrés mine shake every time there is an explosion to expose more ore. The location of the community is unstable and houses have cracks in them from the explosions. Community members must also walk through the mine along a road used by heavy mining trucks in order to reach their community. There have been many domestic animals killed by the trucks and many near accidents with people.

Community members in El Porvenir are concerned about the dropping water levels in the river and the large quantities of sand extracted for use by the San Martín mine. This has affected people's ability to use the river to support their livelihood, including use of the river as a water resource for their herds of animals.

### **Structure of the mining industry prevents adequate environmental controls**

While each mining company is required to complete an Environmental Impact Study (EIS) in order to be granted a mining license, the company pays for the EIS and chooses the company who will carry out the study. No mining company has ever been refused a mining license after having completed an EIS. The Government is not responsible for conducting, or paying for the EIS. There is no separate, independent body which is solely responsible for monitoring the environmental effects of mining.

### **Lack of community participation**

Community members of El Porvenir, San Ignacio and San Andrés all complained of the lack of consultation and participation in the EIS stage. No community appears to have been adequately consulted before the mining licenses were approved. Staff of DEFOMIN (Department for the Promotion of Mining) clearly stated that they thought it inappropriate to consult the community about mining decisions due to their lack of education. The process for informing communities of applications for mining licenses appears inadequate as the applications were advertised in a newspaper that does not arrive at the community in San Andrés, and the Law allows only 15 days in which to object to the mine. Community members also were concerned about the lack of availability of the EIS for public reading.

### **Lack of ability to fully investigate all complaints**

The office that receives complaints about the environment, the Public Prosecutor's Office for the Protection of the Environment, only has power to investigate complaints which are of a criminal nature, not those of an administrative nature. They do not have the power to investigate the granting of a mining license. In addition, when offences are of a serious nature the Office has to refer them to the judicial process. Judges frequently are partial, have very little knowledge of the General Mining Law, and are reluctant to assign fault to the foreign mining companies. Members of this Office criticized the lack of sufficient environmental protections within the law and the lack of limits on the use of water by a mining company.

The Government has clearly breached its obligations under Article 12, committed acts of violation and failed in its duty to protect and fulfill the right to health.

## ***RECOMMENDATIONS***

CESR recommends the General Mining Law should be amended to make clear that communities cannot be forcibly removed. We recommend that an independent legal office should be established to provide legal assistance to communities who are petitioned to relocate. The Law should be amended to require mining companies to negotiate with legally represented communities about their relocation. The Law should also be amended to ensure that communities participate in the design of any new community to which they will be relocated. The Government should ensure that communities who have been relocated are provided with legal title to their houses within six months of relocation, otherwise the mining companies' concessions will be cancelled. The General Mining Law should be amended to reflect this.

CESR recommends that the General Mining Law should be amended to require any mining company operating in Honduras to contribute to a workers' benefits fund to ensure that workers benefits are paid even in the event of bankruptcy. We also recommend that the Department of Labor monitor the living conditions of workers at the San Martín mining facility and ensure that their proximity to cyanide leach pads is within defined international standards.

CESR recommends that municipal authorities should require all those residing in mining areas to register with the municipal authority in order to control the numbers of incoming people. Municipal authorities should also regulate the number of alcohol outlets which are permitted to open in towns close to mines. The Government should provide additional funding to build low cost housing for those who cannot afford housing due to increased housing costs in towns close to mines.

CESR recommends that the General Mining Law needs to be amended in order to reform the current environmental monitoring and mining licensing schemes. DEFOMIN currently plays the dual role of promoting mining and monitoring environmental protection. The Department for Evaluation and Environmental Control (DECA) reviews EIS, controls the license granting, and also monitors the environmental effects of mining. DEFOMIN should be clearly involved only in the promotion of mining and the granting of licenses. DECA, or another body, should have a strong environmental protection role. The General Mining Law should be amended to require the Government to conduct the EIS, not the mining company. Mining companies, however, should be required to contribute to a fund that is dedicated to paying for EIS.

CESR recommends that applications for mining licenses should be displayed in local municipalities, on church walls and on public notice boards (not just in the newspaper), and the length of time for comment should be extended to 3 months. Communities should be provided with legal representation in order to be able to argue against the granting of a mining license. EIS should be available in public locations locally. EIS should also be conducted every two years when a mine is in operation. Communities should be included in the environmental monitoring processes. Staff of the environmental monitoring body should be trained in the international legal requirement that communities participate in the EIS and environmental monitoring processes.

CESR recommends that the Government, through the Department of Health and/or the National Independent Water Authority, immediately conduct a thorough evaluation of the water quality throughout Honduras, concentrating on the areas where mines are located. The evaluation should test for the presence of heavy metals including lead, mercury, arsenic and cyanide and thiocyanates in both superficial and subterranean waters. The Center for the Research and Control of Pollution should continue to operate as an independent center, conducting its own monitoring of environmental standards.

In addition, the General Mining Law should also be reformed to limit the amount of water that a mining company can use. The Government should investigate and identify alternatives to releasing cyanide-contaminated water into the river system. The body responsible for environmental protection should monitor the release of contaminated waters into the river systems.

The Government should also broaden the mandate of the Public Prosecutor's Office to include the capacity to investigate complaints about the mining licensing process. Judges should be trained in mining law. CESR encourages reforms of the legal system which will de-politicize and give greater independence to the judiciary.

## **CONCLUSION**

CESR, after reviewing the gold mining industry in Honduras, finds that the Government of Honduras has breached its obligations under the Covenant on Economic, Social and Cultural Rights. These breaches have arisen since the passage of the General Mining Law and include breaches of the right to health and a healthy environment, the right of people to an adequate

standard of living, the right to self-determination, and the right to just and favorable conditions of work. CESR does not support the gold mining policies of the Government of Honduras which violate its international commitments to economic, social and cultural rights. CESR concludes that the recommendations included in this report are practical, concrete steps. At this review of Honduras by the Committee on Economic, Social, and Cultural Rights, CESR urges the Government to take action to remedy the current situation in the gold-mining industry.

## **RESUMEN EJECUTIVO**

El Centro de Derechos Económicos y Sociales (CESR) hizo una visita de investigación en marzo/abril 2001. El motivo de la visita de investigación fue para investigar la operación actual de la industria minera de oro, específicamente después de haber sido aprobada la Ley General de Minería en noviembre 1998. CESR estaba especialmente interesado en el estado actual de los derechos económicos, sociales y culturales y cómo habían sido afectados por aplicación de la nueva Ley. Esta Ley fue aprobada después del Huracán Mitch y en un clima de presión económica internacional para que Honduras provea condiciones favorables a la inversión extranjera. El Centro aprendió que la Ley General de Minería y el funcionamiento de la industria minera violaba las obligaciones de Honduras bajo el Convenio Internacional de los Derechos Económicos, Sociales y Culturales. Los derechos específicos objeto de violaciones incluyen el Artículo 1, el derecho a autodeterminación, Artículo 7, el derecho a condiciones de trabajo justas y favorables, Artículo 11, el derecho a un nivel de vida adecuado y Artículo 12, el derecho a salud y a un medio ambiente saludable.

## **VIOLACIONES DE DERECHOS**

### **Artículo 1: el derecho a autodeterminación**

Las minas de oro en San Andrés y San Martín requirieron la reubicación de comunidades. El pueblo de San Andrés reportó que se sintió presionado por el Gobierno y la compañía minera a reubicarse. No se brindó asistencia legal en las negociaciones con la compañía minera. La comunidad de San Andrés fue reubicada en una comunidad recientemente construida con casas que no tenían lugar para hacer una milpa o para tener animales. Este estilo de construcción es contrario al modo de vida tradicional. La comunidad no fue consultada sobre el tipo de casa o diseño de la comunidad.

### **Artículo 7: el derecho a condiciones de trabajo favorables**

Los trabajadores de la mina San Martín en el Departamento San Francisco Morazán viven en proximidad cercana a una cancha de lixiviación. Los que viven en el complejo habitacional tienen acceso limitado a la comunidad. A los trabajadores de la mina de San Andrés en Copán inicialmente les fueron negados sus beneficios laborales cuando la compañía minera, Greenstone, se quebró. Fueron pagados sus beneficios solamente después de una negociación sustantiva y por la presión a la nueva compañía minera.

### **Artículo 11: el derecho a un adecuado nivel de vida.**

Miembros de la comunidad de San Ignacio, cerca de la mina San Martín, reportaron que la cantidad de tiendas ha aumentado desde el comienzo de la mina pero también la cantidad de expendios de alcohol. También ha venido mucha gente a la comunidad sin un control migratorio. Esta gente nueva ha causado el alza del costo de la vivienda, esto ha forzado a la gente de bajos recursos a dejar sus casas. El costo de materiales de construcción es mucho más caro y es más difícil conseguir mano de obra para la agricultura. Aunque la mina ha dado algunos beneficios a la comunidad, esta no fue consultada adecuadamente en el proceso de desarrollo para que hagan los proyectos necesitados. Por ejemplo, hicieron un pozo pero querían agua de tubo para la sección arriba de la comunidad.

La comunidad en San Andrés que fue reubicada ha sido construida en líneas en vez de construirla en el estilo tradicional, alrededor de una plaza central. También no hay lugar para una milpa o para tener animales alrededor de las casas. Los dueños de las casas todavía esperan título legal a sus casas.

## **Artículo 12: el derecho a la salud y a un medio ambiente saludable**

### ***Estudios que muestren contaminación de agua***

CESR fue informado de unos estudios preliminares llevados a cabo por una autoridad municipal que revelaron presencia anormal de mercurio, plomo, arsénico y hierro en ríos en el Oeste y Norte del país. Los estudios fueron hechos bajo los auspicios de la Organización Mundial de Salud. El pueblo toma agua de, y baña en estos ríos. Aunque los estudios sean preliminares, la ubicación de muchas minas que descargan aguas contaminadas en estas zonas sugiere que las minas están contaminando los ríos. Otro estudio realizado por el Centro de Estudios para el Control de Contaminación revela la presencia de metales pesados en agua y pescados que es causada por la descarga de aguas contaminadas por la mina El Mochito. Otro estudio realizado por este Centro revela problemas con aguas descargadas de la mina de San Andrés.

### ***Efectos directos de la minería en la salud de miembros de las comunidades***

Las casas cercanas a la mina de San Andrés en la comunidad San Miguel están ubicadas dentro de 42 metros de la cancha de lixiviación de cianuro. La cerca alrededor de la cancha no es suficientemente alta y un animal ha entrado al área y se murió después de tomar de la piscina de cianuro. También miembros de la comunidad se han quejado de un aumento de enfermedades respiratorias y de la piel por la alta concentración de polvo. Otra comunidad (Azacualpa) cerca de la mina de San Andrés tiembla cada vez que hay una explosión para exponer mas mineral crudo. Esta comunidad es inestable y las casas tienen grietas. Miembros de la comunidad tienen que caminar por en medio de la mina para llegar a su comunidad. Han muerto muchos animales domésticos por los camiones y muchos “casi-accidentes” con el pueblo. La mina de San Andrés ha descargado aguas contaminadas por cianuro entre 6-7 veces y el estudio de impacto ambiental (EIA) no les permite hacerlo. El sistema de ríos provee agua para tomar y bañar para las comunidades al río abajo.

Miembros de la comunidad El Porvenir están preocupados por los niveles más bajos del río y las grandes cantidades de arena que fueron extraídas para ser usadas en la mina de San Martín. Esto ha afectado la capacidad de usar el río para su ganado.

Estructura de la industria minera que previene controles adecuados para la protección del medio ambiente

Todas las compañías mineras tienen que hacer un estudio de impacto ambiental (EIA) para conseguir una licencia minera, pero es la compañía que selecciona quien hace el EIA y lo paga. El cumplir con el EIA y el Contrato de Mitigación es monitoreado por dos organizaciones, el Departamento para la Evaluación y Control Ambiental (DECA) y el Departamento para el Fomento de la Minería (DEFOMIN). DECA y DEFOMIN visitan las minas para tomar muestras de agua cada mes.

Ninguna solicitud para una concesión minera ha sido rechazada después de hacer un EIA. El gobierno no tiene responsabilidad para hacer o pagar el EIA.

### ***Falta de participación de la comunidad***

Miembros de las comunidades El Porvenir, San Ignacio y San Andrés se quejaron de la falta de consulta y participación en la etapa de EIA. Ninguna comunidad fue consultada adecuadamente antes de aprobar la licencia minera. El personal de DEFOMIN opinó claramente que no es apropiado consultar a la comunidad sobre decisiones mineras por la falta de educación del pueblo. El proceso para informar la comunidad de una solicitud para una concesión minera parece inadecuado porque la solicitud es publicada en un periódico y la Ley proporciona 15 días solamente oponerse a la mina. El periódico en que sale el anuncio de la solicitud no llega a la comunidad de San Andrés. Miembros de la comunidad también se preocuparon por la falta de disponibilidad del EIA para que miembros de la comunidad puedan leerlo.

### ***Falta de jurisdicción para investigar todas las quejas***

La oficina que es responsable de recibir denuncias sobre el medio ambiente, la Fiscalía para la Protección del Medio Ambiente, solamente tiene capacidad de investigar denuncias criminales, no las denuncias administrativas. No tienen jurisdicción de investigar el otorgamiento de una licencia minera. Cuando las ofensas son muy graves, la Fiscalía tiene que referirlas al proceso judicial. Con frecuencia los jueces son parciales, tienen muy poco conocimiento de la Ley General de Minería y no están dispuestos a decidir contra las compañías mineras. Miembros de la Fiscalía criticaron la falta de protecciones adecuadas dentro la ley y la falta de límites del uso de agua por una compañía minera.

El gobierno claramente ha violado sus obligaciones bajo Artículo 12, cometido actos de violación y fallado en su obligación de proteger y cumplir el derecho a la salud.

## **RECOMENDACIONES**

CESR recomienda que la Ley General de Minería sea enmendada para aclarar que una comunidad no puede ser sacada por la fuerza. Recomendamos que se establezca una oficina independiente para brindar ayuda legal a las comunidades que sean pedidas a reubicar. La Ley debe ser enmendada para requerir a las compañías mineras a negociar con comunidades con representación legal sobre su reubicación. La Ley debe ser enmendada para asegurar que las comunidades participan en el diseño de su comunidad nueva en que van a vivir. El Gobierno debe asegurar que las comunidades que fueron reubicadas son proveídas con título legal de sus casas dentro de 6 meses de reubicación o sino, la concesión minera será cancelada. La Ley General de Minería debe ser enmendada para reflejar esto.

CESR recomienda que la Ley General de Minería sea enmendada para requerir a cualquiera compañía minera que tiene operaciones en Honduras a aportar a un fondo para beneficios laborales para asegurar que los beneficios laborales sean pagados en caso de bancarrota. También recomendamos que el Ministerio de Trabajo monitorear las condiciones de vida del personal de la Mina de San Martín y asegure que su proximidad a las canchas de lixiviación de cianuro está dentro los estándares internacionales.

CESR recomienda que las autoridades municipales requieran a todos los que viven en la zona de la mina, a inscribirse con la autoridad municipal para controlar los números de gente que viene a la zona. Las autoridades municipales deben controlar el número de expendios de alcohol que sean permitidos a abrir en los pueblos cerca a una mina. El Gobierno debe proporcionar fondos

adicionales para construir viviendas de bajo costo para los que ya no tienen fondos suficientes para una vivienda por el costo elevado de vivienda en los pueblos cercanos a minas.

CESR recomienda que la Ley General de Minería sea enmendada para reformar el sistema actual de monitoreo ambiental y el esquema para brindar las concesiones mineras. DEFOMIN ocupa un papel doble de promover la minería y monitorear la protección del medio ambiente. DECA estudia los EIA y también monitorea los efectos ambientales de la minería. DEFOMIN debe promover la minería solamente y estar encargado del otorgamiento de las concesiones. DECA, o una otra agencia, debe tener un papel fuerte de proteger al medio ambiente. La Ley General de Minería debe ser enmendada para que el Gobierno sea encargado de hacer el EIA, no la compañía minera. Las compañías mineras deben ser requeridas para contribuir a un fondo que sea dedicado a pagar los EIA.

Solicitudes de concesiones mineras deben estar expuestas en las municipalidades locales, en las paredes de iglesias, en una cartelera (no solamente en los periódicos) y el período para comentar o oponer el otorgamiento de la concesión minera debe ser prolongado a 3 meses. Las comunidades que van a ser afectadas directamente deben recibir ayuda legal para poder oponerse al otorgamiento de una licencia minera. Los EIA deben estar disponibles en lugares públicos y cerca a las minas. Un EIA debe ser realizado cada 2 años cuando una mina está funcionando. Las comunidades cercanas deben ser incluidas en el proceso de monitoreo ambiental. El personal de la agencia encargada del monitoreo ambiental debe ser capacitado en el requisito de derecho internacional que las comunidades participen en el proceso del EIA y en el monitoreo ambiental.

El Gobierno a través del Ministerio de Salud y/o SANAA debe evaluar profundamente la calidad de agua en todo Honduras concentrando en las áreas donde hay minas. La evaluación debe averiguar la presencia de metales pesados incluyendo plomo, arsénico, cianuro, mercurio y tiocianatos en las aguas subterráneas y superficiales. El Centro para el Estudio y Control de Contaminación debe continuar como un centro independiente haciendo su propio monitoreo de estándares ambientales.

La Ley General de Minería debe ser reformada para limitar las cantidades de agua que una compañía minera puede usar. El Gobierno debe investigar e identificar alternativas para descargar agua contaminado por cianuro al sistema de ríos. Cualquier descarga de aguas contaminadas debe ser controlada por la agencia encargada de la protección ambiental.

El Gobierno debe ampliar el mandato de la Fiscalía para la Protección del Medio Ambiente para que tenga jurisdicción para investigar denuncias sobre el otorgamiento de concesiones mineras. Los jueces deben ser capacitados en la ley de minería. CESR fomenta las reformas al sistema legal que van a despolitizar a la judicatura y dar más independencia a los jueces.

## **CONCLUSION**

Después de investigar la industria minera en Honduras es obvio que el Gobierno está violando sus obligaciones bajo el Convenio de Derechos Económicos, Sociales y Culturales. Estas violaciones han ocurrido después de haber sido aprobada la Ley General de Minería e incluyen violaciones del derecho a salud y a un medio ambiente saludable, el derecho del pueblo a un nivel de vida adecuado, el derecho a autodeterminación, y el derecho a condiciones de trabajo justas y favorables. Mientras Honduras puede explotar sus recursos naturales para desarrollar la economía, es obligado por sus obligaciones internacionales a asegurar los derechos económicos, sociales y culturales de su pueblo. Las recomendaciones incluidas en este informe son unos pasos prácticos y concretos, que el Gobierno puede tomar para rectificar la situación actual.

## I. INTRODUCTION

In March/April 2001, the Center for Economic, Social and Cultural Rights conducted a fact-finding mission (CESR FFM) to Honduras to investigate the effects of the gold mining industry on Hondurans' economic, social and cultural rights.<sup>1</sup> It focused on the implementation and operation of the new General Law on Mining, which had been approved in the aftermath of Hurricane Mitch in 1998 and came into effect in February 1999. The central aim of the mission was to determine the effects on people's health and right to a healthy environment in light of the opening up of Honduras to gold mining carried out by mostly foreign companies using cyanide.

This form of gold mining has gained greater use as the price of gold has enabled it to become an economically viable form of gold mining. The mission came at a time after Honduras suffered grievously from the effects of Hurricane Mitch. It had sought and gained large foreign capital to enable it to reconstruct its economy which was devastated by the effects of Hurricane Mitch. One of the measures which the Government passed to open the country to foreign investment was to pass the General Law on Mining.

The fact-finding mission became concerned about the effects of gold mining on the health of Hondurans in several ways. People's right to health has been violated through the operation of mines which release heavy metals and cyanide-laden waste into water which is used for drinking and bathing. While further studies need to be conducted to identify the full extent of this problem, the initial results showing the presence of lead, mercury, and arsenic in people's water supply are worrying. The mission also revealed that people's health might be affected by living in close proximity to cyanide heap-leaching pads as they report increased respiratory and skin diseases.

The mission revealed that communities were coerced into relocating once gold was discovered under them. The community members did not feel able to freely participate and make decisions about their relocation. It also revealed that the process of granting mining concessions was not truly open to community participation and the process of conducting Environmental Impact Studies was also not sufficiently impartial and open to community participation.

It is clear that the Government needs to reorganize the bodies which are responsible for granting mining licenses, monitoring compliance with environmental impact studies and environmental norms and develop means for enabling community participation in these processes. This will involve significant amendments to the General Law on Mining. Until this occurs, Honduras will continue to breach its international obligations under the International Covenant on Economic, Social and Cultural rights.

This report is divided into 5 sections. The second section provides an overview on the political and economic situation; it details the operation of the legal system; and explains the processes of gold mining using cyanide.

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<sup>1</sup> The fact-finding mission was comprised of Anna Cody who conducted the intensive mission between 28<sup>th</sup> March and 5<sup>th</sup> April 2001. It included meetings with the Public Prosecutor's Office for the Protection of the Environment, the Department for the Promotion of Mining (Legal Director, technical advisor, Director of Environmental Monitoring Department), the Department for Evaluation and Environmental Monitoring within the Ministry for Natural Resources and the Environment, the National Independent Service of Aqueducts (Water Authority), the Department of Health (Environmental Monitoring Department), the Center for the Research and Control of Pollution, the Association of Non-Governmental Organizations, Dr Juan Almedares, and community members of San Ignacio, El Porvenir engaged in farming, members of the Environmental Committee of the Syria Valley, and a visit to the mine at San Martín, Department Francisco Morazán.

The third section provides an overview of the status of economic, social and cultural rights in Honduras with specific reference to the gold-mining industry. The fourth section gives general and specific recommendations and the fifth section is the conclusion.

## GOLD

“Gold comes from the earth and brings with it a series of social and environmental impacts. Cyanide is the most popular chemical used by mining corporation to extract gold from ore, despite the fact that leaks or spills of this chemical are extremely toxic to fish, plant life and human beings. Gold mining produces few jobs (those it does provide only last on average about eight years) and the holes in the ground left by the industry leave long-term liabilities for the community. Gold mining mostly enriches a few corporate executives. Gold mining is non-essential: more gold lies in the vaults of the US Federal Reserve –steadily depreciating—than is known to exist in all the mines in the entire United States including Alaska.”

*The Gold Album, Project Underground*

“The current price of gold is \$265 per ounce.”

*The London Foreign Exchange, April 18, 2001*

“If we submit the decision to peasants there will be anarchy. It is unrealistic to ask illiterate people what should happen. These decisions belong to experts....”

*Technical Advisor of Department for the Promotion of Mining*

“We were not consulted at all about the creation of the mine. We didn’t participate and I knew nothing about the environmental impact study until you (Fact-finding Mission) mentioned it.”

*Lucila Canaca of El Porvenir*

## II. BACKGROUND INFORMATION ON HONDURAS

### A. POLITICAL AND ECONOMIC OVERVIEW

Honduras, the second largest country of Central America with an area of 112,088 square kilometers, borders with Guatemala, El Salvador and Nicaragua. It has a population of approximately six million people, about 90% of whom are mestizo. Its natural resources include timber, gold, silver, copper, lead, zinc, iron ore, antimony, coal, fish and hydropower.<sup>2</sup> The economy is based mostly on agriculture, which accounted for 18 percent of GDP and 70 percent of exports in 1999. Honduras' primary exports include coffee, shrimp, lobster, melons, bananas, beef, timber and zinc. Since the late 1990s, especially during the years 1996 and 1997 the mining industry has increased markedly in size as the country has opened to foreign investment. Although the figures for the amount of territory, which has been released for mining exploration and extraction are indefinite, some estimate that over 30% of the territory has been licensed for mining.<sup>3</sup>

With an annual per capita income of approximately \$750 in 1999, Honduras remains one of the poorest and least developed countries in Latin America. Over 65 percent of the country's households live in poverty and the unemployment rate combined with underemployment is estimated at 42 percent. While 1998 GDP growth was 3 percent, the severe impact of Hurricane Mitch contributed to a 3 percent contraction in GDP in 1999, in addition to significant increases in unemployment and the budget deficit.<sup>4</sup>

Since 1990, succeeding Honduran administrations have embarked on neo-liberal economic reform programs.<sup>5</sup> These have involved dismantling price controls, lowering import tariffs, removing non-tariff barriers to trade, adopting a free market exchange rate regime, removing interest rate controls and passing legislation favorable to foreign investment. Honduras became a founding member of the World Trade Organization in 1995 and participates in international trade organizations, including those related to the establishment of the Free Trade of the Americas.<sup>6</sup>

In light of crippling levels of external public debt (at the end of 1999, Honduras total external public debt, was about \$3.1 billion, equaling about 135 percent of exports and more than 300 percent of the country's central government revenue) both the International Monetary Fund (IMF)

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<sup>2</sup> The World Factbook 2000, Central Intelligence Agency. [www.cia.gov/cia/publications/factbook/](http://www.cia.gov/cia/publications/factbook/)

<sup>3</sup> CESR FFM, meeting with representative from ASONOG, 3<sup>rd</sup> April 2001.

<sup>4</sup> 1999 Country Report on Human Rights Practices. Bureau of Democracy, Human Rights and Labor. U.S. Department of State. February 25, 2000 and Budget Justification FY 2001: Honduras. U.S. Agency for International Development

<sup>5</sup> Honduras is a democratic constitutional republic divided into eighteen departments. Honduras' current Constitution dates back to 1982 and provides for a strong executive, a unicameral National Congress, comprised of 128 seats, and a judiciary appointed by the Congress. Both the president and the Congress are elected by popular vote to serve four-year terms. The two major political parties are the National Party and the Liberal Party. On January 27, 1998, President Flores of the Liberal Party took office. Honduras will hold its next general elections -- which will decide the nation's next President, Congress and mayors -- in November 2001.

<sup>6</sup> 1999 Country Report on Economic Policy and Trade Practices – Honduras. Bureau of Economic and Business Affairs. U.S. Department of State. March 2000. [www.state.gov/www/issues/economic/trade\\_reports/1999/](http://www.state.gov/www/issues/economic/trade_reports/1999/)

and the World Bank agreed to support a comprehensive debt reduction package for Honduras under the enhanced Heavily Indebted Poor Countries (HIPC) Initiative.

In 1999, the Honduran government outlined the policies it intended to implement in the context of its request for financial support from the World Bank and the IMF under HIPC Initiative. These included: further liberalizing Honduras' trade regime through the lowering of import duties; taking steps to contain growth in wages, interest payments and non-emergency transfers; increased privatization and modernization of a number of sectors including electricity distribution, telecommunications, public works projects and airports; and a decline in inflation from 16 percent in 1998 to 8 percent in 2001.<sup>7</sup>

Nongovernmental organizations such as Oxfam have criticized the slow pace of debt relief under HIPC Initiative, as well as the fact that the IMF has tied progress on the initiative to the introduction of wide ranging economic reforms, rather than linking it to a poverty reduction agenda. Debt relief in Honduras was delayed while agreements were reached on the speed of privatization of the electricity sector.<sup>8</sup> Some groups believe that the 1998 mining law, which offers companies lifelong concessions, low taxes and unprecedented power to petition for the removal of traditional communities near mineral deposits, was, in part, a result of pressure by the international financial institutions to implement reforms in macroeconomic, structural and social policies.<sup>9</sup>

## Hurricane Mitch

Hurricane Mitch – the worst natural disaster ever to strike the Western Hemisphere – presented a severe setback for Honduras, which suffered more damage than any of its neighbors. The October 1998 hurricane caused widespread flooding and landslides, which killed 5,667 persons, 8,058 disappeared, 12,272 people injured and left hundreds of thousands homeless, caused approximately \$3 billion in damage, and deprived tens of thousands of their livelihoods.<sup>10</sup>

<sup>11</sup>Family dislocation and damage to educational facilities and water/sanitation systems as a result of Hurricane Mitch are expected to increase school drop-out rates and infant and child mortality.<sup>12</sup>

The international community has committed some \$6 billion to the rehabilitation and reconstruction process. In the aftermath of Hurricane Mitch, which is estimated to have destroyed some 70 to 80 percent of Honduras' agricultural production, the Honduran government increased its efforts to provide a favorable climate to foreign investment. In the last two months

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<sup>7</sup> March 10, 1999 Letter of Intent of the Government of Honduras. [www.imf.org/external/NP/LOI/1999/031099a.html](http://www.imf.org/external/NP/LOI/1999/031099a.html)

<sup>8</sup> Making Debt Relief Work: Proposals for the G7. Oxfam International Policy Paper, July, 2000. [www.oxfam.org.uk/policy/papers/okinawa/debt2.htm](http://www.oxfam.org.uk/policy/papers/okinawa/debt2.htm)

<sup>9</sup> Michael Marsh, "Honduras is worth more than gold". *Honduras This Week*. March 5, 2001. [www.marnder.com/htw/special/environment/87.html](http://www.marnder.com/htw/special/environment/87.html)

<sup>10</sup> 1999 Country Report on Human Rights Practices. Bureau of Democracy, Human Rights and Labor. U.S. Department of State. February 25, 2000

<sup>11</sup> Plan Maestro de la Reconstrucción y Transformación Nacional, Master Plan for Reconstruction and national Transformation <http://rds.org.hn/estocolmo/propuestas/pmrtn/pmrtn.htm>, page 4.

<sup>12</sup> Budget Justification FY 2001: Honduras. U.S. Agency for International Development

of 1998, the Congress passed legislation reforming the mining code, allowing concessional operations of airports and seaports, providing incentives for renewable energy projects, and allowing foreign tourism development in coastal areas. Indigenous groups have demonstrated against legislative proposals designed to enhance foreign investment in coastal areas. They claim such proposals would vitiate indigenous claims to ancestral lands, accelerate alienation of indigenous property, and deprive indigenous people living in affected areas of access to coastal areas.<sup>13</sup> Similar complaints have been made with regard to the new mining code.

It is clear that Honduras as a HIPC is under pressure to open itself to foreign investments. The Government has responded to this pressure with the passing of the General Mining Law. The Government itself states in the National Master Plan for Reconstruction that “recently the National Congress, as part of the series of legal initiatives aimed at revitalizing the productive sector, has passed the Mining Law whose aim is to guarantee mining rights and attract foreign investment in order to generate employment.”<sup>14</sup>

While the exact connection between the growth of the mining industry and international financial institutional pressure is not abundantly clear, the dual effects of Honduras’ highly indebted country status and Hurricane Mitch have contributed to Honduras’ need to increase foreign investment. The General Mining Law was passed to facilitate foreign investment in mining. Environmental protection is clearly secondary in this law. This will be discussed in detail in the following legal section.

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<sup>13</sup> 1999 Country Report on Human Rights Practices. Bureau of Democracy, Human Rights and Labor, U.S. Department of State. February 25, 2000

<sup>14</sup> National Master Plan for Reconstruction for Honduras. <http://rds.org.hn/estocolmo/propuestas/pmrtn/pmrtn.htm>

## B. LEGAL SYSTEM

### International law

1. The government of Honduras has ratified the following international conventions:

International Covenant on Economic, Social and Cultural Rights (1981)  
 International Covenant on the Elimination of All Forms of Discrimination Against Women (1983)  
 International Covenant on the Rights of the Child (1990)  
 International Convention against Torture (1996) (acceded)  
 International Covenant on Civil and Political Rights (1997)

### Domestic Law

2. Within Section three of the Constitution, chapters one to nine include human rights protections such as that the dignity of a person is inviolable (Article 59), that all are equal before the law and should be free from discrimination on the basis of sex, race, class or any other human characteristic (Article 60), freedom of association (Article 78), right to present legal petitions and have them answered promptly (Article 80), freedom of movement (Article 81), right to private property (Article 103) protection of the family, marriage, maternity and infancy (Article 111) of children (Article 119) the right to work and protection from unemployment (Article 127) and regulation of working hours, the right to have access to economic resources even if a person is unable to work (Article 142), and the right to health (Article 145), which includes the responsibility of everyone to participate in the preservation and promotion of individual health and the health of the community. It states: *“The State will conserve the environment sufficiently in order to protect the health of the people”*(Article 145). It names the importance of eradicating illiteracy (Article 154) and the promotion of culture (Article 151) as well as recognizing the responsibility of the State to develop the basic education of the people (Article 153) and recognizes the right of all Hondurans to dignified housing (Article 178)
3. In Section 6, Chapter 1 in relation to the economic system the Constitution refers specifically to the environment. It declares the public need to exploit natural resources in a rational and scientifically competent way. (Article 340) It also states *“The reforestation of the country and the conservation of forests is of national importance and in the collective interest.”* (Article 340)
4. The other domestic laws specifically relevant to this report are the General Environment Law and the General Mining Law.
5. The General Environment Law (1993) in its preamble refers to the importance of maintaining the environment and that the degradation of the environment poses a risk to the ability of the people to enjoy their economic and social rights.<sup>15</sup> It also states the

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<sup>15</sup> Decree number 104-93, second paragraph of the preamble in which it states that “the degradation of the environment threatens the future of the nation causing economic and social problems which affect the quality of life of the people and it is the responsibility of the State to encourage a style of development which, through the proper use of natural

importance of the participation of the people in order to maintain, conserve and protect the environment.<sup>16</sup> These principles are stated explicitly in Article 3, which states that non-renewable natural resources should be used in a way which prevents negative environmental effects being produced. The law discusses the importance of conducting environmental impact studies for any project, which has the potential of degrading or polluting the environment.<sup>17</sup> It also stipulates that any release of polluted material must be strictly in compliance with the technical rules and also to any international norms<sup>18</sup> and prohibits the release of radioactive waste or any other wastes to the environment.<sup>19</sup> It states: “*the territory and the national waters cannot be used as a place to deposit these wastes.*” Participation of the people is specifically discussed, and projects are required to include and promote the participation of the communities in any project, which relates to the proper management of the environment.<sup>20</sup>

### ***General Mining Law***

6. The General Mining Law was passed on 30 November 1998 and entered into operation on 6 February 1999. The stated aim of the law is to “guarantee mining rights and to attract foreign investment in order to generate employment. An important part of the law is the rational exploitation of natural resources, by means of clearly defined legal rules which will benefit the Central Government, the municipalities and the private sector.”<sup>21</sup>
7. The law recognizes that the State of Honduras holds inalienable dominion over all mineral deposits (metallic, non metallic and gemstone). This means that landholders have rights only to the superficial layer and not the subsisting layer.<sup>22</sup> There is only one form of legal title called “a mining concession” which encompasses both the exploration and exploitation of minerals.<sup>23</sup> The law provides indefinite periods of concessions which are extinguished by cancellation, nullification or renunciation.<sup>24</sup>

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resources and of the environment enables the basic needs of the people to be satisfied without compromising the ability of the future generation to satisfy their needs.”

<sup>16</sup> Decree number 104-93, fourth paragraph of the preamble, “the participation of the people is vital for the protection, conservation and rational use of the natural riches of the country and of the environment in general.

<sup>17</sup> Article 5 of the General Environment Law

<sup>18</sup> Article 7 of the General Environment Law

<sup>19</sup> Article 8 of the General Environment Law

<sup>20</sup> Article 9 of the General Environment Law

<sup>21</sup> Plan Maestro de la Reconstrucción y Transformación Nacional, Master Plan for Reconstruction and National Transformation <http://rds.org.hn/estocolmo/propuestas/pmrtn/pmrtn.htm>, page 64.

<sup>22</sup> Article 2 of the General Mining Law

<sup>23</sup> Article 9 of the General Mining Law

<sup>24</sup> Articles 62-71 of the General Mining Law

8. Opposition to the granting of a mining concession must be made within 15 days of the publication of the application for a mining concession in the national newspaper. The opposing petition must include all the relevant proofs.<sup>25</sup>
9. The rights of mining concession holders, who can be individuals or companies, include:
  - a) the free use of unproductive State lands;
  - b) the right to ask permission to use third parties' lands in order to exercise the mining concession;
  - c) use of water both inside and outside the area of the mining concession for the operations of the mine and for personal use by mine-workers in accordance with the legal rules on this matter;
  - d) to have legal petitions answered by the mining authority within a specified time or else they will be considered automatically approved;<sup>26</sup> and
  - e) the right to petition the State to forcibly remove people from their land where their presence makes the use of the mining concession impossible. The decision to forcibly move people should be made according to the terms and proceedings indicated in the law.<sup>27</sup>
10. The obligations of the concession holders are:
  - a) to produce at least \$500/hectare per year until the 8<sup>th</sup> year after granting the concession;
  - b) to pay a territorial tax (canon territorial) which varies between \$.25/hectare per year for a new concession/permission and \$3.00/hectare per year for a concession/permission which is older than 8 years old;
  - c) to pay a penalty amount if minimum production is not reached;
  - d) to develop activities subject to applicable safety, hygiene and environmental norms;<sup>28</sup> and
  - e) to pay a tax on rent (subject to depreciation, deductions and mortgages), tax on sales (doesn't apply to exports) and a municipal tax (1% of crude worth of sales)
11. The process for obtaining a mining permit is that a company must firstly decide on the area in which it wishes to mine. The Department for Evaluation and Environmental Monitoring (DECA) then inspects the area where the company is proposing to establish a mine. From this inspection DECA decides whether or not the mine should be classed as Category One or Category Two. If the mine is classed as Category One the mining company is not required to do an Environmental Impact Study (EIS). If the geographical area is more sensitive or if the mine is going to be a large one, then it is classified as Category Two. The principle environmental protections lie within the EIS.<sup>29</sup> If a mine is categorized as Category Two, the mining company is then provided with the terms of reference for the EIS. The mining company is given a list of companies, which are approved by the Government for the purposes of doing EIS. There is a list of approved companies at the Department of Natural Resources and the Environment. The mining

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<sup>25</sup> Article 60 of the General Mining Law

<sup>26</sup> Article 23 of the General Mining Law

<sup>27</sup> Article 32 of the General Mining Law

<sup>28</sup> Articles 33-38 of the General Mining Law

<sup>29</sup> Article 79 of the General Mining Law

company pays for the EIS. Once it is completed then there is a team of technical experts from DECA who study the EIS. Sometimes additional technical experts from the Department for the Promotion of Mining (DEFOMIN) or SANAA are asked to participate in the review of the EIS. After the EIS has been reviewed then a formal opinion is released which includes a list of measures, which the company must comply with to be granted the mining license. This list of measures then forms the Contract of Mitigation measures.

12. Once an EIS has been approved the mining company must seek the formal approval of DEFOMIN, which includes checking the financial status of the mining company.<sup>30</sup>
13. The government has created two bodies to deal with the issue of supervision of mines. The first one is DECA and the second is DEFOMIN. When a mining company begins operations then both DECA and DEFOMIN carry out regular inspections at the mining site sometimes together and other times separately.<sup>31</sup>
14. There is also provision for a manual detailing the environmental norms to be written.<sup>32</sup> This manual is currently being written by DEFOMIN. While the law refers to decisions made about relocation of people and use of water according to the law, there is no established law on these matters. Thus while the law appears clear and determinate, in practice there are no guiding principles or case law to use to decide these issues. Frequently the decisions rest with the discretion of both DECA and DEFOMIN.

### ***Judiciary and Court system***

15. There is a three-tiered court system in Honduras based in codified law rather than a common law system. The first instance judges (Juzgados de Letras) are the lowest level and these courts serve as trial courts in serious civil and criminal cases. There are about 280 of these judges. In the capital Tegucigalpa there are specialized judges but in the country areas these judges do not specialize. Above the first instance courts is the Court of Appeal. These courts are three-judge panels that hear all appeals from the lower courts, including civil, commercial, criminal and habeas corpus cases. These judges specialize in different areas such as criminal, family and children or civil law. The Court of Appeal judges rely heavily on the assistance of Court of Appeal employed lawyers who make initial assessments of cases and make recommendations about how to deal with them. The Supreme Court, which is the highest court, has nine principal justices and seven alternates. These judges are appointed by the National Congress for a period of 4 years each which corresponds with the electoral term also.<sup>33</sup> The court has three chambers-- civil, criminal, and labor--with three justices assigned to each chamber.
16. In 2002 there are substantial changes proposed to the court system so that judges of the Supreme Court will be appointed every 7 years and the Supreme Court will begin to have a constitutional law specialty.<sup>34</sup>

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<sup>30</sup> CESR FFM, meeting with technical advisor of DEFOMIN, 29<sup>th</sup> March 2001.

<sup>31</sup> CESR FFM, meeting with Director of Environmental Monitoring Department of DEFOMIN, 2<sup>nd</sup> April 2001

<sup>32</sup> Article 83 of the General Mining Law

<sup>33</sup> CESR FFM, meeting with Legal Director of the DEFOMIN, 30<sup>th</sup> March 2001.

17. It appears that making a denunciation of an environmental offence is relatively easy and accessible. There is no office, which provides free legal assistance in formulating denunciations but this does not appear to have created a barrier to people bringing complaints.<sup>35</sup>
18. Enforcing constitutional rights appears to be highly problematic. There are no judges who specialize in the area of constitutional law and this area of jurisprudence seems very undeveloped, if used at all by the community or civil society.<sup>36</sup>

### **C. THE GOLD-MINING INDUSTRY AND USE OF CYANIDE IN GOLD-MINING**

19. Cyanide leach mining is now the dominant method used by the hardrock mining industry to extract gold and other metals from ore. This was first developed in Scotland in the late 19<sup>th</sup> century. By 1969, the US Bureau of Mines proposed cyanide heap-leaching as a method to recover gold from extremely low-grade ore and the method began to be used internationally. Previously the mercury amalgamation process was used which only recovered approximately 60% of an ore body's gold. In contrast, leaching finely ground ore with cyanide could recover more than 97% of the ore's gold value.<sup>37</sup> By the 1970s, the U.S. gold industry adopted the technique, soon making heap-leaching the dominant method for treating gold ores.<sup>38</sup>
20. The process of gold mining using cyanide is controversial because mining such low-grade ores creates large open pits, releases a number of potentially dangerous toxins and cyanide itself is extremely toxic.<sup>39</sup>
21. Cyanide heap leaching is the technique used in the San Martín mine run by Entre Mares and in the mine at San Andrés, Copan. The process includes:
  - i) removal of all topsoil from the area to be mined;
  - ii) large open pits, up to a mile wide are created for extracting the ore;
  - iii) the raw ore is transported in very large trucks to rock crushing machines;
  - iv) the crushed material is conveyed to a pad where it constructs heaps and cyanide solution is sprayed over the heaps;
  - v) the cyanide trickles down through the ore and bonds with microscopic specks of gold whereupon a heap pad, (rubber layer), underlying the heap, channels the solution into a holding pond;

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<sup>34</sup> CESR FFM, meeting with Legal Director of the DEFOMIN, 30<sup>th</sup> March 2001.

<sup>35</sup> CESR FFM, meeting with Public Prosecutor's Office for the Protection of the Environment, 28<sup>th</sup> March 2001.

<sup>36</sup> CESR FFM, meeting with Legal Director of DEFOMIN, 30<sup>th</sup> March 2001.

<sup>37</sup> Mineral Policy Center, Cyanide Leach Mining Packet, [www.mineralpolicy.org](http://www.mineralpolicy.org), page 2.

<sup>38</sup> Golden Dreams, Poisoned Streams, Mineral Policy Centre 1997, quoted in Cyanide Leach Mining Packet, [www.mineralpolicy.org](http://www.mineralpolicy.org), page 2.

<sup>39</sup> Mineral Policy Center, Cyanide Leach Mining Packet, [www.mineralpolicy.org](http://www.mineralpolicy.org), page 2.

- vi) the gold laden cyanide solution flows over activated carbon and the carbon bonds to the gold while the cyanide is drawn off and channeled to be re-used on the heap;
  - vii) other chemicals are used to separate the gold from the carbon; and
  - viii) the gold is purified<sup>40</sup>
22. Mining companies state that cyanide in water rapidly breaks down in the presence of sunlight, into largely harmless substances, such as carbon dioxide and nitrate or ammonia. However, cyanide also tends to react readily with many other chemical elements, and is known to form, at a minimum, hundreds of different compounds. Many of these breakdown compounds, while generally less toxic than the original cyanide, are known to be toxic to aquatic organisms. They may also persist in the environment for long periods of time and there is evidence that forms of these compounds can be accumulated in plant and fish tissues.<sup>41</sup>
23. Generally mines are not required to monitor these cyanide related compounds. While much of the cyanide used at mining sites does break down fairly readily, either as a result of natural degradation or the various treatment processes, significant amounts of the original cyanide form potentially toxic compounds that remain unaccounted for in the monitoring of mining compounds.
24. There are no water quality criteria, for most forms of cyanide derivatives found in mining-related waters, in the General Mining Law of Honduras. The current U.S Environmental Protection Agency water quality criterion for cyanide is 0.2 milligrams per liter (0.2mg/L) for drinking water, 5.2 micrograms per liter for freshwater aquatic life, and 1.0 microgram per liter for marine aquatic life and wildlife.<sup>42</sup>
25. Fish are killed by cyanide concentrations in the microgram per liter range, whereas bird and mammal deaths generally result from cyanide concentrations in the milligram per liter range. A toxicologist with the U.S Environmental Protection Agency reports that Hydrogen Cyanide concentrations above 40 to 200 milligrams per liter are likely to be toxic to mammals, including humans.<sup>43</sup>

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<sup>40</sup> Mineral Policy Center, Cyanide Leach Mining Packet, [www.mineralpolicy.org](http://www.mineralpolicy.org), pages 4 and 15, CESR FFM, visit to the San Martín mine, discussions with a mining engineer, 1<sup>st</sup> April 2001.

<sup>41</sup> Mineral Policy Center, Cyanide Leach Mining Packet, [www.mineralpolicy.org](http://www.mineralpolicy.org), page 7

<sup>42</sup> Mineral Policy Center, Cyanide Leach Mining Packet, [www.mineralpolicy.org](http://www.mineralpolicy.org), page 7, EPA 1986.

<sup>43</sup> Mineral Policy Center, Issue Paper No 1, [www.mineralpolicy.org](http://www.mineralpolicy.org), page 8.

### Accidents involving cyanide<sup>44</sup>

Romania: In February 2000, approximately 3.5 million cubic feet of cyanide contaminated water spilled into the Szamos River, which flows into the Tisza. This river passes through Hungary, Serbia and Romania and over 250 miles of river was contaminated killing millions of fish, shutting water supplies and devastating aquatic life.<sup>45</sup>

Kyrgyzstan: On 20 May 1998, a truck transporting cyanide to the Kumtor mine in Kyrgyzstan plunged off a bridge, spilling almost two tons of sodium cyanide (1,762 kg) into local surface waters

Guyana: In 1995, more than 860 million gallons of cyanide-laden tailings were released into a major river in Guyana when a dam collapsed at Cambior mining company's Omai gold mine.

USA: Pegasus Corporation founded a gold mine in Montana in 1979, which it closed in 1999/2000. The mine experienced repeated leaks and discharges of cyanide solution throughout its operating life, resulting in wildlife deaths and severe contamination of streams and groundwater.

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<sup>44</sup> Mineral Policy Center, Issue Paper No 1, [www.mineralpolicy.org](http://www.mineralpolicy.org)

<sup>45</sup> Washington Post, February 15, 2000. A Gold Mine's Toxic Bullet.

### III. OVERVIEW OF THE STATUS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS WHICH ARE AFFECTED BY THE MINING INDUSTRY IN ITS CURRENT FORM OF OPERATION

#### Article 1

1. All peoples have the rights to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-self governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations

#### The Facts

26. The CESR fact-finding mission found that the San Andrés community felt pressured to re-locate when gold was discovered under the community site. The community had been living on its location in the municipality of La Unión for approximately 150-200 years. There was an 80 year old church in the community and there had been a church on that spot in the community for approximately 300 years which had passed through various stages of being destroyed and re-built. While the community members owned their houses, the State owned the minerals underneath their community. During the period of 1997-1998 community members began to hand over their legal titles to their houses after being promised new houses in a different area in order to create a new community. The mining company, Greenstone, promised this. Ultimately only 3 families refused to move and these finally agreed to move after the Director of Greenstone Gerard Phillips, bulldozed the water tank with a young man on top of it. Both his legs were broken with multiple fractures. Gerard Phillips was compelled to pay a fine, but not imprisoned for doing this. The whole community was finally relocated in 1998. Community members state that they did not feel able to resist the mining company in its demands that the whole community should be re-located.

CESR FFM, interview with representative from ASONOG (Association of non governmental organizations), 3<sup>rd</sup> April 2001.

27. Additionally, the community members of San Andrés stated that, whereas previously they had had a small plot of land on which to grow corn and beans to supplement their food intake, in the new village there was no plot of land around each house in which to grow basic foodstuffs. The lack of land around the house also meant that there was no area in which to keep animals. This has led to animals living and wandering onto the roads.

CESR FFM, interview with representative from ASONOG (Association of non governmental organizations), 3<sup>rd</sup> April 2001.

## Government response

28. The CESR FFM learnt that the government through its body, DEFOMIN, has held numerous meetings with mining company representatives as well as community members in order to stabilize the location of the community, including building a community center, a school, health center and 2 churches. These meetings were held after the mining concession was granted. The mining company has also completed a water project to bring piped water into the community and built a fence around the football field.

CESR FFM, interview with representative from ASONOG (Association of non governmental organizations), 3<sup>rd</sup> April 2001

CESR FFM, interview with Director of the Environmental Monitoring Department of DEFOMIN, 2<sup>nd</sup> April 2001.

### Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
  - (i) Fair wages and equal remuneration for work of equal value without distinction of any kinds, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) A decent living for themselves and their families in accordance with the provision of the present Covenant
- (b) Safe and health working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure, and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

## The facts

29. The CESR FFM found that some of the workers at the San Martín mine in the municipality of San Ignacio, Department of Francisco Morazán, lived within close proximity of the cyanide heap leach pad, in a building constructed by the mining company Entre Mares S.A de CV. While workers did not express their concern with the proximity of the cyanide leach pad, they did discuss the difficulties of living within the mine compound.

CESR FFM, visit to the San Martín mine, 1<sup>st</sup> April 2001, discussion with workers at the mine site.

30. Workers at the San Andrés mine in Department of Copan were not paid their work entitlements when the mining company, Greenstone went bankrupt. Eventually the company which bought the mining operations paid the workers their work entitlements. This reveals the vulnerability of workers if a mining company becomes bankrupt without having paid their benefits.

CESR FFM, interview with representative from ASONOG (Association of non governmental organizations), 3<sup>rd</sup> April 2001

### Government response

31. The government financed the partial purchase of the San Andrés mine by the bank Atlántida, an Honduran bank. After the sale negotiations held between DEFOMIN and the new mining company pressured the new company to pay the workers' entitlements.  
CESR FFM, interview with Director of the Environmental Monitoring Department of DEFOMIN, 2<sup>nd</sup> April 2001

### Article 11

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

### The facts

32. During the CESR FFM, community members of the community San Ignacio reported that since the opening of the mine, there had been an increase in the number of shops which had opened which was of benefit to the community. One of the estimates of increase in shops was that an additional 10-15 shops had opened and that they sold a greater variety of food.  
CESR FFM, meeting with community members, San Ignacio community, 1<sup>st</sup> April 2001.
33. A community member also reported that in addition to the increase in shops there had also been an increase in the number of alcohol outlets by about 15 additional alcohol outlets. This led to greater incidence of alcohol abuse in the town.  
CESR FFM, meeting with community members, San Ignacio community, 1<sup>st</sup> April 2001.
34. Community members also reported that since the beginning of the operation of the mine, there had been a large increase in the number of people in town who were not from that area. Estimates ranged between 250 and 300 people who had come into the zone. No migration control was in existence through the municipality.  
CESR FFM, meeting with community members, San Ignacio community, 1<sup>st</sup> April 2001.
35. Community members also reported the increase in the cost of living due to the influx of people from outside that region. Whereas a house in the past cost approximately 150 lempiras/month to rent it now costs approximately 2000 lempiras/month which mean that the poorest members of the community had been effectively pushed out of the housing market. The cost of materials and manual labor in the agricultural sector had also increased, making it more difficult to obtain assistance.  
CESR FFM, meeting with community members, San Ignacio community, 1<sup>st</sup> April 2001.
36. An additional problem is that while the mine has provided some tangible benefits to the community, they are not the benefits which the community requested. In the case of San Ignacio, the community asked for a water system throughout the higher section of the

community which was without water. The mining company instead provided a well dug next to an already existing well. The community asked for a doctor in the community and was provided with a new building for the health clinic. The community asked for a system to dispose of sewerage and also wastes. No system has been provided so that sewerage continues to be released directly into the river system.

CESR FFM, meeting with community members, San Ignacio community, 1<sup>st</sup> April 2001.

37. The FFM was told that the community of San Andrés was re-located to a new area close to its previous location. While the company built 124 houses, one for each family, the layout of the village is now no longer in accordance with traditional patterns and the houses are constructed along lines rather than around a central square. The lack of a back yard in which to grow corn and supplement food and have an area for animals also disrupts the traditional lifestyle of the community. The houses are constructed of concrete block in a uniform style. Additionally those living in the houses are still waiting to receive the legal titles to their properties. They have asked for legal title to their new land and houses since 1997.

CESR FFM, interview with representative from ASONOG (Association of non governmental organizations), 3<sup>rd</sup> April 2001

38. A woman from the community El Porvenir which is a community in close proximity to the San Martín mine felt that “I don’t think there are any communal benefits but perhaps some individuals benefit from the mine, for people who work in the mine.”

CESR FFM, interview with community member, El Porvenir, 1<sup>st</sup> April 2001.

### **Government response**

39. The government in its report under Article 11 refers to the standard of living in relation to the prevailing situations in education, health, employment and housing. At paragraph 143 it states *“The environmental health problems include inadequate food hygiene controls, shortage of water fit for human consumption, and poor domestic sanitation facilities and excreta and rubbish disposal services. The following indicators reflect this situation: 35 per cent of homes do not have a piped drinking water supply; 40 per cent do not have adequate excreta disposal arrangements; and there are other problems of varying severity resulting from the destruction of forests and natural resources of water and from the development methods used in certain areas, which relegate health considerations to second place.”* From the discussions with various governmental agencies and community groups it appears that the development of the mining industry follows the pattern of inappropriate development methods and the relegation of health considerations to second place. Entre Mares, did not respond appropriately to the development needs as expressed by the community.

Initial report: Honduras. 23/07/98, E/1990/5/Add.40 (State Party Report)

40. The government believes that the presence of a mine assists a local community through the provision of employment and through the material assistance which the mine brings.

CESR FFM, meetings with various technical staff of DEFOMIN, 29<sup>th</sup> and 30<sup>th</sup> March 2001.

### Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve full realization of this right shall include those necessary for:
  - a) The provision for the reduction of the still-birth rate and of infant mortality and for the healthy development of the child;
  - b) The improvement of all aspects of environmental and industrial hygiene;
  - c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - d) The creation of conditions which would assure to all medical services and medical attention in the event of sickness.

### ICESCR General Comment No 14

Para 4: “the drafting history and the express wording of Article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and health working conditions, and a healthy environment.

Para 15. “the improvement of all aspects of environmental and industrial hygiene” (art, 12.2(b)) comprises *inter alia*, preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.

Para 37 “the obligation to fulfill (promote) the right to health requires States to undertake actions that create, maintain and restore the health of the population. Such obligations include: i) fostering recognition of factors favouring positive health results, eg research and provision of information.

Footnote 13: The Committee takes note, in this regard, of Principle 1 of the Stockholm Declaration of 1972 which states: “man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”, as well as of recent developments in international law, including General Assembly resolution 45/94 on the need to ensure a healthy environment for the well-being of individuals; Principle 1 of the Rio Declaration; and regional human rights instruments such as article 10 of the San Salvador Protocol to the American Convention on Human Rights.

### The facts

41. The CESR FFM found that preliminary studies carried out by the Municipal Division Responsible for Water in San Pedro Sula revealed the presence of mercury, lead, iron and arsenic in waters in the Northern and Western parts of the country. The study was carried out over a 4- month period and after taking samples from a number of rivers in an area where there is substantial mining. These rivers feed into a larger river system and these rivers show high levels of lead, mercury, iron and arsenic. The study was carried out under the auspices of the Pan-American Health Organization which is the regional branch of the World Health Organization. These rivers are all rivers in which people bathe,

drink water from. Until now there have been no studies to determine the health effects on the people.

CESR FFM, meeting with Director of the Department of Environmental Monitoring of the Health Department, 4<sup>th</sup> April 2001. CESR FFM, meeting with the National Independent Service of Aqueducts, (SANAA), 31<sup>st</sup> March 2001.

42. While the connection between the existence of mines which release contaminated waters into the river systems and the presence of these heavy metals has not been proved, there does appear to be a clear connection between the location of these mines and the presence of heavy metals. The mine at San Andrés Copán is located within these river systems. “It is obvious that it is the mines which are contaminating the rivers” (Director of the Department of the Environmental Monitoring of the Health Department)

CESR FFM, meeting with Director of the Department of Environmental Monitoring of the Health Department, 4<sup>th</sup> April 2001.

CESR FFM, meeting with the National Independent Service of Aqueducts, (SANAA), 31<sup>st</sup> March 2001.

“It is obvious that it is the mines which are contaminating the rivers”. (Director of the Department of the Environmental Monitoring of the Health Department)

43. Another mine, El Mojito has clearly been releasing contaminated waters into the largest lake in Honduras, Lake Ojuya. The Center for the Research and Control of Pollution, (CESCCO) completed a study in 1995 which draws a clear link between the presence of lead in the Lake and the releases of the El Mojito mine run by American Pacific Mining company, AMPAC. The mine was releasing untreated and contaminated waters directly into the lake. The Center studied the presence of heavy metals in water, fish, and humans. The water study revealed the presence of heavy metals and the fish study also revealed the presence of heavy metals but at levels which were not of danger to humans. Since that time, CESCCO has been directly involved in monitoring the waste treatment processes of the El Mochito mine. The center believes that the El Mochito mine is now no longer releasing untreated contaminated waste into the lake.

CESR FFM, meeting with the sub director and head of research team of CESCCO, 2<sup>nd</sup> April 2001.

44. CESCCO did another study in August/September 2000 at the San Andrés mine site. At that stage the mine had no formal plan to minimize the environmental impact of the mine or any policy on how to treat the contaminated discharges which the mine was making. There was a pool whose purpose was to collect the discharge water but during the Hurricane Mitch there were overflows from this contaminated water pool. CESCCO made various criticisms of the operation of the mine and the lack of a contingency plan to minimize the effects of the discharges.

CESR FFM, meeting with the sub director and head of research team of CESCCO, 2<sup>nd</sup> April 2001.

### Government Response

45. The mine at San Andrés Copán rejected the findings of the CESCCO study. The government’s Secretary of Health, in response to the study carried out by CESCCO about the San Andrés mine, suggested that there should be a meeting between members of DECA and DEFOMIN, both within the Department of Natural Resources and the Environment and the Environment Ministry (SEDA). The aim of this meeting would be to establish criteria by which to supervise the functioning of the mines. Despite CESCCO enquiring further about this proposed meeting to be called by the Secretary of

Health, no meeting has been scheduled as yet. Approximately 4 months have now passed since the proposal to have a meeting was initially made.

CESR FFM, meeting with the sub director and head of research team of CESCO, 2<sup>nd</sup> April 2001.

46. DEFOMIN informed the CESR FFM that at least every 3 months, technical staff from DEFOMIN visited each of the mines and took samples of water as well as checking critical points such as potential landslide areas. Often the visits were more frequent.

CESR FFM, meeting with the Director of the Environmental Control Department of DEFOMIN within the Ministry of Natural Resources and the Environment, 2<sup>nd</sup> April 2001.

47. DECA informed the CESR FFM that they conducted visits to each mine at least every month and some times more frequently depending on the contract of measures of mitigation. If a denunciation has been received then DECA will visit up to 2 or 3 times per month. DECA receives regular reports about the status of each of the mines including waters usage and use of sand. The monitoring which is done is strict and regular to ensure that companies comply with their mining licenses.

CESR FFM, meeting with Director of DECA of the Ministry of Natural Resources and the Environment, 4<sup>th</sup> April 2001.

### Violations through acts of commission

#### ICESCR General Comment 14

Para 48: violations through acts of commission include the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to health or the adoption of legislation or policies, which are manifestly incompatible with pre-existing domestic or international legal obligations in relation to the right to health.

### The facts

48. The CESR FFM asked whether or not a company had ever been refused a mining license due to the severe environmental impact which a mine would have on an area. The FFM was told that there was no instance in which a mining permit had been refused.

CESR FFM, meeting with Director of DECA of the Ministry of Natural Resources and the Environment, 4<sup>th</sup> April 2001.

CESR FFM, meeting with the Director of the Environmental Control Department of DEFOMIN within the Ministry of Natural Resources and the Environment, 2<sup>nd</sup> April 2001.

49. The FFM also asked about the apparent conflict between a mining company paying for the EIS on which the government then relied. While DEFOMIN acknowledged this apparent conflict of interest, the Director of Environmental Control Department could not see a way around this issue due to the high cost of obtaining EIS.

CESR FFM, meeting with the Director of the Environmental Control Department of DEFOMIN within the Ministry of Natural Resources and the Environment, 2<sup>nd</sup> April 2001.

## Violations of the obligation to protect

### ICESCR General Comment 14

Para 51: “Violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties. This category includes such omissions as the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to health, e.g. ...the failure to enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries.”

50. The CESR FFM was told of problems with the monitoring of the mining industry by both DECA and DEFOMIN. In a meeting with the Public Prosecutor’s Office for the Protection of the Environment, an office established in 1993 along with other Public Prosecution Offices for the protection of areas such as Children, Human Rights, Cultural Heritage, the FFM was informed that there are serious problems with the monitoring function. Due to the dual role of DEFOMIN, which both promotes mining as well as monitors environmental impact it is unable to be effective in controlling mining pollution. Community groups were suspicious of the capacity of DEFOMIN to rigorously monitor environmental standards as well as promote mining.

CESR FFM, meeting with the Public Prosecutors’ Office for the Protection of the Environment, 28<sup>th</sup> March 2001.

CESR FFM, meeting with community members, El Porvenir, 1<sup>st</sup> April 2001

CESR FFM, meeting with community members, San Ignacio, 2<sup>nd</sup> April 2001

51. The Public Prosecutor’s Office for the Protection of the Environment only has jurisdiction to investigate complaints about the operation of a mine, not the process of how a mining license is granted. This is a severe and limiting provision of the powers of the office. As many people were concerned about the granting of the mining concessions, there was in effect no overseeing body which could investigate complaints about this part of the process. Concern was expressed about the real capacity of DECA to refuse mining licenses. The fact that no application for a mining license had been refused caused people to doubt the impartiality of the process.

CESR FFM, meeting with the Public Prosecutor’s Office for the Protection of the Environment, 28<sup>th</sup> March 2001.

CESR FFM, meeting with community members, El Porvenir, 1<sup>st</sup> April 2001

CESR FFM, meeting with community members, San Ignacio, 2<sup>nd</sup> April 2001

CESR FFM, interview with representative from ASONOG (Association of non governmental organizations), 3<sup>rd</sup> April 2001

“This law is clearly against the interests of the people and of the country, it only benefits mining companies.” Public Prosecutor’s Office for the Protection of the Environment

52. The Public Prosecutor’s Office for the Protection of the Environment was critical of the functioning of the new General Mining Law. It did not believe there was sufficient protection of the environment within the law. This was because the law allowed a company to use copious quantities of water (the only limitation being that stipulated in the Contract for Mitigation Measures) and did not provide sufficient measures for the

cancellation of the mining licenses. A member of the Office stated, “This law is clearly against the interests of the people and of the country, it only benefits mining companies. The General Mining Law was clearly approved without consensus. The law makes the work of multi national corporations very easy, there is no limit on the use of water and the area where Entre Mares (a mining company) is working is a dry region and needs its water.”

CESR FFM, meeting with the Public Prosecutor’s Office for the Protection of the Environment, 28<sup>th</sup> March 2001  
General Mining Law decree 139-98, article 22

53. Another problem with the organization and powers of the Public Prosecutor’s Office for the protection of the Environment is that it can only investigate and resolve minor offences. Once an offence is of a more serious nature it must refer the dispute for adjudication by a judge. Many of the groups with which the FFM met were uniformly concerned about the operation of the judicial process. The Public Prosecutor’s Office for the Protection of the Environment and technical staff from DEFOMIN stated that in effect, judges were not impartial, often had very little knowledge or experience of mining law and were not disposed to find against mining companies. The Legal Director of DEFOMIN stated that at one meeting with a judge, the Department “had to take a copy of the law with us as the judge knew nothing about it”.

CESR FFM, meeting with the Public Prosecutor’s Office for the Protection of the Environment, 28<sup>th</sup> March 2001.  
CESR FFM, meeting with community members, El Porvenir, 1<sup>st</sup> April 2001  
CESR FFM, meeting with community members, San Ignacio, 2<sup>nd</sup> April 2001  
CESR FFM, meeting with the Legal Director of DEFOMIN, 30<sup>th</sup> March 2001.

54. Another area of concern was that often mining companies began work without an approved EIS. The government imposed a small fine but then would move its position in order to approve the work of the mining company. Community members believe that the control by DECA does not function effectively.

CESR FFM, meeting with the Public Prosecutor’s Office for the Protection of the Environment, 28<sup>th</sup> March 2001.  
CESR FFM, meeting with community members, El Porvenir, 1<sup>st</sup> April 2001  
CESR FFM, meeting with community members, San Ignacio, 2<sup>nd</sup> April 2001

### **Government Response**

55. The Government states that through its agencies, DECA, and the Department for the Evaluation and Environmental Control within DEFOMIN, there are sufficient means of monitoring environmental effects.

CESR FFM, meeting with the Director of the Environmental Control Department of DEFOMIN within the Ministry of Natural Resources and the Environment, 2<sup>nd</sup> April 2001.  
CESR FFM, meeting with Director of DECA of the Ministry of Natural Resources and the Environment, 4<sup>th</sup> April 2001.

56. The FFM was also informed about a process of reform of the judicial system which Honduras is currently undergoing. This reform will include extending the period for which a judge is appointed, and separating this from the National Congress elections. Currently each judge is appointed for only a 4-year term which coincides with the Presidential elections and National Congress elections. This had led to a highly politicized judiciary with little judicial independence. In 2002 this will change and an additional level of judges will be appointed to deal with serious crime. The current

highest court, the Supreme Court has 9 judges who are appointed every 4 years by the President. This will change to separate it from the political process.

CESR FFM, meeting with the Legal Director of DEFOMIN within the Ministry of Natural Resources and the Environment, 30<sup>th</sup> March 2001.

### **Further violations of the right to health**

57. There is a community which is situated very close to the cyanide leach pad of the San Andrés mine at Copán. There are houses in the San Miguel community which are 42 meters from the leach pad. The fence which is in place to keep animals and humans away from the cyanide leach pad is only chest high. An animal has wandered into the area, drunk from the pool and died. While there are physical health risks due to living so close to the cyanide leach pad, there are also psychological effects of living in such close proximity to a toxic poison. There are also high levels of dust from the rock-crushing machine, the noise from the rock crusher which operates 24 hours, and there is concern about erosion under the cyanide leach pad which makes it unstable. The people living in San Miguel community state that they have noticed a higher occurrence of skin diseases and respiratory diseases since the mine began operation. The community is concerned and has asked the Department of Health to conduct a study of any health risks. A thorough study is yet to be conducted. The Environmental impact Study states *“it is very probable that some people in San Miguel will have to be moved.”* The minimum acceptable distance in Nevada USA guidelines for living next to a cyanide leach pad is 305 meters.

CESR FFM, interview with representative from ASONOG (Association of non governmental organizations), 3<sup>rd</sup> April 2001

58. Another community which is also close to the San Andrés mine, the Azacualpa community is situated 400 meters above the open cut of the mine and is perched on top of the mountain which is being exploded and excavated to mine gold. Each time there is an explosion people living in the houses feel vibrations and there are increased cracks in the walls of the houses. The excavations may be releasing heavy metals into the atmosphere and community members are very concerned for their health. Again there is also a psychological effect of the instability of the land and houses in which people live. The community has asked to move but so far has been unsuccessful in its petition.

CESR FFM, interview with representative from ASONOG (Association of non governmental organizations), 3<sup>rd</sup> April 2001

59. To reach the community of Azacualpa, community members must walk through the mine site, within 10 meters of the open cut on a road which is used by heavy trucks for transporting rocks. There have been many incidents of near accidents between the large trucks and humans, and many domestic animals have been killed on the road. The road is closed 4-5 times per week for up to one hour each time because of the explosions which are occurring.

CESR FFM, interview with representative from ASONOG (Association of non governmental organizations), 3<sup>rd</sup> April 2001

60. While the Environmental Impact Study for the mine operating at San Andrés only allows the release of contaminated waters in case of exceptionally bad rains (“the worst in 100 years”) or in case of emergency, there have been 6-7 releases of contaminated waters in the River Lara. These waters feed into a river system which provides drinking and bathing water for communities further down.

CESR FFM, interview with representative from ASONOG (Association of non governmental organizations), 3<sup>rd</sup> April 2001

61. People living in the community of El Porvenir are concerned at the dropping levels of water in the river and believe it to be caused by the extraction of large quantities of water and of sand. This has affected the people's ability to use the river to support their herds.  
CESR FFM, meeting with community members, El Porvenir, 1<sup>st</sup> April 2001

### **Government response**

62. DEFOMIN states that it has been involved in negotiating outstanding issues between the mining company at San Andrés, and the communities. It acknowledges that the community of Azacualpa is located in an unstable area. The mining company states that it is not compelled by the EIS to relocate either of the communities of San Miguel or Azacualpa. The Department of Health agreed to study the health of the inhabitants of San Miguel but only took blood samples from 3 people who live in only 2 of the houses in the community.  
CESR FFM, meeting with the Director of the Environmental Control Department of DEFOMIN within the Ministry of Natural Resources and the Environment, 2<sup>nd</sup> April 2001.
63. The mining company acknowledges having made releases of contaminated waters but states that it was approved by DEFOMIN on each occasion. The mining company is legally bound by the Environment Impact Study, NOT by DEFOMIN's consent to the releases. There appears to be some laxity in applying the stipulations of the Environmental Impact Study.  
CESR FFM, meeting with the Director of the Environmental Control Department of DEFOMIN within the Ministry of Natural Resources and the Environment, 2<sup>nd</sup> April 2001.
64. DEFOMIN states that the Valley of Syria is a dry valley and that the dropping levels in the river are not due to the mine's use of water.  
CESR FFM, meeting with the Director of the Environmental Control Department of DEFOMIN within the Ministry of Natural Resources and the Environment, 2<sup>nd</sup> April 2001.
65. DEFOMIN states that it has stopped the uncontrolled extraction of sand from the riverbed in the Valley of Syria and has now imposed conditions on the licenses to remove sand.  
CESR FFM, meeting with the Director of the Environmental Control Department of DEFOMIN within the Ministry of Natural Resources and the Environment, 2<sup>nd</sup> April 2001.
66. DECA states that it maintains a tight control on the use of water by the mine run by Entre Mares, San Martín. This mine provides information of daily use of water. The company is allowed to use up to 220,000 gallons of water per day but currently is using between 143,000 and 195,000 gallons of water per day. The Department also required the mining company to stop using illegally sunk wells.  
CESR FFM, meeting with Director of DECA of the Ministry of Natural Resources and the Environment, 4<sup>th</sup> April 2001.

## Participation of the people in the process of environmental control

### ICESCR General Comment 14

Para 54 “The formulation and implementation of national health strategies and plans of action should respect, inter alia, the principles of non-discrimination and people’s participation. In particular, the right of individuals and groups to participate in decision-making processes, which may affect their development, must be an integral component of any policy, programme or strategy developed to discharge governmental obligations under article 12. Promoting health must involve effective community action in setting priorities, making decisions, planning, and implementing and evaluation strategies to achieve better health. Effective provision of health services can only be assured if people’s participation is secured by States.

“If we submit the decision to peasants there will be anarchy. It is unrealistic to ask illiterate people what should happen. These decisions belong to experts, doing the job properly.” Technical advisor of DEFOMIN

### The facts

67. When asked about people’s participation in the Environmental Impact Study stage of a mining companies establishment, the CESR FFM was told by DEFOMIN *“If we submit the decision to peasants there will be anarchy. It is unrealistic to ask illiterate people what should happen. These decisions belong to experts, doing the job properly.”* Communities in San Ignacio, El Porvenir, San Andrés, Azacualpa, San Martín all complained of the lack of participation they had in the process of the approval of mining licenses. While the General Mining Law requires that an application for mining license and publication of an EIS be published in a national newspaper and groups to have 15 days in which to express disagreement with the granting of a license, communities stated they were unaware of the application for a mining license.  
 General Mining Law, Decree 139-98, Articles 54 and 55.  
 CESR FFM, meeting with technical advisor of DEFOMIN  
 CESR FFM, meeting with community members, El Porvenir, 1<sup>st</sup> April 2001  
 CESR FFM, meeting with community members, San Ignacio, 2<sup>nd</sup> April 2001
68. In El Porvenir, community members stated that they did not see any advertisement and did not become aware of the mining license until after it had been granted  
 CESR FFM, meeting with community members, El Porvenir, 1<sup>st</sup> April 2001
69. In San Ignacio, community members stated they also did not see any advertisement nor become aware of the application for a mining license until after it had been granted.  
 CESR FFM, meeting with community members, San Ignacio, 2<sup>nd</sup> April 2001
70. The first community meeting in San Ignacio was held AFTER the Environmental Impact Study had been approved and not before.  
 CESR FFM, meeting with lawyer from DECA within the Ministry for Natural Resources and the Environment, 4<sup>th</sup> April 2001.

71. In San Andrés, the communities surrounding that mine were unaware of the mining application, as the national newspaper does not get delivered to that part of the country.  
CESR FFM, interview with representative from ASONOG (Association of non governmental organizations), 3<sup>rd</sup> April 2001
72. While both the terms of reference for the EIS and the EIS itself are supposed to be public documents, all community members expressed their frustration during the process of trying to get access to these documents. “While the terms of reference and the environmental impact study are supposed to be public documents in fact they are not.” (Public Prosecutor’s Office for the Protection of the Environment) Some of the community members in El Porvenir and San Ignacio had never heard of an EIS. There was a copy of the EIS in the local library but no one had actually read the 500 page document.  
CESR FFM, meeting with the Public Prosecutor’s Office for the Protection of the Environment, 28<sup>th</sup> March 2001.  
CESR FFM, meeting with community members, El Porvenir, 1<sup>st</sup> April 2001  
CESR FFM, meeting with community members, San Ignacio, 2<sup>nd</sup> April 2001
73. Community members of San Ignacio and El Porvenir state that they have not been consulted in the development of the mine.  
CESR FFM, meeting with community members, El Porvenir, 1<sup>st</sup> April 2001  
CESR FFM, meeting with community members, San Ignacio, 2<sup>nd</sup> April 2001
74. Most recently, at the end of March 2001, community members of San Andrés and Azacualpa Copán, occupied the road which runs through the middle of the San Andrés mine. This was due to their frustration with the lack of compliance with previous agreements made between community members and the mining company. Eventually representatives from DEFOMIN mediated in the dispute to resolve some of the outstanding issues. There is no formal mechanism other than civil protest for the community members to provide input and be consulted about the operation of the mine.  
CESR FFM, interview with representative from ASONOG (Association of non governmental organizations), 3<sup>rd</sup> April 2001

### Government response

75. The State party report to the Committee on Economic Social and Cultural Rights affirms the importance of community participation in municipal health plans. It states at paragraph 272, “*the municipal health plans which have been formulated call for broad participation by the community, NGOs and the different sectors represented in each area, participation based on an analysis of the people’s health situation in terms of living conditions.*” As the mining industry impacts upon communities’ health, one assumes that communities would be included in environmental planning also. The government in its report states in paragraph 207 “*universal access to health services and a comprehensive approach to health problems, with the informed participation of the community, is one of the most important aspects of the national health policy. In this connection the municipality is currently recognized as the most suitable geopolitical unit for implementing measures to improve the people’s health and living conditions by promoting comprehensive development and preserving the environment.*”  
Initial report: Honduras. 23/07/98, E/1990/5/Add.40 (State Party Report)
76. DECA believes that there is extensive community participation in mining projects. This begins with the announcement of the project. As soon as the company begins to construct the mine, the people see and realize what is happening. Then the people come

and make their claims of what they want out of the mining project. This is what happened in the Entre Mares mine near San Ignacio. *“The people have substantial opportunity to participate in the process. For example there have been public assemblies, when they come to the Capital we see the people, and the people go on strike. For example in San Andrés Copán and Entre mares we have shown the people that the project is safe. Always there is a group who is super green or ecologically hysterical.”*

CESR FFM, meeting with Director of DECA of the Ministry of Natural Resources and the Environment, 4<sup>th</sup> April 2001.

77. It is apparent that while communities have participated to some degree in the establishment and operation of gold mines, it has been more in the nature of public protest rather than in a structured and inclusive manner. There do not appear to be any formal mechanisms within the law for there to be consultation with the people who will be affected. The people are included in the process at their insistence, rather than through a uniform procedure clearly established in the General Mining Law. Additionally even DECA acknowledges, the people in San Ignacio were included after the EIS had been approved rather than before the mining license was granted.

CESR FFM, meeting with a lawyer from DECA of the Ministry of Natural Resources and the Environment, 4<sup>th</sup> April 2001.

## IV. RECOMMENDATIONS

### A. GENERAL RECOMMENDATIONS

78. CESR commends the openness of the Government departments in their discussions with the CESR FFM as an indicator of the genuine good will of the government and encourages the government to engage in a transparent process regarding gold mining and its adverse environmental impacts.
79. CESR acknowledges the pressures under which the Government operates in relation to structural adjustment policies and the pressure to comply with economic conditions, including opening up the economy to foreign investment, to qualify as a Highly Indebted Country and to attract foreign industry.
80. CESR recommends that the Government seek the assistance of the Committee on Economic, Social and Cultural Rights (CESCR) and other qualified human rights experts in order to review the operation of the mining industry in light of its legal obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), with a view to ensuring that mining policy and the General Mining Law have as a central objective the realization of the economic, social and cultural rights of Hondurans.
81. The CESCR should encourage the Government of Honduras to establish greater powers of the Public Prosecutors Office of Human Rights with an aim of creating an independent National Human Rights Commission.
82. The Government should train judges of all courts in the General Mining Law, as they currently are inexperienced and unable to decide cases adequately. The existing reforms of the court system should extend to judges of all levels in order to de-politicize the judiciary and give them greater independence.
83. The Government should assist in increasing Hondurans' knowledge of human rights law through its inclusion in the curriculum at all levels of education.
84. The Government should broaden the mandate of the Public Prosecutor's Office for the Protection of the Environment to include administrative processes as well as criminal offences. This would mean that it could receive complaints about the licensing process and investigate these as well as criminal offences.
85. The Government should amend the General Mining Law to limit the amount of water, which a mining company can use in order to protect the natural resource of water that is the property of all Hondurans.
86. The Government needs to regulate more thoroughly the release of cyanide-contaminated waters by mining companies. The CESR FFM is concerned by the use of this toxic poison in gold mining and has identified a need for this to be regulated more closely. There is currently no explicit reference to this activity within the General Mining Law. The General Mining Law needs to be amended to include specific controls of this activity. The Government needs to investigate and identify alternatives to releasing cyanide contaminated water into the rivers. The body established to evaluate EIS

and environmental pollution should supervise the release of the contaminated waters and monitor levels of thiocyanates.

87. CESR encourages the Government to sign and ratify all international human rights instruments to demonstrate its full commitment to the human rights of all Hondurans, particularly the San Salvador Protocol to the American Convention on Human Rights.

## **B. RECOMMENDATIONS PERTAINING TO SPECIFIC RIGHTS**

### **Article 1**

88. The General Mining Law is in violation of the State Parties' obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Government should review this law, drawing on the assistance of international experts and the Committee on Economic, Social and Cultural Rights in order to ensure the law's compliance with ICESCR.
89. The Government should establish an independent body within the Public Prosecutor's Office for the Protection of the Environment, which is specifically responsible for providing legal advice and assistance to members of a community who may be petitioned to be re-located. The independent body within the Public Prosecutor's Office for the Protection of the Environment will provide an independent source of advice for communities in any negotiations with mining companies.
90. The General Mining Law should be amended to ensure that mining companies must negotiate with communities, which they wish to relocate. Any negotiations should be carried out through this independent office and that it should be made clear to community members that they cannot be forcibly removed from their traditional lands.
91. The General Mining Law should be amended to provide that if a community decides to relocate, the community should be specifically involved in designing and planning the layout of their new community which may include provision of land around houses for small crops and animals.
92. The Government should hold open consultations throughout Honduras to decide whether the law should be amended to prevent relocation of communities, which would involve the relocation of churches or cemeteries. In Argentina no church or cemetery can be relocated and this may be a measure, which should be introduced in Honduras.

### **Article 7**

93. The Government should amend the General Mining Law to require all mining companies engaged in extraction of minerals, who are employing local workers, to contribute to a fund for workers' benefits, similar to the Guarantee Fund to which mining companies are currently required to contribute for future environmental damage. This will prevent, in the case of bankruptcy, the workers from being deprived of their work entitlements.
94. The Government, through its agency the Department of Labor should monitor the living conditions of workers in the San Martin mine and ensure that their proximity to cyanide leach pads is within international standards.

## Article 11

95. The Government, through its municipal authority should require all those residing in a mining area to register with the municipal authority in order to maintain some control of incoming people.
96. The Government, through its municipal authorities should regulate the number of alcohol outlets, which are permitted to open in towns located close to mines.
97. The Government, should provide additional funds for low cost housing to be built for those members of the community who are unable to afford the increased rents as a result of higher demand on housing in towns located close to mines.
98. The Government should provide formal legal assistance through the Public Prosecutor's Office for the Protection of the Environment for communities to negotiate with mining companies about the types of development assistance they want from mining companies in order to prevent unwanted or unneeded development projects.
99. The Government, through its office, DECA, should ensure that mining companies comply with their obligations to provide legal title to those communities which have been relocated. If mining companies do not provide legal title to relocated community members within 6 months of relocation then their mining concessions should be cancelled. The General Mining Law should be amended to reflect this.

## Article 12

100. The Government must immediately reform the current environmental monitoring and mining licensing scheme through amendment of the General Mining Law and other relevant laws. **The two roles: promotion of mining and protection of the environment need to be separated and the environmental protection measures need to be strengthened.** Currently there are numerous government-related departments who are responsible for the combined functions of environmental monitoring and mining licensing. DECA and DEFOMIN both have combined roles. (The National Water Authority and the Environmental Control Department of the Health Department and the Center for the Research and Control of Pollution also test water quality). The Ministry, which oversees DECA and DEFOMIN, is the Ministry for Natural Resources and the Environment. The combination of these two functions, promotion of the use of natural resources and the protection of the environment is currently problematic.
101. The Government should create one body, a combination of DECA and DEFOMIN that grants mining licenses/concessions and is responsible for the promotion of mining. DEFOMIN should no longer have any responsibility for monitoring the effect on the environment of the mining industry.
102. The Government should create a separate body, which is responsible for conducting EIS and monitoring compliance with environmental norms as specified in an amended General Mining Law. This body should operate in an autonomous way within the Ministry for Natural Resources and the Environment. It should continue to be a requirement of the granting of a mining concession that an EIS should be completed, but

- it should be paid for by the Government, not by the mining company seeking the mining concession. As EIS are expensive, the Government should seek contributions to a fund for EIS from all mining companies wishing to commence mining activities within Honduras. The body, which conducts and reviews EIS, should include an independent technical expert nominated by non-governmental organizations (NGOs) and a community representative chosen by NGOs. Each mine should be required to conduct periodic EIS, every two years, to monitor the effects of the mine on the environment.
103. The Government, through the Department of Health or the National Independent Water Authority should conduct a thorough evaluation of the water quality throughout Honduras, particularly in the areas where there are mines. This evaluation should test for the presence of heavy metals including lead, mercury, arsenic, and cyanide and also by products of cyanide including thiocyanates in both superficial and subterranean waters. This evaluation should occur in rainy and dry seasons. The results should be tested in both national laboratories and an international laboratory to verify results of the testing.
  104. The Government should continue to assist CESCO to operate as an independent center that can conduct its own supervision of pollution. It will form part of the non-governmental network for maintaining environmental standards.
  105. The Committee should recommend that the World Health Organisation should convene a meeting with the Department of Health and CESCO as soon as possible in order to discuss the findings of the CESCO study revealing problems with the San Andrés mine.
  106. The Government through the Department of Health should investigate the health effects on the inhabitants of the community of San Miguel, close to the San Andrés mine in order to determine whether or not the community will have to be relocated. Non-governmental organizations that have assisted the community should be included in any ensuing negotiations about relocation.
  107. The Government should clearly establish, and monitor compliance with, clear guidelines based on international or USA/EU based standards for the allowable distance between houses and cyanide heap leaching pads.
  108. The community of Azacualpa has expressed its desire to be relocated due to the geographic instability of the community and the effects on the health of its inhabitants caused by constant explosions. The Government should engage in negotiations with community members, the mining company, and the community represented by the body established to provide legal assistance to communities who may be relocated, about how and where it should be relocated.
  109. The Committee should reiterate the importance of community participation in matters affecting their health, and in the process of environmental control to the Government. The Government should amend the General Mining Law to allow for greater participation in the approval of EIS. The currently allowed period 15 days is insufficient and the method of advertising in the national newspaper is also inadequate. The law should be amended to require mining companies to post signs in local areas such as churches, town halls, municipal buildings, and shop walls to draw communities' attention to the proposed mining concession. Communities should also be provided with legal representation in order to be able to gather sufficient proofs to object to mining concessions being granted.

110. The Government should also include the potentially affected communities in environmental monitoring processes. Staff of the government body responsible for all elements of the mining process should be trained in the international legal requirement that people participate in the EIS process and the environmental monitoring process. Community participation must be sought before the approval of any EIS.

## V. CONCLUSION

The Committee on Economic, Social and Cultural Rights has an important role to play in ensuring that Honduras complies with its international obligations. While it is recognized that Honduras has the right to exploit its natural resources, including its mineral resources, this should not occur in abrogation of its international legal obligations and the rights of its people guaranteed in its Constitution.

The current General Law on Mining provides great leeway to mostly foreign mining companies who wish to exploit Honduras' national resources. The law passed by the current Government does not provide sufficient mechanisms by which peoples right to self-determination, an adequate standard of living, safe working conditions, and right to health and a healthy environment are respected. Currently the Government through its actions and omissions is breaching the Covenant on Economic, Social and Cultural Rights in these areas. Additionally it does not appear to recognize nor enable the people's participation in decisions affecting their health and the environment.

We believe that the Committee can play a vital role in drawing these breaches to the Government's attention and ensuring that in the future it complies with its obligations so that a healthy environment is maintained, people's health is promoted and their rights to an adequate standard of living and self determination are respected.

## VI. Appendices

### **Gold Mining in Honduras**

**Presentation: 23<sup>rd</sup> April 2001.**

My name is Anna Cody, I work with the Center for Economic and Social Rights based in New York.

In March/April 2001 I conducted a fact-finding mission to Honduras with the specific aim of investigating the current operation of the gold mining industry, following the passage of the General Mining Law in November 1998. This law was passed just after Hurricane Mitch in a climate of substantial international pressure for Honduras to provide favourable conditions to foreign investment for its reconstruction.

The fact-finding mission revealed substantial human rights violations in the areas of: Self-determination, right to favorable work conditions, right to adequate standard of living and the right to health and a healthy environment. You have a copy of the report written subsequent to the mission in your material.

In this presentation I will discuss how the gold mining industry functions, the effects on peoples health of two specific gold mines, some problems with the law itself, and include some recommendations.

#### Gold Mining industry

The gold mining industry is dominated by mostly Canadian, USA and Australian mining companies. Since the 1970s a new technique has been developed using cyanide for gold mining. This new technique means that mines which were previously not considered profitable are being created. The technique used in gold mining has involved creating a large open pit, taking out rock, crushing it, and then sprinkling cyanide solution on the crushed rock. The cyanide bonds with the gold in the crushed rock and is channeled into collection pools. The gold is then removed. It takes several hundred tonnes of ore to produce small quantities of gold.

Cyanide is highly toxic. A teaspoon of 2% cyanide solution can kill a person. The cyanide solution in the mines is recycled but ultimately loses its value. The question then remains of what to do with the cyanide-laden water. In Honduras, cyanide contaminated waters have been released into river systems.

The two mines on which I focus are at San Andrés Copán and the San Martín mine.

### San Andrés

Some of the problems with the mine at San Andrés include:

In order to build a mine in that area, the community was forced to relocate. The community states that it felt pressured to relocate. The people are still waiting for legal title to their houses. They were not consulted about the type of housing or design of the new community. This means that the houses do not have a plot of land around them for small food crops and raising animals which is the traditional style.

Another community, San Miguel which is located close to the mine, has a house within 42 meters of the cyanide heap leaching pad. This is the area where cyanide is sprinkled onto the rock. People in that town complain of increased skin and respiratory diseases. They also complain of high levels of dust generated by the rock-crushing machine. They are worried about the long-term effects on their health of living so close to cyanide. Another community closely situated is perched on top of the mountain which is being excavated for gold. The houses in the community shake every time there is an explosion and there are cracks in their houses. These community members are also required to walk through the mine to get to their community. The road is used constantly by huge trucks which have killed domestic animals.

The mine at San Martín consumes large quantities of water and sand. The water has been taken from the ground water reserves. Sand has been removed from nearby rivers. The communities have remarked on the lower levels of water in the river. There are no limits on the amount of water which the mine can use and the use of sand was initially uncontrolled.

### Structural problems: the law itself

The General Mining Law came into force in 1999. The stated aim of the law is to create favourable conditions for foreign investment in the process of reconstruction following Hurricane Mitch.

It gives wide sweeping powers to mining companies with ineffective environmental protections or provision for people to participate in decisions which affect their health.

Mining companies are required to conduct an Environmental Impact Study when seeking a mining license. However it is the mining company who chooses who will conduct the study and pays for the study. The government reviews the study but does not conduct its own study. This Environmental Impact Study, then provides the basis for the environmental controls on the mine. Neither the community at San Andrés or near the San Martín mine had any participation in this process. When asked whether the people should be consulted, a government official replied “why consult peasants, they are illiterate and there would be anarchy”. The community is supposed to be given 15 days to object to a mining license being granted. But most don't even know when a company

has applied for a license as it is only advertised once in a newspaper which doesn't even get delivered to some of these communities.

The people should be consulted about decisions which will effect their lives so profoundly, and the EIS should be conducted by the Government with input from the people and not paid for by the mining companies.

The environmental controls are currently ineffective. Water studies reveal high levels of heavy metals, lead, mercury, arsenic and iron in the river systems in the mining areas.

The current roles of the bodies monitoring environmental protection need to be clarified. The Organisation responsible for promoting mining should not also be responsible for monitoring environmental standards. We recommend that a new organization should be created within the Ministry for Natural Resources and the Environment whose principal functions are to:

Conduct EIS at the beginning of a mine and every 2 years during the operation of the mine and;

Monitor compliance with environmental protections

The body which conducts and reviews EIS should include an NGO nominated technical person. It should also include a community representative. This will facilitate community participation in decisions affecting their health.

Communities should be legally represented when they are being petitioned to relocate so that they can negotiate fairly with mining companies. The granting of mining licenses should be subject to review by the Public Prosecutor's Office for the Protection of the Environment as currently there is no review process.

While we recognize the right of Honduras to exploit its natural resources, the rights of the Honduran people to self-determination, an adequate standard of living and to health should not be violated in this process. Effective environmental protections must be enshrined in the General Mining Law to ensure that people's lives are not endangered by gold mining.

## **IMPACTO DE LA MINERÍA Y CALIDAD DE AGUA EN HONDURAS**

**Tupac Mejía**

En mi condición de ciudadano hondureño, profesional de la Ingeniería Hidráulica, que trabaja en los sistemas de sustentabilidad y garantía de una agua sana y segura para la población hondureña, presento el siguiente testimonio técnico sobre el impacto de la industria minera.

Para tal propósito expondré cuatro consideraciones: Participación comunitaria en el proceso de aprobación de licencias ambientales y monitoreo, contaminación por metales pesados, disponibilidad de aguas para la industria y la comunidad, propuestas y sugerencias

### **Comunidad, Licencia ambiental y Monitoreo**

Según información proporcionada por las comunidades de San Andrés Copán, San Ignacio, El Porvenir y Macuelizo no fueron consultados los miembros de la comunidad, colegios de maestros ni personas técnicas como ingenieros que habitan en dichas áreas geográficas. Esta consulta era necesaria para otorgar la licencia ambiental que concierne a la explotación.

En el marco institucional tampoco fueron tomadas en cuenta las opiniones de académicos y científicos de la Universidad Nacional Autónoma de Honduras ni de los sectores del periodismo. En el proceso de Monitoreo tampoco ha estado involucrada la comunidad; por otra parte los recursos técnicos, equipo de laboratorio y personal resultan insuficientes para dar seguimiento o hacer monitoreo a la contaminación actual.

### **Contaminación de Metales Pesados**

En la zona Norte y Occidental de Honduras donde se encuentran los ríos más caudalosos como El Ulúa y El Chamelecon; teniendo las cuencas hidrográficas una área que excede en a los 2000 kilómetros cuadrados y cuyas aguas están próximas a los drenajes de la industria minera; se ha demostrado mediante un muestreo realizado por la División de Aguas Municipales de San Pedro Sula en junio del año 2000 una alta contaminación de los ríos con mercurio, plomo y arsénico .

Según los valores permisibles de sustancias tóxicas por la EPA y la OMS los datos sobre el Mercurio son de 0.001 mg/L mientras que en el Río Ulua del Progreso Yoro son de 0.0026 mg/L. En el Río Chiquito es de 0,0328

En relación al Plomo la situación es más grave en el Río Ulua Santa Barbara es de 6.85 mg/L y en Río Chamelecón, Entrada Copán es de 4.42 mg/L siendo los valores permisibles máximos 0,05 mg /L. En cuanto al arsénico en el Río Chamelecón la Entrada Copán de 0,413 mg/L(valor permisible de 0,05 mg/L).

En el caso del Mercurio la contaminación podría proceder de minas antiguas y cuyos depósitos fueron arrastrados por el Huracán Mitch. En referencia al plomo, el arsénico y otros metales pesados no investigados, estos pueden ser liberados durante las explotaciones mineras. En la actualidad existe una explotación minera que emplea la lixiviación del oro con cianuro a cielos abiertos. Sin embargo en los principales laboratorios del Estado y en los privados no se puede medir las concentraciones del cianuro ni de los tiocianatos. En consecuencia cabe preguntarse ¿ qué clase de monitoreo se esta realizando.

El impacto en la salud, ecosistemas y biodiversidad por metales pesados se requiere estudios técnicos y científicos para medir la magnitud del impacto económico, social, ecológico y en salud que esta ocasionando la industria minera en Honduras.

### **Disponibilidad de aguas para Comunidades e Industria Minera**

En la Zona del Valle de Siria , que corresponde al Proyecto Minero San Martín, la disponibilidad de agua es superficial, y limitada la principal fuente proviene de los sistemas acuíferos. Es de hacer notar que la explotación minera con cianuro a cielos abiertos requiere enormes cantidades de agua. Existe un acuífero de baja intensidad en el Valle de Siria; el cual es la fuente más importante para suplir a las principales comunidades. Este sistema esta ubicado en la proximidad de las pilas de lixiviación que utilizan cianuro; por lo tanto existe una alta probabilidad de que el tóxico pueda contaminar las aguas subterráneas.

La deforestación, erosión, explosiones, apertura de carreteras y las construcciones de las pilas han alterado los ciclos hidrológicos y es de esperar que reduzcan la recarga del acuíferos. En consecuencia, la cantidad y calidad de agua será cada vez menor para el consumo humano y la irrigación con fines agrícolas. Violando así uno de los derechos humanos esenciales:

### **Propuestas y Sugerencias**

- ❖ Creación de un Comité Científico y Ético, integrado por representantes del Gobierno, Comunidades y la Universidad Nacional Autónoma de Honduras con el objeto de dar transparencia y evaluar todo el proceso desde sus orígenes.
- ❖ Dotar y capacitar técnicamente a elementos de las comunidades para que evalúen y supervisen el monitoreo y las medidas de mitigación para que se cumplan las leyes hondureñas y las normas internacionales
- ❖ Utilizar tecnologías menos tóxicas que el cianuro y de menor grado de contaminación
- ❖ Realizar un estudio del impacto de la industria minera en la salud de las comunidades, ecosistemas y biodiversidad. De inmediato es importante y urgente estudiar la situación del acuífero ubicado en el Valle de Siria