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Corporate-community mining conflicts in Guatemala: Unsettling hegemonic power
relations in environmental struggles

A Dissertation

Presented to

the Faculty of Natural Sciences and Mathematics

University of Denver

In Partial Fulfillment

of the Requirements for the Degree

Doctor of Philosophy

by

Anna Guðbjört Sveinsdóttir

June 2019

Advisor: Dr. Matthew Taylor

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Title: Corporate-community mining conflicts in Guatemala: Unsettling hegemonic power relations in environmental struggles
Advisor: Dr. Matthew Taylor
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Abstract

This dissertation analyzes corporate-community conflicts around extractive industries in Guatemala with the purpose of better understanding how environmental struggles emerge and take shape. The study uses environmental governance as a framework to analyze the processes, institutions, actors and discourses that shape the conditions of possibility of political action and mobilization in environmental struggles. The dissertation argues that to understand the conditions of possibility of political action and mobilization in environmental struggles we must study the interplay between political actions ‘from above’ and ‘from below,’ which are seen as dialectically interrelated, with dynamic and contested interactions between actors within and between scales.

Environmental struggles are understood as part of emergent forms of scalar politics wherein different actors struggle to (re)consolidate power and authority in the hands of competing groups. The complex ways in which corporate-elite-government-military networks shape political actions in environmental conflicts intersects with the strategies of grassroots movements, who themselves are engaged in multi-scalar contentious politics. Spatialities shape the conditions of possibility for political action. They matter for the imaginaries, material practices and emergent trajectories of environmental struggles. By examining the shifting spatialities of political actions we can

reveal the articulations of emergent power relations and make visible some of the power geometries in environmental struggles.

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Chapter One: Environmental governance, extractive industries and struggles for environmental justice in Guatemala

1. Introduction

I did not know that I would end up working in Guatemala when I started the PhD program at the Department of Geography and the Environment at the University of Denver. My master's thesis had focused on issues relating to changing land tenure in coastal Nicaragua and I had always thought I would continue working in Nicaragua, at least in some capacity. I was headed to Nicaragua for a return visit in November 2014 and decided to make a quick stop in Guatemala on the way.

I did not know much about the history of Guatemala before I got there. I knew that the country had experienced a horrific 36-year long war, which had produced some of Latin America's most terrible instances of state terror that culminated in acts of genocide. I would later find out that counterinsurgency warfare saw more than 200,000 people murdered during the war, the vast majority of which were non-combatant indigenous Maya. Another 50,000 people were disappeared, their whereabouts unknown and their bodies buried in clandestine graves throughout the country.

I also knew that conflicts relating to extractive industries and hydropower development were spreading throughout the country, and that these conflicts were becoming increasingly violent. The civil war ended with the signing of the Peace Accords in 1996 during a period when the government negotiated different free trade agreement

and changed legislation to attract foreign investment, and extractive industries were one of the economic sectors strongly promoted by the government.

People in post-war societies are marked for a long time by their experiences with terror and death, but also, many governing practices that emerge during civil wars are difficult to eradicate. Environmental struggles in Guatemala are historically contingent, embedded in a post-war context and must be understood against this backdrop. As such, one of the things I pay particular attention to in my dissertation is how the civil war shapes conflicts surrounding extractive industries.

Before that first trip to Guatemala I had learned about an unfolding situation surrounding a Canadian mining project in southeastern Guatemala, where only the year before my arrival the conflict had reached a boiling point. Communities affected by the mining project had started to organize against the mine a few years earlier, frustrated with lack of transparency and their exclusion from decision-making processes, and worried about the potential environmental impacts of the mine. The Canadian company had become increasingly unhappy with local opposition to the mine and demanded that the government take action to protect the company's investments.

In May 2013, then President, Otto Perez Molina declared a 'state of siege' in the areas surrounding the mine, deploying thousands of troops and police to the area. The repression was harsh and the criminalization that would follow effective. Anti-mining movement leaders had arrest warrants issued against them and soldiers and police officers raided activists' homes. Many were arrested, while others fled into hiding. Perez Molina, a former special-ops army general, justified the state of siege – which can be likened to martial law – on grounds of terrorism and drug trafficking threats.

The logic of the civil war and the counterinsurgency warfare that characterized it, so deeply embedded within the Guatemalan state, continue to shape the ways in which the government and industry react to contentious environmental politics, often by portraying activists in the same ways as adversaries during the war, justifying corporate counterinsurgency, repression and criminalization against them.

Examining how government, corporations and elites react to opposition ‘from below’ against extractive industries became a main focus of my dissertation. However, I also observed that the ways in which grassroots movements mobilize against extractive projects influences responses ‘from above.’ In my dissertation, I argue that to understand political action in environmental struggles we must study the interplay between political actions ‘from above’ and ‘from below,’ which I see as dynamic and contested interactions between actors within and between scales. Environmental struggles are part of emergent forms of politics where different actors struggles to consolidate power and authority in the hands of competing groups in and through the environment.

This then was the context in which I decided to visit the areas surrounding the mine for the first time. Early one morning I set out to meet with members of the anti-mining movement in the Departments of Santa Rosa and Jalapa. I met with members of the ‘Parliament of the Xinka People of Guatemala’, who despite their right to prior consultation as established by the International Labour Organization’s (ILO) Indigenous and Tribal Peoples Convention number 169, which Guatemala ratified in 1996, were never consulted prior to the installment of the mine. This would later result in the suspension of the mine’s exploitation license when Guatemalan courts recognized the Xinka peoples right to consultation as established by the Convention.

Later I would also meet people who had escaped on foot through the mountains when soldiers and police came to arrest them during the state of siege, others who had been forewarned by neighbors and managed to escape but nonetheless had their homes raided and their children and families terrorized. I met people who had been kidnapped, who had been shot by the mine's private security, others who had been arbitrarily arrested and jailed for months without trial, others who had lost their children. Families and neighbors no longer speaking to each other because some were pro-mining while others were anti-mining.

That same day I also went to San Rafael Las Flores, where the mine itself is located. However, once in San Rafael, I was asked if I'd be willing to go to the next town, Mataquescuintla or Colís as the locals know it, because it was safer and it would be easier to talk there. Colís, unlike San Rafael, had declared itself as against mining, having successfully carried out a community referendum on mining, which the Guatemalan High Court had recognized as legally binding in 2013 – the first time ever in Guatemalan history.

Driving into Colís we saw big signs saying 'No a la minería!' – 'No to mining' and even though there were soldiers on patrol throughout the small city the atmosphere already felt a little lighter than in San Rafael. The Colíseños told me the story of how they had organized a municipal referendum on the mining project and of the pushback they had experienced from the mining industry and the government, and the following state of siege. They explained that in Colís they had the support of their mayor, whereas in San Rafael Las Flores the mayor, who was pro-mining, had refused to authorize a municipal referendum.

The issue of the community referendums and how anti-mining activists increasingly deploy legal strategies as part of their political and social struggles became another focus of my dissertation. In Guatemala, anti-mining activists increasingly use ‘the law’ to expand the political spaces available to them for transformative politics. Different types of community referendums have become one of the most common tools for resisting mining. Through these mechanisms, grassroots movements have increasingly been able to assert the rights of mining-affected communities and indigenous peoples to self-determination in environmental decision-making and natural resource management.

I was moved by the sense of urgency of the people I met on this initial visit to Guatemala: ‘the world needs to know about this’ they said. Their resilience, their hope, and their fighting spirit inspired me. In particular, I was inspired by their willingness to defy all odds against an insurmountably strong industry and a State with a long history of rural repression. And so it was that I came to fall in love with Guatemala. I left Guatemala that December 2014 knowing without a doubt that I would be back and that my doctoral research would focus on the environmental struggles emerging in response to extractive industries.

Five years later, I remain inspired as ever by the people of Guatemala and by their tenacity. I am inspired by the innovative ways in which grassroots actors have been able to pry open the political spaces they have historically been excluded from. Through their efforts they are increasingly able to obtain recognition and assert the rights of affected communities to self-determination in environmental decision-making processes. In doing so, they attempt to push open new spaces for participation, recognition and distribution in

order to access environmental justice. They increasingly unsettle the legitimacy of dominant ideas about development and human-environment relations, and in small ways, they subvert hegemonic power relations in environmental struggles.

2. Background and context

Since the early 2000s, environmental conflicts stemming from the expansion of extractive industries have proliferated throughout Guatemala. This expansion relates to changes in the global geography of resource extraction, which are the result of the greatly expanding metabolism of societies consuming ever more energy and material resources (Martínez-Alier, 2002). The liberalization of economic policies, natural resource laws and investment codes, the financialization of many commodity markets, and historically low domestic interest rates, coupled with a decade of high commodity prices, deregulation and technological innovations have allowed corporations to advance the commodity frontier, moving ever greater quantities of soil and water (Bridge, 2004). Industry technological advances have also made natural resources accessible that were previously not economically viable (Mudd, 2007). Companies go deeper and farther into more ecologically and often socially vulnerable areas to extract resources. Often, these areas are inhabited communities, many of them indigenous, who most suffer the burdens of environmental degradation and pollution, and lack of access to basic resources due to the unequal distribution of power and income, and social inequalities of ethnicity, social class, caste and gender (Conde, 2017). While economic growth and the increasing social metabolism of society, coupled with neoliberal reforms are some of the reasons behind the expansion of the resource extraction, what causes conflicts to emerge are the socio-

environmental impacts on land, water and livelihoods coupled with the exclusion of affected communities from decision-making processes (Conde, 2017; Conde & Le Billon, 2017).

In Guatemala, unprecedented environmental struggles led by strong grassroots movements have emerged in response to the expansion of extractive industries. These grassroots movements include some of the most marginalized social groups in Guatemala – indigenous people and the rural poor. Issues of water scarcity, pollution and loss of farmland often lie at the core of these conflicts. Resistance to extractive industries addresses a range of interrelated concerns, including claims to political autonomy; the rights to land and territory; the unjust burden of environmental risk and degradation; the politics of livelihoods; and cultural survival. More broadly, these movements question ideas and visions of development that they feel dispossess and exclude them, and express discontent over the unequal distribution of socio-environmental benefits and burdens stemming from extractive projects (Hall et al., 2015). The people involved in these struggles use a wide array of strategies and tactics to resist extractive projects. They organize community referendums, stage demonstrations and set up blockades. They mobilize transnational activist networks and collaborate with international non-governmental organizations (NGOs) and religious groups. Activists also increasingly use legal discourses and mechanisms as part of their political and social struggles, using ‘the law’ to expand the political spaces available to them for transformative politics.

Social and environmental injustices are rampant in Guatemala, and environmental struggles take place in a post-war context characterized by racism, fragile justice, pervasive impunity and great structural inequality. Those who engage in resistance

against extractive projects are faced with an unsettling climate of hostility and violence, and experience repression and criminalization aimed at undermining their activism, and reports indicate that killings of environmental activists are on the rise (Global Witness, 2017).

3. Conceptualizing environmental struggles in Guatemala

Environmental struggles in Guatemala are historically contingent, embedded in a post-war context and must be understood against this backdrop. Guatemala's thirty-six year long civil war, which lasted from 1960 to 1996, produced some of Latin America's most terrible instances of state terror that culminated in acts of genocide.

Counterinsurgency warfare saw more than 200,000 people murdered during the war, the vast majority of which were non-combatant indigenous Maya. Another 50,000 people were disappeared, their whereabouts unknown and their bodies buried in clandestine graves throughout the country (Brett, 2016; CEH, 2012; ODAH, 1998). The widespread operationalization of disappearances became a signature tactic of the Guatemalan military and was used to terrorize, punish and silence the civilian population. The signing of the Peace Accords in 1996, which marked the end of the war, did little to address many of the root causes of the civil war, such as inequality, highly skewed land distribution, deeply rooted racism and the exclusion of the indigenous population from meaningful civil and political participation (Sveinsdóttir, Aguilar-Støen, and Bull, forthcoming). Drawing inspiration from the work of Brett (2016) and Sundberg (2008), I argue that in order to understand contemporary environmental struggles in Guatemala two specific

factors must be taken into account: 1) the logic counterinsurgency and 2) the logic of racism, and how these factors shape the conditions of political action and mobilization.

3.1. The logic of counterinsurgency

Guatemala's state crafting project was one that combined democracy with anti-communist counterinsurgency, which built on long-evolving patterns of rural repression (Grandin, 2011). In the words of General Gramajo, quoted by Jennifer Schirmer (1998, p. 1): "in Guatemala, a democracy was born out of the womb of a counterinsurgency campaign." To this day counterinsurgency structures remain incorporated into the very heart of the Guatemalan state and continue to condition individual and collective actions. A main factor driving the political violence that culminated in the mass atrocities committed against indigenous non-combatants was the counterinsurgency objective of 'draining the bowl to kill the fish' (Brett, 2016; Sanford, 2003; Schirmer, 1998). Particularly under President Lucas García and de facto president General Efraín Ríos Montt, between 1981 and 1983, a 'scorched earth' campaign of extraordinary brutality was waged, including eradicating entire communities, systematic massacres against indigenous populations, homicides, torture, mass public rape and forced sterilization, the burning of crops and the killings of livestock to 'starve out' the insurgents (Brett, 2016, p. 57).

Despite the official disappearance of the counterinsurgency state, counterinsurgency has become common sense among large factions of Guatemalans, for whom the lack of empathy towards the victims of state terror has become normalized (Flores, 2017). The logic of counterinsurgency, so deeply embedded within the Guatemalan state, shapes the way in which the government and elites react to contentious

environmental politics, often by portraying activists in the same ways as adversaries during the war, justifying corporate counterinsurgency, repression and criminalization against them, issues which are discussed in chapter 2 of this dissertation.

3.2. The logic of racism

Though the conflict in Guatemala reflected the anti-communist logic of the region's Cold War, it was also shaped by the longer-term logic of embedded racism that served to organize unequal socio-spatial relations in colonial and postcolonial Guatemala (Brett, 2016; Casaús Arzú, 2010). As the counterinsurgency state sought to exterminate the guerrilla's support base, which was allegedly situated within indigenous and peasant communities, it simultaneously sought to annihilate all vestiges of indigenous selfhood (Brett, 2016, p. 2).

A wealth of research highlights the ways in which the ideology of racism is a central axis of national life in Guatemala (Brett, 2016; Casaús Arzú, 2010; Nelson, 1999, 2015; Sundberg, 2008). Systems of hierarchical racialization were central to colonial rule (Quijano, 2000), and Spanish colonial policies and administrative legacies left an enduring imprint on governance, cultural practice, and human-environment relations in Guatemala (Sundberg, 2008, p. 569). Although the European colonists encountered diverse groups of people with differing languages, economies and governance structures, the conquest led to a process of social homogenization, creating the unified categories of "Spaniards" and "*Indios*" where none had previously existed (Quijano, 2000). A third group was soon added to the mix: "Negros" made up of African slaves and their descendants. Not only did the colonial legal system divide people into racial categories, it also defined their differing rights and responsibilities accordingly, including what jobs

they were eligible for, whether they could pursue formal education, where they could live, and whether or not they had access to natural resources. Racial thinking then informed the ways in which the new Latin American republics codified citizenship, and racial hierarchies came to form the structures of the postcolonial social order and the modern state (Sundberg, 2008, p. 571).

Sundberg (2008) argues that while complex and fluid systems of racial categorization emerged in the colonial era to describe the many outcomes of racial mixing, Europeanness/whiteness formed the core of such systems. In ‘postcolonial’ Latin America, hegemonic nation-building projects were organized around and privileged whiteness. White supremacy and white privilege inform legal systems, and everyday understandings of self and other, as well as the organization of space, place and environmental formations.

3.3. Situating race in environmental struggles

In Guatemala, race¹ has been a central factor in demarcating legal access to rights and resources since the colonial era. While biological and cultural traits have long been recognized as primary elements in delineating racial hierarchies in Latin America, human-environment relations have been relatively neglected. Juanita Sundberg argues that systems of racialization have drawn upon and come into being through ‘environmental formations’, that is, the historically contingent articulations between

¹ I use the term *race* when referring to “a contingent historical phenomenon that has varied over time and space” and *racialization* to refer to the “process of marking human differences according to hierarchical discourses” (Appelbaum et al., 2003, p. 2). I understand racial categories not as natural, but as a social construction, constituted in time and place (Cf. Sundberg, 2008).

environmental imaginaries², natural resource allocation and political economies.

According to Sundberg, analyzing how race articulates with environmental formations to shape socio-spatial relations allows us to understand how environmental injustices are organized, justified, but also reconfigured (2008, p. 569). An analytical lens such as Sundberg's provokes new questions about the ways in which exclusionary discourses and practices work in and through the environment.

Processes of racialization articulate in and through ideas about nature and appropriate natural resource practices and vice versa. They are rarely incidental to the access and control of natural resources, predominant visions of appropriate land use, exposure to environmental risk, access to environmental benefits (clean air, water, fertile soils), and who counts in environmental policy making. Sundberg argues that environmental justice, as an approach will be significantly enriched if we historicize racialization in particular places. Understanding contemporary discourses and practices depends upon analysing how actors draw from and reinterpret historically constructed categories in the context of specific nation-building projects, legal frameworks, daily discourses and practice, and environmental formations (Sundberg, 2008, p. 579).

Hegemonic visions of nature and appropriate human-environment relations are shaped by, and in turn shape, racial hierarchies, which justify and fix unequal social relations at multiple and intersecting scales (Sundberg, 2008). As such, natural resource management practices, environmental governance and their regulatory and legal contexts must be understood as racialized in ways that organize inequality. In Guatemala,

² By environmental imaginaries, Sundberg (2008, p. 579) refers to ideas about nature and appropriate human-environment relations, such as natural resource management and property regimes.

resistance against extractive projects is historically contingent and represents a struggle for socio-spatial relations and forms of governance that are not based on the normalization of racial inequality.

4. Environmental governance as an analytical framework

As an analytical framework environmental governance provides a tool for examining the complex and multi-scalar institutional arrangements, social practices and actors engaged in environmental decision making (Bridge & Perreault, 2009, p. 491). As a concept environmental governance is more popular than precise. It has been deployed in a myriad of ways to describe and to occasionally critique the institutional arrangements of state, market and civil society through which decisions about environment and resources are made. Bridge and Perreault (2009) have argued that environmental governance articulates the economic with the political, shedding light on the relationships between institutional capacities and social action. In doing so, the term problematizes state-centric understandings of power and highlights the role of non-state actors – NGOs, supra-national agencies, social movements, or private firms – in allocating, administrating and regulating environments and resources. Governance occurs at multiple scales that extend beyond those of formal institutions to include practices and norms through which key categories – nature, environment, citizens and resources – are contested, affirmed and reproduced.

In my understanding of environmental governance, I draw on the analytical framework advanced by Bridge and Perrault and I adopt Bull and Aguilar-Støen's (2015, p. 5) definition of the term, which understands environmental governance as “the set of

mechanisms, formal and informal institutions and practices by which social order is produced through controlling that which is related to the environment and natural resources.” Such an understanding allows for a broader conceptualization of environmental governance and looks past an environmental managerialism that is unreflexive about the dynamics of power, divergence and conflict that inhere in the process of managing resources and the environment, and which often masks competing claims to, and about, the environment. In my view, environmental governance describes an institutional arrangement that is not only a sociospatial configuration: it is also, and fundamentally, a representation of – and resource for – political and economic power operating on and through the control of the environment. Because the institutions, organizations and relations of environmental governance are inherently power-laden, analyses of environmental governance should aim to lay bare these power geometries, and interrogate their origins and implications (Bridge & Perreault, 2009, p. 492).

5. Summary and structure of the dissertation

My dissertation, in its broadest sense, set out to better understand how environmental struggles emerge and take shape. In particular, the dissertation analyzes the processes, institutions, actors and discourses that shape the conditions of possibility for political action and mobilization in environmental struggles. I argue that to understand the conditions of possibility for political action in environmental struggles we must study the interplay between political actions from above and from below, which is what I have tried to do throughout the dissertation. I argue that environmental struggles are part of emergent forms of politics wherein different actors struggle to consolidate

power and authority in the hands of competing groups. The complex ways in which corporate-elite-government-military networks shape political actions in environmental conflicts intersects with the strategies of grassroots movements, who themselves are engaged in multi-scalar contentious politics.

To understand uneven development, unjust social relations, and environmental conflicts, we must ground these processes historically and geographically by tracing the historical processes, legal and institutional infrastructures, and socially implicated assumptions and discourses that typically make unjust outcomes the rule rather than the exception. By examining the shifting constellations of political actions from both above and below we are able to reveal the articulations of emergent power relations and make visible some of the power geometries in environmental struggles.

In addition to this introduction and a concluding chapter, which presents a summary of the dissertation's main arguments, the dissertation comprises of three articles that are written as distinct manuscripts intended for publication in peer-reviewed journals. The first article, *"This is not a game": Shaping political actions 'from above' in environmental conflicts in Guatemala*, is co-authored with Dr. Mariel Aguilar-Støen and Dr. Benedicte Bull at the Centre for Development and the Environment at the University of Oslo. This article examines how government, corporations and elites in Guatemala shape decisions, practices, and interactions that influence political actions 'from above' in environmental conflicts. In the paper, we analyse how the private sector and the government respond to opposition against extractive industries. Responses include tactics and strategies that range from criminalisation and repression of activism to publicity campaigns and lobbying. However, we observe that the ways in which social movements

resist also influence responses ‘from above,’ e.g. legal and technical contestations to environmental and social standards, community referendums, civil disobedience etc. We ask: 1) what types of resources are mobilised within government-corporate networks in response to resistance to the advancement of extractive industries, and 2) how do tactics used by social movements influence responses ‘from above’? We contend that the private sector and government engage in practices that aim to undermine and suppress opposition to extractive industries, and to make extractive operations politically and socially legitimate. Activists are increasingly portrayed in the same way as adversaries during the civil war, justifying counterinsurgency and repression against them, while paradoxically, corporations claim commitment to international human rights standards, such as the ILO’s Convention 169, and to engage in ‘community development’ and ‘social responsibility.’

The second article, *From the streets to the courts: Mobilizing the law to subvert hegemonic power relations in environmental struggles*, is co-authored with Dr. Mariel Aguilar-Støen. This article examines the growing importance of law, legal institutions and legal actors in environmental struggles. In doing so, we wish to get at the complex and dynamic interweaving of law, space, politics and power in struggles for environmental justice. More specifically, we analyze the ways in which grassroots actors mobilize the law in attempts to subvert hegemonic norms and power relations in environmental struggles. We argue that due to lack of adequate political spaces to advance environmental struggles, activists have turned to the judiciary as a strategy to expand their repertoires of contention. In doing so, they attempt to push open new spaces for participation, recognition and distribution to access environmental justice.

The emerging legal strategies adopted by environmental activists in Guatemala highlight how the many dynamic configurations of environmental struggles are related to legal processes in lieu of political spaces. The legal cultures we observe in Guatemalan environmental struggles raise important questions about the dialectics of resistance and the law, and how these processes shape environmental governance, political participation and contestation. Those who engage in resistance against extractive projects are faced with a climate of hostility and violence, and experience repression and criminalization aimed at undermining their activism. Despite this, we find that environmental struggles in Guatemala reveal how grassroots mobilizations can - however modestly - subvert hegemonic power relations in their struggles for environmental justice and transformative politics.

The third article, *Corporate community conflicts in Guatemala: Exploring private sector perspectives on opposition to mining*, explores the discourses of Guatemalan business leaders and economic elites to analyze how the private sector explains and understands corporate-community mining conflicts in the country. I analyse discourses emerging from interviews with ‘the private sector’, wherein business leaders and economic elites discussed their thoughts on socio-environmental conflicts and what they see as the main challenges currently facing the extractive sector in Guatemala. In focusing on private sector discourses my aim is to advance a better understanding of how responses to mining opposition take shape, and the ways in which such discourses contribute to establishing the conditions of possibility of political action in environmental conflicts.

The analysis presented in the dissertation draws on data gathered through fieldwork in Guatemala between 2014-2017, using qualitative research methods such as interviews, participant observation and document analysis. My analysis includes perspectives from a wide range of diverse actors, including indigenous leaders, environmental activists, and rural smallholding farmers involved in anti-extractive movements, as well as legal advisors representing them, and allied organizations. I also interviewed corporate representatives from transnational mining companies, multinational conglomerates and agro-industrial organizations. I also interviewed leaders of business associations and industrial business networks, board members of umbrella associations promoting private sector interests, as well as powerful political and economic elites. Between 2014-2017, forty-nine interviews were conducted. Participant observation included visits to two different project sites; one a mineral mine, the other a cement plant, as well as participation in private sector conferences, anti-extractive demonstrations, meetings and public court hearings.

Chapter Two: Methodological approach

The analysis presented in the dissertation draws on data gathered through fieldwork in Guatemala between 2014-2017, using qualitative research methods such as interviews, participant observation and document analysis. The decision to use qualitative research was based on the findings of my exploratory research. My research process began with exploratory research in Guatemala from 2014 until 2016. During four separate trips I conducted interviews and was able to identify key issues, actors, and processes that play a role in conflicts relating to natural resource extraction in the country. Exploratory research between 2014 and 2016 played an important part in the design of my study. The information gathered through exploratory research gave me an overview and understanding of the corporate-community conflicts surrounding extractive industries in Guatemala. This allowed for the progress of my research design to be unfolding in nature, and letting empirical findings guide the development of the study's design. This does not imply an "anything goes" strategy. Qualitative research has an inherent openness and flexibility that allows you to modify your design and focus during the research to understand new discoveries and relationships (Maxwell, 2013). Exploratory research enabled me to affirm that the type of approach I had in mind was both appropriate and feasible. I confirmed that my Spanish was adequate to be able to conduct interviews and that I would be able to gain access to my desired participants, and

that in-depth interviews and participant observation are an appropriate method for data collection.

2.1 Data collection and exploratory research

To collect the information needed for my study I used in-depth interviewing, participant observation, and analysis of texts and documents. I brought together the information from these different sources in a process of triangulation in order to balance the strengths and weaknesses of these different methods and the information they produce. I collected information from a wide range of different actors, including indigenous leaders, environmental activists, and rural smallholding farmers involved in anti-extractive movements, as well as legal advisors representing them, and allied organizations. I also interviewed corporate representatives from transnational mining companies, multinational conglomerates and agro-industrial organizations. I also interviewed leaders of business associations and industrial business networks, board members of umbrella associations promoting private sector interests, as well as powerful political and economic elites. Between 2014-2017, forty-nine interviews were conducted. Participant observation included visits to two different project sites; one a mineral mine, the other a cement plant, as well as participation in private sector conferences, anti-extractive demonstrations, meetings and public court hearings.

Gaining access to the participants and settings that I used as sources of information is a process that began with my ongoing exploratory fieldwork in 2014. During exploratory research in 2015 I conducted in-depth interviews and participant observation with participants from the anti-extractive movement. The preliminary

findings from this exploratory research highlighted the need to study the role of the state-elite nexus in resource extraction to better understand the dynamics of violence that surround these sectors. This is supported by research that indicates that not only is this nexus understudied but also because the choices and actions of elites affect the centralization of power in the state, the ability to extract resources from society, and the establishment of a monopoly on legitimate force. These are all pre-requisites for the emergence of a state that in turn can take on distributive functions and create a sense of integrated community and citizenship (Bull, 2014). Gathering information from the private sector, government officials, and the elites is important for several reasons. These groups are currently understudied in Guatemala and what information exists about them usually comes from secondary sources so that they tend to be blackboxed. Most existing research considers them monolithic. Finally, these groups are important because they are in position to formally or informally influence decisions and practices that have broad societal impact (Bull, 2014).

I began the process of collecting information from the private sector and the elite in Guatemala during the summer of 2016. Gaining access to these participants was not without issue or unproblematic. Guatemala's private sector and elite are very elusive and recently, given the often-critical spotlight under which resource industries have come in the country, they are very wary. However, through some good initial gatekeepers I was able to get the ball rolling and I was able to begin to make headway with several key informants. These were actors from the mining industry, from the agro-business industry, the hydropower industry, as well as several association and groups that promote and protect private sector interests. This initial access and relationship with this group of

participants was important, and affirmed that it is possible to gain access to the private sector and the elite.

2.2. Data analysis

In qualitative research, data analysis is a process of making meaning. It is a creative process, not a mechanical one (Denzin & Lincoln, 2011). My data analysis strategy is one such of interpretation and I drew on my understanding of the context and ongoing discussion both in Guatemala and beyond.

Analyzing qualitative data generally involves several stages. First, I began by arranging and organizing my data so that I was able to make sense of it. Margaret LeCompte and Jean Schensul (1999) call this the process of “tidying up.” I began by listening to all recordings of my interviews and reorganizing my observation notes. I made sure that all my taped interviews were transcribed verbatim and that my field notes were together and complete. I made a comprehensive list of all the materials that I gathered. Following this I began to immerse myself in my data and became familiar with what I had gathered. I then read the interview transcripts, observation notes, and the documents that I wanted to analyze. During this reading and listening, I wrote notes and memos on what I see and heard in my data and developed tentative ideas about categories and relationships. This was the beginning of determining patterns and regularities in my data. Following this began the process of making sense of my data. The first steps of this process were coding. In qualitative analysis, the goal of coding is to begin to focus on the potential meanings of ones data. Amanda Coffey and Paul Atkinson suggest that qualitative coding entails three basic procedures: “(a) noticing relevant phenomena, (b)

collecting examples of those phenomena, and (c) analyzing those phenomena in order to find commonalities, differences, patterns, and structures” (1996, p. 29).

At each step of the way of my analysis I wrote up memos, both procedural ones and analytical ones. Procedural memos helped me remember how I did my coding, what kinds of categories I created, and so forth. These memos were important to help keep track of what I had done. Analytical memos helped me think about the categories and themes that I developed in my analysis. They helped me focus on what was important in my data and to make connections between cases. These memos contained my hunches and ideas and best guesses about what I should be thinking about. As I developed my coding further, these memos got more and more detailed (Esterberg, 2002). Coding serves the purpose of data compilation. Following data compilation came the process of developing an analysis, which included looking for patterns in the data (similarities and differences), comparing cases, building typologies, and conducting a content analysis (Esterberg, 2002).

2.3. Positionality and the politics of fieldwork

Fieldwork is undeniably important in Latin American geography, yet despite this importance there is an absence of a dialogue about the politics of fieldwork within the sub-discipline (Sundberg, 2003, 2005). Juanita Sundberg draws on feminist and post-colonial theories about the production of knowledge to suggest that this silence about fieldwork is rooted in masculinist notions of objectivity that predominate Latin American geography. Sundberg has argued that critical geographies of Latin America must begin with an analysis of how and why the bodies and geographies of geographers

themselves matter. She argues for increased attention to the nexus of power and knowledge and in particular, to how researcher's geographical location, social status, race and gender fundamentally shape the questions asked, the data collected, and the interpretation of the data (Sundberg, 2003). However, to focus on the geographer as a producer of knowledge is not to advocate the kind of navel gazing so abhorrent to many scholars. Rather, it is an effort to call attention to and critically assess how the geographer's embodied social position and geographic location inform the production of knowledge about and representations of Latin American people and nature (Sundberg, 2005, p.17).

Much like Juanita, I as a white woman conducting research in Guatemala have been made acutely aware of the ways in which my gender, race, and biography as a privileged Icelandic citizen and student at a private university in the United States shape all levels of my research. I have tried to reflect upon this as I try to situate myself as a critical, feminist geographer working in Latin America. In thinking about and doing research I try to be self-reflexive about my position (geographic location, social status, race, and gender) and to consider how power relations are embedded in the very interpretative nature of research. I see this as a political intervention and contribution to the broader goals of emancipatory politics shared by human geographers.

Chapter three: “This is not a game”: Shaping political actions 'from above' in environmental conflicts in Guatemala

I. Introduction

In an interview titled “This is not a game”,³ the president of the pro-military NGO, the “Foundation Against Terrorism” (Fundación Contra el Terrorismo -FCT), Ricardo Méndez-Ruiz, explained why his NGO and the private sector in Guatemala shared a common interest in reversing the results of the genocide trial against former dictator Ríos-Montt. According to Méndez-Ruiz, the private sector and the military are allies in a common fight because the post-war legal proceedings against the military not only threaten the military, but also the dominant position of the private sector and elites. This statement illustrates how the civil war, its violence, and the main parties involved are recurrent themes in contemporary Guatemalan society. In the interview, Méndez-Ruiz also mentioned land, agrarian issues and the extractive industries as being at risk from popular revolts.

In this paper we study conflicts relating to extractive industries that have proliferated throughout rural areas in Guatemala since the early 2000s. In doing so, we show how the legacies of the civil war (1960-1996) shape the ways in which the private sector and the government react to contentious politics. The Peace Accords were never completely implemented and room for including “others” in dialogue, negotiations and in

³ <https://www.plazapublica.com.gt/content/esto-no-es-un-juego>

decision-making remains limited. As a result, the private sector and the government are able to engage in practices that aim to undermine and suppress opposition to extractive industries, while at the same time trying to make extractive operations politically and socially legitimate for certain social groups. Activists are increasingly portrayed in similar ways as insurgents during the war, when the figure of the ‘internal enemy’ was central to normalizing counterinsurgency and genocide. This particular framing of opposition to extractive industries fosters a hostile climate that enables corporate counterinsurgency and state repression.

In the early days of the peace talks the notion of “politics as a continuation of war” was put forward by former ministry of defense General Alejandro Gramajo, who in an interview told Jennifer Schirmer the following:

Our strategic goal has been to reverse Clausewitz’s philosophy of war to state that in Guatemala, politics must be the continuation of war. But that does not mean that we are abandoning war; we are fighting it from a much broader horizon within a democratic framework. We may be renovating our methods of warfare but we are not abandoning them... we are continuing our [counterinsurgency] operations [against] international subversion because the Constitution demands it (Schirmer, 1998, p. 1)

Central to the counterinsurgency campaign during the civil war were several programs that intended to reshape territories and people’s lives. Counterinsurgency campaigns took place in tandem with a series of public relations programs, the construction of infrastructure, the establishment of “model villages” and other programs designed to “win the hearts and minds of the population” (Interview with General Gramajo in Schirmer 1998; see also Gould, 2018). The civil war was not only a military project; it was political and economic, in the sense that it was a project designed to shape territories and space (Ybarra, 2012). We argue that responses ‘from above’ to

contemporary opposition against extractive industries can to some extent be understood as an extension of the “politics as a continuation of war”. As we will outline below, contemporary extractive conflicts in Guatemala are shaped by the post-war context in which they take place and are characterized by the continuation of many of the root causes of the war, such as inequality, a highly skewed distribution of land and exclusion of the indigenous population from civil and political participation.

Our analysis draws on data gathered through fieldwork between 2013-2017 and focuses on four mining projects. We conducted interviews with corporate representatives, associations and groups that protect and promote private sector interests, lawyers, public servants, and Guatemalan elites. We interviewed actors engaged in resistance against extractive projects, legal advisors representing them, and allied organizations. Our research is also based on participant observation with the aforementioned actors and includes, for example, visits to projects sites and participation in private sector conferences, as well as participating in anti-extractive demonstrations, meetings and public court hearings.

1.1. Theoretical considerations

There is a growing body of literature on mobilizations against resource extraction that is dedicated to better understanding how political reactions ‘from above’ emerge and take shape (Brock & Dunlap, 2018; Dunlap, 2018b, p. 2018; Geenen & Verweijen, 2017). This literature attempts to understand the actions taken by governments, corporations and allied elites to legitimize and actualize their operations. Geenen and Verweijen (2017, p. 758) further argue that to understand social mobilizations against resource extraction, it is important to study the interplay between political actions and

reactions both ‘from above’ and ‘from below’, and to recognize the diversity of these reactions.

With our contribution we wish to respond to calls to further study the interplay between political actions ‘from above’ and ‘from below’ in environmental struggles. We argue that political actions from above and from below are dialectically interrelated, with dynamic and contested interactions between actors within and between scales. By theorizing and substantiating empirically shifting spatial configurations in mobilization and counter-mobilizations we aim to contribute to advancing theoretical debates on the spatialities of politics in environmental struggles.

We hold that spatialities (e.g. place, scale, networks, positionality, and mobility) are active, dynamic, and composed of social relations (Leitner & Sheppard, 2018; Leitner, Sheppard, & Sziarto, 2008; Massey, 2005). Additionally, in theorizing spatialities, we have to examine the co-implication of particular spatialities in particular contexts. Leitner et al. (2008), drawing inspiration from Massey’s relational space (Massey, 2005), argue that it is not simply a question of the co-presence of the relevant spatialities, but also how they shape one another and, thereby, the trajectories of contentious politics. Finally, we see spatialities as processual; always in the making, never finished and never closed (Massey, 1999, pp. 2–3). Understanding spatialities as relational, multivalent and co-implicated enables us to reconnect the spatial with the political and confront structurally embedded power relations (Merriman et al., 2012).

This article examines how shifting sociospatial relations come about and how shifting spatialities shape – and are reshaped by – the dialectics between political actions from above and from below. The spatialities of politics are often conceptualised through

the lens of the politics of scale (Leitner et al., 2008; MacKinnon, 2011). Scale is conceptualised as a relational, power-laden and contested construction that actors strategically engage with, in order to legitimise or challenge existing power relations. In the course of these struggles new scales are constructed, and the relative importance of different scales is reconfigured. This process is highly contested, involving numerous negotiations and struggles between different actors as they attempt to reshape the scalar spatiality of power and authority (Leitner, 1997; Leitner et al., 2008).

Our study aims to contribute to these theoretical debates by examining the dialectic of political actions ‘from above’ and ‘from below’ in environmental struggles in Guatemala. We do so by analysing the complex configurations of corporate-government-elite-military networks, and how these networks operate. We also look at the interplay between corporate/state mobilization on the one hand, and grassroots mobilization on the other, analysing how they mutually shape each other. We argue that these reactions must be interpreted against the backdrop of competition and alliances between different elite groups that pursue projects of power and authority, which require control over political- and security forces. Furthermore, these reactions must be understood in the context of a post-war state that has failed to establish hegemony in the Gramscian sense.

In post-war Guatemala, political and business interests are entangled in ways that engender conflict and violence, for example, through linkages between private security actors and the economic elite, and between ex-military and private security actors, or some combination thereof. These shifting sociospatial relations build on the legacies of the civil war, the context in which the peace process developed and the failure to enact structural transformations after the signing of the Peace Accords. Social movements and

local actors also gained new knowledge, accessed transnational networks and strengthened their organization as a result of the peace negotiations and the Peace Accords (Aguilar-Støen & Bull, 2017).

Thus, we argue that extractive conflicts are part of emergent forms of scalar politics where different actors struggle to (re)consolidate power and authority in the hands of competing groups. These processes intersect with the strategies of grassroots movements engaged in multi-scalar strategies by drawing on transnational alliances in a struggle where conflicting global discourses are developed and deployed in contested ways. Spatialities shape the conditions of possibility for political action. They matter for the imaginaries, material practices and emergent trajectories of environmental struggles. By examining the shifting spatialities of political actions we are able to reveal the articulations of emergent power relations and make visible some of the power geometries in environmental struggles.

2. Conceptualising counterinsurgency in contemporary Guatemala

The counterinsurgency campaigns in Guatemala were carefully crafted, detailed in handbooks and taught in special courses, for example at the School of the Americas. Such campaigns materialised in the form of massacres, terror, sexual violence, selective assassinations, and kidnappings; as well as in the form of campaigns to gain the “hearts and minds” of the population. These campaigns, engineered within the Kennedy Administration’s counterinsurgency programme (officially known as military civic action, MCA), included food programs, relocations, building of infrastructure, medical assistance, literacy programs etc. (Flores, 2017; Gould, 2018; McAllister & Nelson,

2013; Schirmer, 1998). To some military experts, the MCA was as important as intelligence and operations in the counterinsurgency effort (Gould, 2018).

Guatemala's state crafting project was – and in many ways remains - a strategy that combines democracy with counterinsurgency. In the words of General Gramajo, quoted by Jennifer Schirmer (1998, p. 1); “in Guatemala, a democracy was born out of the womb of a counterinsurgency campaign”. Flores (2017) argues that despite the official disappearance of the counterinsurgency state, counterinsurgency has become common sense among large factions of Guatemalans for whom the lack of empathy towards the victims of state violence has been normalized. On the other hand, the incapacity and lack of interest on behalf of elite factions to arrive at broad agreements on a nation and state building project has shaped a particular form of state in Guatemala (Illmer, 2018). This is characterized both by a lack of state hegemony in the Gramscian sense, and by the absence of a legitimate monopoly of violence in the Weberian sense, which becomes further compounded by disaccord about what counts as legitimate violence. As Gramsci argued, the lack of hegemony by dominating groups in the formation of discourses, subjectivities and political blocs, leads to a domination of subalterns that is dictatorial and crude (Gramsci & Nowell-Smith, 1972).

In Guatemala, violence has remained a resource in most political struggles, also between elites in their competition for domination and economic gains (Bull, 2014). One expression of the failure to establish a monopoly of legitimate violence is the instrumental but shifting relationship between the economic elite and the military. During the civil war, the economic elite collaborated with the military, particularly during the government of Ríos Montt. The economic elite provided funds and political support to

the former dictator, members of the elite occupied positions in his government, and the elite embarked on an international lobby campaign to improve the image of the dictator and of Guatemala (Rodríguez-Pellecer, 2013). However, the fact that the military controlled much of the state, held high positions in various state enterprises, and acquired economic benefits from such positions, increased tension among dominating sectors within the economic elite, who in the 1990s were advocating a minimalist state (Bull, 2005).

There was also discord within the military between those known as “the institutionalists”, who supported the peace process, and the “Officers of the Mountain” who suggested that they had won the war on the battlefield⁴. This latter view was shared with the ultraconservative landowner elite (Schirmer, 1998, pp. 210–211). The institutionalists advocated “politics as a continuation of war,” where war was continued under civilian rule in such a way that the army was not held accountable for war crimes (Schirmer, 1998). Schirmer (p. 234) also points out that what the extreme right-wing factions within the military and among the ultraconservative landowner elite failed to understand was that this ‘strategic combination’ is, over the long run, far more efficient and sophisticated in its maintenance of control than cycles of full-scale violence. However, as McAllister and Nelson (2013) argue, power is polyvalent; alliances can be disrupted and turned to other agendas, and the political entails the possibility of reversals and changes. Even “politics as a continuation of war” do not imply a simple or smooth execution of strategy. It is within the idea that power is polyvalent that one can make

⁴ For an comprehensive discussion on the Officers of the Mountain see Schirmer (1998), chapter 9.

sense and understand the dialectical and dynamic relationship between strategies from “above” and from “below” and the outcomes of this relationship.

Jenny Pearce (2018, pp. 5–6) puts forth the notion of a “fragmented security state” to explain the kind of state emerging in Latin America in the context of globalisation, which is favoured by the elites, seeking to promote and protect their own interests. The outcome of this state is the reproduction of violence in society and particularly amongst the poorest segments of the population. The permeability of this state is what matters to elites. Influence trafficking is imperative to securing this permeability but comes at the cost of independent and autonomous legal systems. For example, as the case of Guatemala exemplifies, such states have judicial systems that privilege the protection of private property rights and business transactions over criminal law and civil rights. In such a state project, violence remains not only part of the state’s policy repertoire but is also unbound by legality. Violence, then, is de facto, an everyday tool of political, social and economic interactions. It is used selectively with impunity by state security forces, some of which ally or make deals with traditional and emerging elites. The entanglements of bureaucratic and political actors with these elites secure the legitimization of this de facto governance model.

Through a series of economic reforms, including trade liberalization, privatization of state enterprises and decentralization, a particular form of state formally aiming to strengthen the general conditions for business - although often privileging a few - consolidated the privileged position of private business in the economy towards the end of the war. The ink in the Peace Accords had not yet dried when the government started to negotiate the framework for the implementation of a new set of policies that enabled a

new wave of investments in the primary sector. The domestic private sector enthusiastically embraced these negotiations and there were several local initiatives promoting the discourse of economic liberalization and a minimal state (Bull, 2005). Furthermore, the new policies highlighted the participation of the private sector, including in natural resource-based sectors such as agro-industry, hydropower, oil and minerals. The model was also based on close collaboration with private business, both domestic and transnational, in the formulation of laws, the selection of priorities in regards to public policy, and regulatory frameworks (Dougherty, 2011).

The mechanisms used to secure the expansion of the extractive industries were already in place before the end of the war (Aguilar-Støen, 2016; Solano, 2013). Contemporary extractive conflicts highlight that the inroads for new investments at the end of the war were accompanied by a complex- albeit more subtle- form of violence, which emerged in a historical context that makes it in our analysis impossible to simply ignore the war.

3. The post-war context

This section discusses the most salient features of the Guatemalan post-war context, which are defined by the strengthening of civil society, changing elite dynamics and elite competition, as well as shifting opportunity structures following the demobilisation of the military.

3.1. The strengthening of civil society

The peace process resulted in the opening of certain political spaces to subaltern actors and the development of legal instruments that sought to strengthen popular

participation in decision-making related to development. As a result, resistance movements have turned to these legal frameworks to claim their right to participation. Prominent actors, including International Financial Institutions and the modernizing sector of the elite promoted neoliberal reforms jointly with the promotion of liberal political institutions, and emphasized the importance of participation by civil society (Bull & Aguilar-Støen, 2019; Rettberg, 2007). Within this context several grassroots organizations, including indigenous ones, successfully allied with national and transnational NGOs to gain recognition of their collective rights. One of the results of their joint work was the ratification of the International Labour Organization's Convention concerning Indigenous and Tribal Peoples (No. 169) by the government of Guatemala in 1996. This convention has also been used as a framework for legitimate consultation claims regarding extractive projects.

Political changes that formally opened spaces for civil society groups were not the only factors that increased civil society participation and influence. People living in exile or in refugee camps during the war gained considerable organizational experience prior to the signing of the Peace Accords. Women and indigenous peoples overcame marginalized roles and gained experience in negotiation and project development. After the signing of the Peace Accords, these actors found new, albeit limited, political spaces in which they could make their voices heard (Brett, 2016). This would eventually set the stage on which indigenous and other rural peoples could claim better participation in decision-making regarding mining, oil and hydropower.

The Peace Accords opened a path through which some historically rooted socioeconomic injustices could be addressed. However, the required constitutional

reforms never materialized. A national referendum in 1999 rejected the Constitutional changes required to implement political and economic reforms needed to change or eliminate the structural origins of social conflict in Guatemala, such as inequality, land concentration, lack of institutions for the redistribution of income, and racism (McAllister & Nelson, 2013). The signing of the Peace Accords resulted in a transformation of the ways in which direct violence manifests itself in the country. However, the inherent structural violence embedded in the organization of Guatemalan society remains unchanged (Aguilar-Støen & Bull, 2017). Changes related to the role of the army in post-war Guatemala, although implemented to some extent, did not dismantle the power of the army within the government. As we will discuss below, this failure is partly a result of the increasing competition between elites in Guatemala. Popular claims and demands related to extractive industries show that, despite the signing of the Peace Accords, the aspirations and demands of subaltern groups have not been included in the post-war social, political and economic reorganization of the state.

A series of new national and international legal instruments that sought to strengthen popular participation in decision-making processes also came into being and required new forms of responses from above. The UN-International Labour Organization's (ILO) Convention concerning Indigenous and Tribal Peoples (No. 169, 1989), as well as on the country's Municipal Code, Decree 12-2002, and the Law of Local Development Councils all secure rights to participation in decision making and Free, Prior and Informed Consent (FPIC) of indigenous peoples, and in certain cases, of local non-indigenous communities. Groups opposing extractive projects increasingly mobilize rights-based discourses, legal mechanisms and strategic litigation. In recent

years, strategic litigation has disrupted extractive projects and Guatemalan courts have suspended and cancelled the operating licences of several projects due to the failure to properly consult with affected indigenous populations. From our interviews with lawyers it became evident that just in the last six years more than 25 cases have been brought on behalf of indigenous groups against the State of Guatemala for granting mining and hydropower licenses without complying with the right to (FPIC).

3.2. Shifting elite dynamics in the post-war era

The combination of political changes related to post-war democratization and economic changes starting in the 1980s led to the emergence of new elites and new factions within the traditional elite. The economic elite adapted to global economic changes by forming alliances with transnational corporations and by expanding regionally and globally (Bull, Castellacci, & Kasahara, 2014). Additionally, new groups controlling important resources in the country started to challenge the economic dominance of the old landed elite, including in the media sector and telecommunications (Bull, 2005; Solano, 2015a). In the extractive industries, there are also new international actors, for instance, Canadian, Russian and U.S. mining firms, European firms in hydropower development and Nicaraguan groups in sugarcane production. Finally, former military officers who enriched themselves through illegal activities during the war now fight for the control of political parties, and largely control private security firms (Argueta, 2012).

There are also various ways in which domestic elites collaborate in new ways with transnational companies. This includes domestic economic groups participating as minor partners in specific projects. Domestic companies function as service providers for

transnational companies, for instance, electricity, infrastructure and equipment. They also function as political “door openers” for transnational companies. Even though mining is of minor economic importance to Guatemala’s economy, to control activities associated to mining may be of great importance for the domestic elite, not only in economic terms but to maintain their influence within competing power networks (Aguilar-Støen & Bull, 2016).

The fall of former president Pérez Molina and former vice-president Baldetti in 2015 due to the discovery of a corruption ring in the toll office, known as “La línea,” shows that control of the state apparatus is no longer exclusive to the economic elite. The military, particularly war officers, had disputed control over the toll office since before the signing of the Peace Accords (Estrada & Rodriguez, 2015; Peacock & Beltrán, 2003). Changing elite dynamics also led to new ways to control the state through campaign financing, as revealed by the International Commission against Impunity in Guatemala (CICIG, for its acronym in Spanish). While in the past the economic elite was the main financier of electoral campaigns, currently the economic elite contributes 25% of the funding, 50% comes from companies providing services to the state, and the remaining 25% comes from illicit structures, mainly drug trafficking (CICIG, 2015).

Both the legislative and executive branches are increasingly sites of competition between old and new elites. As shown by Briscoe and Rodríguez-Pellecer (2010) the Legislative Assembly can be compared to a market place where political favours are bought and sold, open to the influences of groups associated with licit as well as illicit sectors. Despite this, the traditional elite continues to hold strong influence in the legislative and executive branches of the state. Naveda (2011) suggests that the most

powerful Guatemalan elite (family) corporations contributed to funding the political campaigns of former presidents Arzú, Berger and Pérez Molina. Once their candidate is in office, members of these groups take positions in the government (Valdez, 2003). Ideological affinity is not a requisite for the elite to offer economic support to the candidates. Rather, they pursue a strategy of supporting whoever has better odds of winning so as to secure their economic interests and to establish new business opportunities that further strengthen their position. This happens, for example, through their influence on the drafting of favourable laws (notably for our case, the mining bill and the electric energy bill) (Aguilar-Støen, 2015; Aguilar-Støen & Hirsch, 2017; Dougherty, 2011).

3.3. The demobilization of the military, shifting opportunity structures and emerging private security assemblages

In addition to competition between old and new elites, the demobilization of the military also led to various power struggles and shifting opportunity structures resulting in novel, emerging private security assemblages. Military personnel entered into illegal activities during the civil war (smuggling, tax evasion, drug trafficking) through diffuse and shifting networks by way of which they amassed considerable fortunes (Gagne, 2016; Peacock & Beltrán, 2003). As a result of the volatility of such networks and the illegal nature of their activities, it was crucial to secure access to and control of the intelligence offices of the government. A key resource was the Estado Mayor Presidencial (EMP). Several corruption cases revealed that struggles to control the EMP were also related to the fight for political power and authority. The goal of controlling intelligence offices seems to be related to the opportunities it provided for monitoring and

maintaining surveillance of the activities of competing illegal networks⁵. The dissolution of the EMP in 2003 did not mean that the military completely lost access to intelligence offices. Indeed, some of them entered newly created civilian intelligence offices while others joined the private sector, and organised crime, drug trafficking and other legal and illegal activities (Argueta, 2012).

The private security sector absorbed a considerable number of former military personnel in a process that intensified after 1996 (Argueta, 2012). Additionally, international security advisors, particularly from the USA and Israel, who advised the military on issues related to military intelligence during the civil war, started to provide security services to the private sector in Guatemala. This proved profitable and they eventually established their own private security firms in alliance with Israeli and British companies (Argueta, 2012; Solano, 2015b, 2015c). Some of these transnational security companies, Golan, Yantarni, Centurion Security and several domestic companies like Grupo Escorpión S.A., provide security and intelligence services to mining and oil companies. The manager of Grupo Escorpión S.A. - a company involved in a corruption case as revealed by CICIG in 2015 - is a former military serviceman with links to Grupo Golan (Solano, 2015a).

Abrahamsen and Williams (2009) have theorized the processes described here as “global security assemblages.” By situating security privatization within broader

⁵ Various former military members who worked at the EMP are accused in the aforementioned corruption cases, are also accused or convicted in cases related to crimes committed during the civil war; or both. For example: Manuel Antonio Callejas y Callejas (Caso Moreno, Caso Molina Thyssen, drug trafficking); former general Luis Francisco Ortega Menaldo (Caso Moreno); Otto Pérez-Molina (Caso la línea, caso cooptación del estado); Juan Guillermo Oliva Carrera (Caso Moreno; Caso Mirna Mack).

transformations in the relationship between public and private power and authority, Abrahamsen and Williams analyse the emergence of global security assemblages; settings where a range of different global and local, public and private security agents interact, cooperate and compete to produce new institutions, practices, and forms of security governance (Abrahamsen & Williams, 2009, p. 3). These changes indicate important developments in the relationship between security and the state, structures of political power and authority, and the operations of global capital. In the next section we turn our attention to how these development shape and are shaped by tactics and strategies of resistance from grassroots organizations.

4. Resistance ‘from below’ and changing spatialities of contentious politics

Emerging political reactions to extractive projects address a range of interrelated concerns, including discontent over unfair distribution of environmental risk stemming from projects and threats to land-based livelihoods. Contention also stems from the perceived asymmetry between profits earned by corporations and low gains for the government and host-communities, deriving from non-inclusive legislative processes characterized by strong favouritism towards industry, as our interviews reveal.

Opposition is also related to failure of governments to comply with and respect the rights of indigenous peoples and their political autonomy. More broadly, movements question ideas and visions of development that they feel dispossess and exclude them and express discontent over the unequal distribution of socio-environmental benefits and burdens from extractive projects (Cf. Hall et al., 2015).

For the purpose of this paper, we focus on political reactions ‘from below’ as they relate to opposition to the mining industry (Hall et al., 2015). There are four major mining conflicts across Guatemala that are important to our analysis: The Marlin mine in San Marcos, the Fenix mine in Izabal, the El Tambor mine in Guatemala, and the Escobal mine in Santa Rosa⁶. Table 1. summarises the main features of the conflicts we included in our analysis. The oldest project (Fenix) dates back to the beginning of the civil war while the extraction licence of the most recent one (El Escobal) was approved in 2013. A Russian company owns one mining project (Fenix) while North American companies (Canada and USA) own the rest. The Marlin mine operated from 2005 to 2017 and was Guatemala’s first large-scale gold mine. The mine is now closed and is currently undergoing a reclamation process. Recently the Guatemalan Supreme and the Constitutional Court suspended mining activities in the cases of the Tambor and the Escobal projects for failing to consult affected communities prior to the installation of the projects.

We observe several common tactics and strategies used by social movements resisting mining projects. These include organizing community referendums, staging demonstrations and the use of roadblocks. Social movements participate in transnational activist networks and collaborate with international NGOs and religious groups (Della Porta & Tarrow, 2005). From our interviews and analysis of resistance campaigns it became clear that activists increasingly engage in legal action framed as an attempt to

⁶ There are also other ongoing conflicts that share similarities with the ones we analyze here but that were not included in our study, for example, the Cerro Blanco gold mining project owned by Bluestone Resources and the San Gabriel cement project owned by Guatemalan Cementos Progreso.

legitimize their right to participate in environmental decision-making. Legal action is also a strategy used to halt, slow down or cancel projects. Legal action, if well-advertised and in the cases where shareholders care, can also harm corporate and government reputation, hurting profitability, and as such is a formidable method for exerting pressure on corporations and governments.

These practices form part of a larger process of using multi-scalar strategies by shifting scales of collective action and politics of networking⁷. There are three important processes within the changing scales of anti-mining resistance in Guatemala: diffusion of collective action, externalization of claims, and transnational coalition forming. Diffusion is the spread of ideas, practices, and frames from one site to another. Externalization is the vertical projection or ‘stretching’ of place-based claims onto institutions or actors in different places. Transnational coalition forming is the formation of dynamic trans-local networks among actors from different sites with similar claims (Della Porta & Tarrow, 2005; Tarrow, 2005). Through processes of shifting scales of collective reaction, actors, organizations, and social movements that oppose extractive projects try to both ‘undo’ and ‘fix’ certain ‘scales’ that are the material expressions of power relations, and they do so in order to rescale and dislodge corporate-government-military geometries of power (González, 2006; MacKinnon, 2011).

Community mining consultations are an example of place-based action shifting/stretching scales to produce coordinated transnational action. Walter and Urkidi (2017, p. 265) argue that community consultations are being institutionalized in the

⁷ Sidney Tarrow, Doug McAdam and Charles Tilly have written in detail about *scale shift* in transnational contention, which simply put, is the spread of collective action beyond its typically localized origins (McAdam, Tarrow, & Tilly, 2001; Tarrow, 2005; Tarrow & McAdam, 2005).

context of mining conflicts in Latin America. Consultations are not isolated experiences but constitute a strategy diffused and transformed in the midst of multi-scalar learning processes where social movements exchange strategies, experiences and discourses. This is certainly the case in Guatemala, where the diffusion of practices takes place both intranationally and internationally. The first community referendum on mining in Guatemala took place in 2005 when the people of Sipakapa voted overwhelmingly against the Marlin mine in San Marcos. The referendum became a milestone in the history of contemporary anti-mining movements in Guatemala (Urkidi, 2011; Yagenova & Garcia, 2009). In the years following the Sipakapa referendum there has been a wave of consultations in Guatemala and the community referendum has become one of the most important resources used by social movements in their struggle against extractive projects.

Guatemalan activists also increasingly engage in legal action in attempts to legitimize their claims and to stop projects. Legal action offers strategic resources to social movements who often otherwise lack the ability to alter corporate practices. The threat of litigation may be one of the few sources of regulatory power available in the neoliberal world order that can radically transform the playing field in which corporations and their critics interact (Kirsch, 2014). Through judicial processes, Guatemalan social movements stake their claims internationally, producing new scales of resistance and environmental struggles. Domestic courts in industrialized countries are increasingly willing to hear cases filed against companies that operate in foreign countries. In 2014, the Norwegian Pension Fund divested from a Canadian mining company, Tahoe Resources, for grave violations of the human rights of Guatemalan indigenous and

environmental activists⁸. One of those cases was brought to Canadian courts. Two Canadian mining companies are currently being held accountable on their home turf for violations they are accused of have committed in Guatemala. In 2017, a shareholder class action was filed in the United States against a Canadian mining company operating in Guatemala for failure to properly inform shareholders about local opposition against the mining project (Kessler Topaz Meltzer & Check, LLP, 2017; Quan, 2017).

Anti-extractive resistance in Guatemala has taken on the shape of a web of networked groups that bridge claims and identities (i.e. indigenous and peasant), highlighting the many ways in which environmental concerns intersect with demands for social and economic justice (Martínez-Alier, 2002). Indigenous authorities, the rural poor, the Catholic Church, as well as national and international networks of activists share knowledge and experiences, which shape the dynamics of anti-extractive resistance in Guatemala and as such political actions ‘from below’. This proliferation of new forms of multi-scalar resistance stretches across boundaries of scale, reproduces new scales, and restructures existing scales of resistance and environmental struggles. By deploying scalar strategies, social movements make their voices heard to expand and secure their political and geographical power (Jones, Leitner, Marston, & Sheppard, 2017).

5. The dialectics between responses ‘from above’ and ‘from below’

Here we analyse the imaginaries and discursive practices mobilized by corporate-government networks in response to social mobilization ‘from below,’ and the ways in which responses from ‘above’ and ‘below’ mutually shape each other. Scale frames are

⁸ https://etikkradet.no/files/2017/02/Tilråkning_Tahoe-Resources_8-4-2014.pdf

developed and deployed to locate problems and causes at particular scales in order to delegitimize opposition, particularly with reference to national security and discourses on terrorism under the influence of the “war on terror” or the “war on drugs” (Kurtz, 2003; Martin & Miller, 2003).

5.1. The changing dynamics of violence and repression

In Guatemala, corporate and state actors have historically mobilized violence and repression in attempts to manage dissent and maintain control. During the civil war reactions to mining opposition were decisively violent. At the height of the war in the 1970s and early 1980s numerous human rights abuses were committed by the military at Fenix nickel mine⁹ in the El Estor region¹⁰ (Nolin & Stephens, 2010; Solano, 2015b). Violence and repression, including assassinations, assaults, forced evictions, rape, and criminalization of dissent remain a common response to contemporary mining opposition. However, whereas during the civil war the main perpetrators were public security forces, currently, public security forces operate in tandem with private security firms. The various types of links and networks that international mining companies

⁹ The Fenix nickel mine in El Estor was the first transnational metal mining project in Guatemala. For a detailed discussion of the history of the Fenix Project and INCO see Fox (2015).

¹⁰ To this day, the Fenix project continues to be plagued with accounts of human rights violations and violent evictions. Hudbay Minerals Inc., which owned and operated the mine from 2004 until 2011, remains caught up in a lawsuit regarding the killing of Adolfo Ich (killed by private security forces employed at the Fenix project), a lawsuit regarding the shooting of German Chub Choc (German was shot at close range in an unprovoked attack by the head of security personnel for Hudbay’s Fenix project), and a lawsuit regarding the rapes of 11 Mayan Q’eqchi’ women (the women were raped by uniformed mining company security personnel, police and military during the forceful expulsion of Mayan Q’eqchi’ families from their farms and homes in the remote community of Lote Ocho) (Klippensteins, Barristers & Solicitors, 2018).

establish with Guatemala's domestic elite also include contact with private security firms, which often have ties to international security firms.

Local grassroots movements, for their part, have responded to violence in a variety of ways. In the Escobal case, because many of the indigenous people from Eastern Guatemala of a certain age have a military background, and many of the younger ones also attended the military academy¹¹, their resistance mobilizations included counterinsurgency intelligence tactics to organize and protect themselves. These tactics shape how they organize their blockades, communicate and coordinate their movements.

In Guatemala, violence remains a resource in most political struggles and certainly in 'engineering extraction.' However, there have been shifts and rescaling in the spatialities of violence, from the public security forces holding a legitimate monopoly of violence (albeit a weak one) to new private security assemblages. These assemblages emerged, as we have discussed above, in the aftermath of the civil war and in the context of the changing dynamics of intra-elite conflicts and competition.

5.2. The enduring "internal enemy"

One of the most salient resources employed by the Guatemalan elite when its interests are threatened is to conjure up the image of the internal enemy by demonizing its opponents as 'communists' or 'terrorists'. This is by no means a new strategy. In order to protect its interests, the extreme right-wing landowner elite and the private sector have traditionally cultivated and depended upon visceral reactions to the guerrilla and to

¹¹ For the indigenous population of Eastern Guatemala since the beginning of the 20th century the army has been a common vehicle for social mobility. A special army task force during the civil war was called "Jalapa Battalion" and it was composed mostly of Xinka indigenous from Jalapa/Xalapan.

‘communism’ among the military and certain segments of Guatemalan society (Schirmer, 1998). In the contemporary context, and as a response to the growing mobilization against extractive industries, the government and the economic elite have revived the notion of the internal enemy. This strategy unifies otherwise divided elites and justifies the use of violence against dissidents who threaten ‘national stability’ and economic growth, further entrenching elite power, which now also includes military elites.

Ibarra (2006, p. 195) argues that the decade between 1944 and 1954 created a space for collective subjects’ political participation in a way that was unacceptable for the business sector, the ecclesiastic hierarchy and the extreme right wing. The figure of the internal enemy was conceived and could be applied to members of the communist party, opposition politicians, catholic priests, union leaders, students, intellectuals, and rural activists (Oglesby & Ross, 2009). Its purpose was to legitimize violence and eventually genocide against the indigenous population during the civil war (Ibarra, 2006). Nowadays, the figure of the internal enemy assumes primarily three forms: 1) communists, 2) terrorists, and 3) intersections with racist discourses.

Our analysis of the media indicates that anti-communist and anti-terrorist rhetoric are also intertwined with racist discourses against the indigenous peoples of Guatemala. The media is often used to appeal to the widespread racism in mestizo and white Guatemalans, blaming the indigenous movement for wanting to impose ways of governing that would divide society in indigenous (with more privileges) and non-indigenous (with fewer rights).

In the early 2000s groups like Liga Pro-Patria,¹² the Foundation against Terrorism, and the military veterans' association (AVEMILGUA) started to portray those fighting for transitional justice as communists and enemies of the state (Molden, 2016). Then as the first protests against mining emerged in the early 2000s¹³, a similar rhetoric was used against protestors.

It was after the 2001 terrorist attacks in New York that the rhetoric of the military veterans and their sympathisers increasingly started to use the term “terrorist” interchangeably with “communist”. ‘Terrorist’ was of course a term also used during the cold war, but its popularity as the new stereotype of the “other” that threatens national security increased only recently in Guatemala. In 2005, the penal code was amended to include the legal figure of “terrorist,” which allowed FCT, Liga Pro-Patria and the Public Prosecutor’s Office to charge human rights activists who oppose extractive projects with terrorism. The Public Prosecutor’s office (Ministerio Público) charged activists who protested against mining in Santa Rosa on terrorism charges in 2013. Following the 2014 massacre in the town of “Los Pajoques,” the company described the activism of those who oppose the San Gabriel mining project as acts of terrorism.

5.3. Corporate-government counterinsurgency

The corporate-government nexus also engages in ‘corporate counterinsurgency’ tactics in response to extractive opposition (Cf. Brock and Dunlap, 2018). Opposition

¹² Liga Pro-Patria was formed by Francisco Bianchi, pastor of the evangelical church Verbo, the same church to which Ríos Montt belonged (Handy, 2003).

¹³ The conflict associated with the Marlin mine that broke out in 2004 marks perhaps the beginning of the contemporary Guatemalan anti-mining movement.

against the extractive industries has been elevated to an issue of national security. The counterinsurgency discourse became embedded in formal policy when, in March 2013, the National Security Council of Guatemala (NSC)¹⁴ decided that social conflicts related to extractive projects should be approached from the perspective of national security. The NSC then created the Inter-institutional Commission for Integral Development” (ICID)¹⁵, which is led by a retired colonel from the Ministry of Interior, and whose role is to collect intelligence, produce socio-political maps, identify issues related to royalties and conduct analysis of communities and social movements (Hernández, 2014; Solano, 2015c). In the framing of conflicts as issues of national security there are remnants of the counter-insurgency strategy of the past when national security was a frequent trope used by the counter-insurgency state.

This trope contributes now, like then, to manufacturing consent within a segment of the Guatemalan population for the use of repression and violence against protestors. This is connected to the government’s frequent evocation of the supposedly on-going fight against drug trafficking. The link to anti-drugs policy became evident in our analysis of public discourses by the government as in each of the cases where states of

¹⁴ The national security council is an inter-ministerial council that coordinates the National Security System and is in charge of policy making related to security and advising the president on security matters. The council is composed of the president and vice-president, the minister of Foreign Affairs, the minister of Interior, the minister of Defense, the secretary of Strategic Intelligence of the State and the Attorney General of the Nation
http://www.mindef.mil.gt/leyes_reglamentos/leyes_y_reglamentos/ley_marco_d018-2008.pdf

¹⁵ The ICID includes representatives from the Ministry of Energy and Mines; Ministry of the Environment and Natural Resources; the Ministry of the Interior; the National Council of Protected Areas; the National Security Council; Secretary for Strategic State Intelligence; the Attorney General’s office; the Permanent Dialogue Commission; departmental governors and municipal mayors.

siege were declared since 2012, the government justified it as a means to combat drug trafficking (Cf. Paley, 2014). Also, our fieldwork revealed that drug trafficking charges have been brought against leaders of the anti-mining resistance movements in an attempt to undermine their activism. These narratives of civil resistance as leftist plot, and/or as threats to national security, serve to delegitimize resistance to extractive projects and to justify its repression.

5.4. Lawfare and soft strategies for engineering extraction

In reaction to the different strategies of anti-extractive resistance, such as strategic grassroots driven litigation and the wave of community referendums on extractive projects, a number of ‘soft’ strategies from above have emerged. These ‘soft’ techniques aim to render conflict manageable rather than to outright eradicate oppositional groups (Dunlap, 2018a). For example, mining companies establish their own community relations’ offices and sustainable community development programs. These mechanisms involve quasi-development programs that may involve health services, technical capacitation, agricultural extension, infrastructure construction and even political training of community leaders. We also observe an increasing culture of legalism where corporations and grassroots movements conduct their struggles through “lawfare” – “the resort to legal instruments...to commit acts of political coercion” (Comaroff & Comaroff, 2006, p. 30).

In response to this increasing culture of legality, the private sector and the government have taken several seemingly contradictory measures. One prominent strategy has been to try to undermine claims for participation and delegitimize mechanisms like the community referendums. In such instances, the private sector has

raised strong concerns about the ‘lack of legal certainty’, arguing that the ILO 169 is not being applied correctly and that it weakens national sovereignty. In July 2017, the umbrella organization of the private sector – CACIF - petitioned the ILO to intervene in Guatemala, claiming that the Convention was being violated and manipulated. CACIF claims that recent unfavourable court rulings undermine legal certainty in the country and infringe on the right to freedom of enterprise and work, generating social conflict (Bolaños & Gramajo, 2017).

Another reaction to the community referendums has been to deny the existence of indigenous peoples in areas affected by extractive projects in an attempt to negate the need for prior consultation as prescribed by the ILO Convention. In the case of the Escobal mine, following the 2017 court rulings which temporarily suspended the mine’s licenses because prior consultation requirements had not been met, the private sector along with several government institutions made statements denying the existence of the Xinka people, either outright or in the vicinity of the mine. The then president of CACIF was quoted saying that the Supreme Court’s resolution was based on a “non-existent community” [referring to the Xinka people] and that as such the court’s resolution was false (Prensa Libre, 2017). The minister of Energy and Mines supported the private sector’s perspective, saying that prior to the authorization of the license in 2013 the state had determined that there are no Xinka in San Rafael Las Flores (Prensa Libre, 2017). Leifsen et al. (2017) suggest that local groups and their allies’ involvement in processes like claiming FPIC can have unexpected outcomes. After the rulings of the court, we have observed in one of our study sites the revitalization of a more politicized Xinka indigenous identity in the area around the mining project. When a new national census

was scheduled for 2017, the Xinka parliament launched an information campaign aimed at increasing the visibility of people who self-identify as Xinka. If successful, a higher number of indigenous Xinka will be registered in national statistics and the obligation to consult indigenous people would be strengthened.

Our findings suggest that strategic litigation and the mobilization of discourses of FPIC engages both grassroots organizations and private companies. Both types of actors rescale their actions and seek support and chances to exert influence on local processes by appealing to international treaties (ILO) and lobbying in international arenas. Our empirical findings seem to contradict Dunlap's (2018a) conceptualization of FPIC as "soft" counterinsurgency to manage conflict insofar as in Guatemala the processes and the claims were launched and sustained by grassroots organizations, and it is only recently that the government and the private sector are trying to co-opt and control FPIC. However, we acknowledge that the law is a double-edged sword where it may strengthen the claims of anti-extractive movements while also enabling new forms of dispossession. But these processes are still playing out in Guatemala and the last word has yet to be said.

6. Conclusion

In this paper we examined the interplay between political actions 'from above' and 'from below' in extractive conflicts in Guatemala. We analysed how changing sociospatial relations come about and how shifting spatialities shape – and are reshaped by – political actions from above and from below. We argue that political actions from above and from below are dialectically interrelated, shaped by dynamic and contested interactions between actors within and between scales. Finally, we argue that extractive

conflicts are part of emergent forms of scalar politics where different actors struggle to (re)consolidate power and authority in the hands of competing groups. These shifting spatial configurations intersect with the strategies of grassroots movements, which engage in their own scalar strategies, and which are embedded within networked scalar configurations that extend from local to global relations (Swyngedouw & Heynen, 2003).

The inception of extractive projects in Guatemala has been accompanied by extraordinary violence. This suggests that in the post-war context the state continues to fail in implementing a consensus-based strategy of governance, and where different actors continue to struggle to consolidate power and authority in the hands of competing groups. Our study demonstrates that emerging political and economic context are shaped by changing elite dynamics, which in turn continue to sharpen intra- and inter- elite competition, fostering new ways of strategic alliances without allowing for the consolidation of a single dominant group. As these groups compete and collaborate in shifting constellations, they are less interested in neutralizing resistance and dissent via concessions and forms of compromise, but instead opt for the explicit exclusion and marginalization of oppositional forces by various mechanisms ranging from discursive and legal structures to outright violence and repression (Cf. Tansel, 2017). Violence is discursively justified by linking opposition to extractive industries to the rhetoric of the civil war, by way of which the notion of the internal enemy is used again. This notion appeals to the non-indigenous population in such a way that the use of force and violence becomes grounded in popular consent. The excessive use of violence and the lack of consensus of what constitutes legitimate violence are also expressions of the failure to establish state hegemony by dominating groups (Gramsci & Nowell-Smith, 1972)

In this paper we discussed a range of discursive and material practices mobilized by corporate-government networks in response to social mobilization ‘from below.’ These networks frame problems and causes at particular scales in order to delegitimize opposition, particularly with reference to national security and discourses on terrorism under the influence of the international “war on terror” or “war on drugs.” These processes intersect with the strategies of grassroots movements engaging in their own multi-scalar strategies by drawing on transnational alliances in a struggle where conflicting global discourses are developed and deployed in contested ways.

The effects of the imageries and practices that are the emergent constellations of political actions ‘from above,’ are to a great degree formed by class interest of dominant classes and vary based on socio-political markers. In the case of Guatemala, this disproportionately affect indigenous groups and individuals, highlighting the continued relevance of race in the structuring of the Guatemalan society. However, despite the resources at their disposal, and the asymmetrical power relations that define the Guatemalan context, elites and their networks do not always succeed in their goals, or at least not so easily. It is not only subalterns who respond to elite strategies, grassroots movements also create and change conditions, although these changes might be short-lived, to which the elites respond by creating new scenarios. Indeed, we argue that political actions ‘from above’ and ‘from below’ are dialectically interrelated and shaped by dynamic and contested interactions between actors within and between scales. This dialectical understanding of the relationship between elites and social movements open the possibility to demystify the elites and to conceptualize them as social actors that are in constant negotiations and often in conflict with each other.

The frequent use of violence that we illustrate in our study also attests to the obstacles to a coherent state building project in post-war contexts in which dominant social groups do not see the need to build strong institutions or even to agree on what legitimate violence is. Opposition to extractive industries in Guatemala has been met with violence throughout history. The main differences between the past and the current situation, however, are the shifting sociospatial constellations where the state increasingly relies on private security assemblages to uphold their coercive functions, often with links to former military personnel and transnational security firms. The violent repression of popular opposition to extractive industries can be understood as part of a broader political project borne by multiple agencies of the state with the participation of the private sector, driven by a myriad of interests and aiming at neutralizing oppositional politics - or what Pearce (2018) conceptualizes as a “fragmented security state.”

Chapter four: From the streets to the courts: Mobilizing the law to subvert hegemonic power relations in environmental struggles

1. Introduction

In Guatemala, different types of community referendums (e.g. *consultas comunitarias*, *autoconsultas*, *consultas de buena fe*, *consultas de vecinos* etc.) have become one of the most common tools for resisting mining and hydropower projects. In fact, Guatemala is the country with the most community referendums on extractive projects to have taken place in Latin America (Walter & Urkidi, 2017). Through these mechanisms, grassroots movements have increasingly been able to assert the rights of mining-affected communities and indigenous people to self-determination in environmental decision-making and natural resource management, questioning the legitimacy of dominant ideas about development and human-environment relations. While those involved in resistance against environmental injustices may predominantly belong to groups that are vulnerable to marginalization, they are also capable of transformative social mobilization (Nielsen & Nilsen, 2015; Rodríguez Garavito & Santos, 2005). The participants in these environmental struggles use a wide array of strategies and tactics to resist extractive projects. They organize community referendums, stage demonstrations and set up roadblocks. They mobilize transnational advocacy networks and collaborate with international non-governmental organizations (NGOs) and religious groups. Activists also increasingly deploy legal discourses and mechanisms as

part of their political and social struggles, using ‘the law’ to expand the political spaces available to them for transformative politics (Rajagopal, 2003; Sieder, 2010, 2011)¹⁶, which is the focus of our paper.

Our paper focuses on the ways in which anti-mining movements in Guatemala mobilize ‘the law’ in attempts to subvert hegemonic power relations in environmental struggles. We examine why subaltern actors increasingly turn to the law and legal mechanisms, as well as the particular ways in which these actors mobilize the law in their struggles. We wish to contribute to ongoing debates on the possibilities and limitations of the law in expanding the conditions of possibility for marginalized groups engaged in environmental struggles (Nielsen & Nilsen, 2015; Rodríguez Garavito & Santos, 2005; Santos, 2002; Sieder, 2011; Walter & Urkidi, 2017)..

There is an emerging jurisprudence in Guatemala that acknowledges the principle of prior consultation, particularly with regard to indigenous rights. In 2015, the Guatemalan Constitutional Court ordered the suspension of a hydropower project in Nebaj (Vega I and Vega II) for failure to consult affected indigenous communities prior to the installation of the project (Price, 2015). In 2017, Oxec I and Oxec II, another hydropower project in Alta Verapaz, had its licenses temporarily suspended for the same reason but resumed operations after a contested state-led consultation processes was carried out (Herrera, 2017). Mining projects have also been suspended, and in 2016, the Guatemalan Supreme Court of Justice ordered the definitive suspension of the “El

¹⁶ In Sveinsdóttir, Aguilar-Støen and Bull (forthcoming) we observe the ways in which, in Guatemala, corporations and the state react to contentious environmental politics with - “lawfare” – “the resort to legal instruments...to commit acts of political coercion” (Comaroff & Comaroff, 2006, p. 30)

Tambor” mining project for failing to consult affected communities prior to the projects installment (Aguilar-Støen & Hirsch, 2017; Pitán, 2016). In July 2017, Guatemala’s Constitutional Court suspended the licenses of the country’s now largest mine, the Escobal mine in San Rafael Las Flores, again citing inadequate prior consultation of affected indigenous communities. In September 2018, the Constitutional Court ordered the Ministry of Energy and Mines to carry out consultations in the areas surrounding the Escobal mine. This verdict¹⁷ is considered a huge victory for environmental and indigenous activists in Guatemala and their ongoing struggle against extractive industries in the country.

Environmental activists frame strategic legal action and the mobilization of legal discourses as an attempt to legitimize their right to self-determination in natural resource management. Legal action is also a strategy used to halt, slow down and cancel extractive projects. It offers a strategic resource to communities and grassroots movements that otherwise may lack the means to alter corporate practices, at least through formal, institutional mechanisms (Kirsch, 2014). Strategic grassroots driven litigation can also harm corporate and government reputation, damaging profitability, thus making it a formidable tactic for putting pressure on corporations and governments (Sveinsdóttir, Aguilar-Støen, & Bull, forthcoming).

The articulations between different scales of law have become more complex, with increasingly porous boundaries between local, national, and global law giving rise to

¹⁷ Guatemalan Constitutional Court, Expediente 4785-2017; Expediente 4785-2018. Court documents available at: <https://cc.gob.gt/2018/09/04/resolucion-4785-2017-caso-minera-san-rafael/>

‘legal hybrids’ and new forms of legal meaning and action (Santos, 2002; Sieder, 2017). Domestic courts in so-called ‘industrialized countries’ are increasingly willing to hear civil claims against companies that operate in foreign ‘host’ countries (Kirsch, 2014). In 2014, the Norwegian Pension Fund divested from a Canadian mining company for serious human rights violations against Guatemalan indigenous and environmental activists. One of those cases was brought to Canadian courts. Two Canadian mining companies are currently entangled in legal battles on their home turf for violations they’re accused of committing in Guatemala. In 2017 a shareholder class action was filed in the United States against a Canadian mining company operating in Guatemala for failure to adequately inform shareholders about local opposition against the mining project (Sveinsdóttir, Aguilar-Støen and Bull, forthcoming).

In this paper, we examine the growing importance of law, legal institutions and legal actors to environmental struggles. In doing so, we wish to get at the complex and dynamic interweaving of law, space, politics and power in struggles for environmental justice. More specifically, we analyze the ways in which grassroots actors mobilize the law in an attempt to subvert hegemonic norms and power relations in environmental struggles (Nielsen & Nilsen, 2015; Rodríguez Garavito & Santos, 2005; Sieder, 2007, 2010, 2011). We argue that due to lack of adequate political spaces to advance environmental struggles, activists have turned to the judiciary as a strategy to expand their repertoires of contention¹⁸. In doing so, they attempt to push open new spaces for

¹⁸ In social movement theory, a repertoire of contention refers to the different set of means or ‘claims-making routines’ groups have to make claims. The term is attributed to Charles Tilly (Della Porta, 2013).

participation, recognition and distribution in order to access environmental justice (Cf. Fraser, 2010; Schlosberg, 2007).

The emerging legal strategies adopted by environmental activists in Guatemala highlight how the many dynamic configurations of environmental struggles are related to legal processes in lieu of political spaces. The legal cultures we observe in Guatemalan environmental struggles raise important questions about the dialectics of resistance and the law, and how these processes shape environmental governance, political participation and contestation. Those who engage in resistance against extractive projects, some of the most marginalized groups in Guatemala - indigenous people and the rural poor - are faced with a climate of hostility and violence, and experience repression and criminalization aimed at undermining their activism (Global Witness, 2017). Despite this, we find that environmental struggles in Guatemala reveal how grassroots mobilizations can - however modestly - subvert hegemonic power relations in their struggles for environmental justice and transformative politics.

Our analysis draws on data gathered through fieldwork from 2013-2017, using primarily qualitative research methods such as interviews, observant participation and document analysis. Our analysis includes the perspectives from a wide range of diverse actors, including indigenous leaders, environmental activists, and rural small holding farmers involved in anti-extractive movements, as well as the legal advisors representing them, and allied organizations. We also interviewed corporate representatives, groups and associations that promote private sector interests, lawyers, public servants, as well as powerful political and economic elites. Participant observation with the aforementioned actors included visits to projects sites and participation in private sector conferences, as

well as participating in anti-extractive demonstrations, meetings and public court hearings.

Following this introduction, the paper is outlined as follows: the second section presents some theoretical considerations for understanding the emancipatory and constraining elements of the law and of engaging in contentious politics through legal mechanisms. The third section examines why subaltern actors increasingly turn to the law in their struggles. The fourth section then analyzes the ways in which the Guatemalan anti-mining movement has mobilized the law in its endeavors. Finally, a discussion and conclusion are presented.

2. Theoretical considerations: The emancipatory and regulatory dimensions of law

Law configures social space in ways that has consequences for justice and injustice in the world (Delaney, 2016, p. 268). It can be understood as constitutive of social reality in the naïve sense that the operation of law as a force in the world causes things to happen. “Law is all over” (Sarat, 1990, p. 343). It is constitutive of the institutional world within which we act. It is literally constitutive of the nation state, the community, the firm, the market, the family and nature (Blomley, Delaney, & Ford, 2001, p. xv). It is the inscription of rules and regulations, the recognition or withholding of rights, and enactment of the privileges of authority at all scales. Law draws lines, constructs insides and outsides, assigns legal meanings to lines, and attaches legal consequences to crossing them. Law defines certain types of personhood and identities (citizens, lovers, owners, workers, refugees, children etc.) and as such, it is constitutive of how lives are enacted and experienced (Delaney, 2015, 2016). Law fixes hegemonic

visions of nature and ‘appropriate’ human-environment relations, determining access and control over land, water, the subsoil and natural resources (Sundberg, 2008).

Law is also an instrument of repression and a pervasive means of reproducing dominant patterns of power relations and hegemony (Sieder, 2011). It is shaped by the broad social, political-economic structures within which it exists, past and present. These include, at the least, the dynamic configurations of global capitalism, the international system of states and organizations (including corporations and international organizations), and ideological frameworks, such as colonialism, racism, and neoliberalism (Delaney, 2016; Sundberg, 2008). Law can be viewed as benefitting the interests of those in power, such as elites and transnational corporations, because of the ways in which legal practices privilege those who can most potently play by the rules of the game. Corporate capitalism and elites often successfully mobilize ‘lawfare’¹⁹ to further their political and economic ends, while those who act in the name of the state mobilize lawfare when they conjure with legalities to act against its citizens, often through criminalization and repression (Comaroff & Comaroff, 2006). Some scholars see law as depoliticizing conflict, for example by regulations that prevent labor from engaging in civil resistance or provoking radical change (Eckert et al., 2012, p. 4) or through a “fetishism of the law,” whereby the central role of politics is displaced to the courts (Comaroff and Comaroff, 2006, p. 49). Similarly, some postcolonial scholars argue that the law alienates subalterns from their own languages and experiences (Das, 1989; Kirsch, 2012).

¹⁹ “Lawfare” is “the resort to legal instruments...to commit acts of political coercion” (Comaroff & Comaroff, 2006, p. 30)

And yet, law can also be an instrument of change and resistance, and a means by which justice might be realized through counterhegemonic struggles (Blomley et al., 2001; Rodríguez Garavito & Santos, 2005; Santos, 2002). Law, in particular rights related norms and instruments, holds out an emancipatory promise to people across the world. This emancipatory promise that has long been invoked by oppressed peoples, for example, appeals to citizenship by those, such as women and slaves, who were systematically denied formal citizenship rights (Sieder, 2011, pp. 240–241). The law is not static. It is not a closed system without contingency, inevitably reproducing hegemonic power relations. Rather, law is open-ended, and legal rules and concepts are open to interpretation (Kirsch, 2014). Even as they are “fixed”, at least partially, in specific legal instruments, interpretations and meanings are subject to ongoing contestation and reinterpretation by different actors. This is particularly evident where international norms and rights discourses are used or invoked to challenge national laws and situated practices. Legal systems and engagements with the law can be understood as contested sites of meaning where dominant ideals and values provide the framework for contestation and for advancing alternative understandings and practices. In this way, law is constantly negotiated and reshaped in a dynamic dialectic between hegemonic projections and counterhegemonic actions (Nielsen & Nilsen, 2015; Rodríguez Garavito & Santos, 2005; Santos, 2002; Sieder, 2011). This is not to suggest that legal strategies are a panacea for those engaged in environmental struggles. We are acutely aware of the irreducible complexity of the dialectics of resistance and the law (Comaroff & Comaroff, 2006; Nielsen & Nilsen, 2015). We understand that without dismantling systems of oppression that produce and reproduce socio-spatial inequalities to begin with, law will

likely favor those who benefit from such systems to begin with. Yet, as Green (2002) points out, subaltern groups do not mobilize at a distance from the institutional and symbolic modalities through which hegemony is constructed, but rather in and through these (Nielsen & Nilsen, 2015). Consequently, the institutions, discourses, and technologies of rule that attach to the state also become sites of contention where subaltern resistance can be articulated and pursued (Gramsci, 1998, p. 52). The work of grassroots actors and social movements engaged in counterhegemonic resistance highlighting these instances, which relates to the questions we raise in our paper, namely, how grassroots actors engaged in environmental struggles are able to mobilize through these ‘legal’ forms of political action (Nilsen, 2012). Finally, it is important to point out that we do not see the mobilization of the law as replacing collective action and civil resistance in contentious politics and environmental struggles. Rather, we see strategic, grassroots driven litigation and counterhegemonic legal resistance as forming part of broader political struggles and complementing existing repertoires of contention (Rodríguez Garavito & Santos, 2005, p. 15).

3. Changing legal opportunity structures and growing rights consciousness

To understand why subaltern actors involved in environmental struggles increasingly include legal discourses and legal mechanisms as part of their repertoires of contention we need to first look to recent global and national developments. The last couple of decades have seen the global spread of international human rights norms in tandem with the increasing incorporation of social, economic and cultural rights into national constitutions (Sieder, 2011; Tate & Vallinder, 1995). At the same time, changes

in legal and regulatory frameworks stemming from decentralization processes have transformed the ways in which the citizens, corporations and the state engage with and through the law. Constitutional courts and supreme courts are also more active in counterbalancing the executive and legislative than ever before, and high courts have begun to recast themselves as defenders of rights, intervening in political and social conflicts (Couso, Huneeus, & Sieder, 2010; Sieder, Schjolden, & Angell, 2009). As a result, subaltern actors and grassroots movements increasingly draw on rights-based discourses and incorporate legal strategies into their political struggles. This growing ‘rights consciousness’, that is, ‘a willingness, or eagerness, to make use of institutions (like courts) which enforce rights, or which decide when rights have been infringed on or broken’ (Friedman, 2002, p. 38) is a key factor in explaining the growth of strategic litigation as part of political and social struggle. The combination of new legal opportunity structures and growing rights consciousness means that processes of grassroots driven legal action – or legal action ‘from below’ – are now taking place in a range of different contexts and across scales (Sieder, 2011, p. 241).

In Guatemala, these developments are shaped by, among other things, legislative and political changes related to post-war democratization, as well as the profound reshaping of the relations between state, market and citizens stemming from economic liberalization favoring a minimalist state (Sveinsdóttir et al., forthcoming). These changes included the increasing codification of the collective rights of indigenous peoples, as well as the implementation of decentralization legislation intended to strengthen ‘participation’ of civil society actors in local decision-making processes by transferring

certain responsibilities from central to ‘lower’ administrative levels, such as departments, municipalities and communities (Aguilar-Støen, 2015; Sieder, 2011; Urkidi, 2011).

Decentralization legislation also transferred responsibilities relating to environmental governance from the state and to the private sector. For example, the responsibility of evaluating and mitigating the potential impacts of projects through the undertaking of Environmental Impact Assessments (EIAs) now lies with project owners, as well as the facilitation of citizen participation in such processes. Tensions between these contradictory ideas about participation, rights and environmental governance sees affected communities generating counterhegemonic, grassroots driven forms of environmental governance practices, such as community referendums, and challenging hegemonic notions of ‘participation’ through their contestation of EIAs and technocratic, market-driven ideas about Free, Prior and Informed Consent (FPIC) (Aguilar-Støen & Hirsch, 2015, 2017). As they do, they increasingly draw on legal discourses and mechanisms to advance their claims.

There are several legal instruments and norms that are of particular importance to public participation in environmental decision-making in Guatemala, and which relate to mobilizations against extractive industries. Relating to the collective rights of indigenous peoples is, most importantly, the International Labour Organization’s Convention concerning Indigenous and Tribal Peoples (No. 169) (ILO 169 hereafter) ratified by Guatemala in 1996²⁰. Guatemala’s Decentralization Law (Decree 14-2002), Municipal Code (Decree 12-2002), and Urban and Rural Development Council Law (Decree 11-

²⁰ Guatemala is also a signatory to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Organization of the Americas’ (OAS) American Declaration on the Rights of Indigenous Peoples. However, these figure less significantly in our analysis.

2002) all regulate citizen participation in local decision-making processes and play an important role in community referendums. The legal and regulatory frameworks of the Guatemalan mining and energy sectors are also of importance. Of particular importance for our case are the Mining Law (Decree 48-97), regulating mining activities, and the General Law of Electricity (Decree 93-96), which regulates hydropower activities. The Regulation of Environmental Evaluation, Control and Monitoring (Ministry of Environment and Natural Resources, Government Agreement 137-2016) is also of importance as it applies to EIAs and FPIC.

3.1. Decentralization and citizen participation

Growing rights consciousness, alongside legislative and regulatory changes stemming from domestic-level decentralization shape the contested terrain of environmental governance (Walter & Urkidi, 2017). These changes have transformed the ways in which citizens, corporations and the state engage with one another. Legislative changes also impact new opportunity structures from within which grassroots actors and social movements mobilize the law to advance their claims (Domingo, 2010). In Guatemala, decentralization reforms were first proposed in the 1980s and then later during the peace process in the 1990s. Decentralization was proposed not only as a way to improve governance and institutional service delivery, but also to grant indigenous people more political autonomy, as well as to increase citizen participation (Costanza, 2016). A range of actors including domestic elites, international donors, intergovernmental organizations, international financial institutions, civil society and indigenous movements took part in these reformations, often attempting to advance conflicting visions of the state and governance. Some laws and policies were crafted with

strong influence from the private sector²¹, whereas others responded to pressure from civil society and development cooperation agencies (Aguilar-Støen, 2015; Aguilar-Støen & Hirsch, 2017; Dougherty, 2011).

Decentralization legislation was approved by the Guatemalan Congress in 2002 and was articulated in three laws: The General Law of Decentralization (Decree 14-2002), the Municipal Code (Decree 12-2002), and the Urban and Rural Development Council Law (Decree 11-2002). These laws included measures to formalize citizen participation in local government by establishing community-level and municipal-level ‘Development Councils,’ and granting the right to community consultation, both indigenous and non-indigenous. The Municipal Code (Decree 12-2002) refers to community consultation in the following terms: *Article 17* confers on residents the right to participate in consultations in accordance with the law, as well as the right to demand public consultation of issues that are of great importance to the municipality. On the basis of *Article 63*, the Municipal Council (COMUDE), through a two-thirds majority of all its members, can decide to hold a consultation (...) “*when the importance of an issue suggests the need to consult the opinion of the residents*” (Municipal Code, Decree 12-2002, Article 63). In addition, residents have the right, through the signatures of at least 10% of the residents registered in the municipality, to demand that consultation be held on issues of a general nature that affect all the residents of the municipality. “*The results would be binding if at least twenty per cent (20%) of the registered residents participate and the majority of the votes in favour of the issue under consultation*” (Municipal Code,

²¹ See Dougherty (2011) and Aguilar-Støen (2015) for an analysis of how the private sector played an influential role in the drafting of the 1997 Mining Law.

Decree 12-2002, Article 64). Finally, the Municipal Code also contains specific regulations regarding consultations in such cases where the issue at hand particularly affects the rights of and interests of indigenous communities and authorities in a given municipality. In such cases, “the Municipal Council will carry out consultation at the request of the indigenous communities or authorities, while taking into consideration the specific criteria determined by the customs and traditions of the said indigenous communities” (Municipal Code, Decree 12-2002, Article 65).

With respect to the jurisprudence of the Constitutional Court in the matter, the High Court has ruled that the right to conduct consultation procedures on issues of community interests lies with the Municipal Council. It also declared that a lack of internal legislation in that respect “*cannot lead to this right being nullified*” (Constitutional Court, Record 1408-2005). For the most part, the Court has ruled that community referendums are non-binding (The Observatory, 2015, p. 14). However, in 2013, the Constitutional Court set an important legal precedent when it recognized the results of the Mataquescuintla municipal consultation as legally binding²². This was the first time the Constitutional Court considered the results of a community referendum regarding a mining project as binding. Since then Guatemala has witnessed a rapidly evolving jurisprudence with important and precedent setting cases such the Escobal case, which we shall discuss in more detail later in the paper.

Much of the literature on the Guatemalan anti-mining movement describes anti-mining mobilizations as indigenous struggles, which indeed they are, particularly in the Western Highlands (Laplante & Nolin, 2014; Nolin & Stephens, 2010; Sieder, 2007,

²² Constitutional Court, *Records*: 4639-2012 and 4646-2012

2011; Yagenova & Garcia, 2009). However, anti-mining struggles in Guatemala are far from monolithic and include indigenous and non-indigenous groups alike, particularly in southeastern Guatemala (Aguilar-Støen, 2015; Walter & Urkidi, 2017). As such, community-consulting processes are heterogeneous, with non-indigenous communities drawing on the Municipal Code and the Development Council Law, whereas indigenous communities also appeal to the ILO Convention 169. This makes the Guatemalan case interesting among other things, because of the synergies between multi-ethnic anti-mining movements, the COCODES, and the COMUDES in the organization of consultations (Urkidi, 2011; Walter & Urkidi, 2017).

3.2. Indigenous justice and the ILO Convention 169

In Guatemala official multiculturalism and indigenous justice remain weak (Sieder, 2007, 2011, 2017). Rather than reflecting an organic process generated in response to a consolidated mass movement of indigenous peoples, the incorporation of indigenous justice into Guatemalan national law is best understood as a consequence of an internationally brokered peace process (Sieder, 2007, 2011). The impact of thirty-six years of civil war, in particular the counterinsurgency warfare inflicted upon the civilian population during the early 1980s, had a devastating effect on popular organization (Brett, 2016; Sieder, 2011). Guatemala's civil war, which lasted from 1960 to 1996, produced some of Latin America's most terrible instances of state terror that culminated in acts of genocide. Counterinsurgency warfare saw more than 200,000 people murdered during the war, the majority of which were non-combatant indigenous Maya. Another 50,000 people were disappeared, their whereabouts unknown and their bodies buried in clandestine graves throughout the country (CEH, 2012; ODAH, 1998). The widespread

operationalization of disappearances became a signature tactic of the Guatemalan military and was used to terrorize, punish and silence the civilian population (Brett, 2016). Guatemala's state formation was one that combined democracy with virulent anti-communist counterinsurgency, which built on long-evolving patterns of rural repression and deeply embedded racism that served to organize unequal socio-spatial relations in colonial and postcolonial Guatemala (Brett, 2016; Casaús Arzú, 2010). To this day counterinsurgency structures remain incorporated into the very heart of the Guatemalan state and continue to condition individual and collective actions (Sieder, 2011; Sveinsdóttir, Aguilar-Støen, and Bull, forthcoming).

The signing of the Peace Accords in 1996, which marked the end of the war, did little to address many of the root causes of the civil war, such as inequality, highly skewed land distribution, deeply rooted racism and the exclusion of the indigenous population from civil and political participation (Sveinsdóttir, Aguilar-Støen, and Bull, forthcoming). Nonetheless, the Peace Accords offered fairly strong support of multiculturalism and indigenous rights, and the peace process resulted in significant agreements between the government and guerrillas designed to respect indigenous rights and recognition (Sieder, 2011). One of the promises of the Peace Accords was that the government would reform the Constitution to recognize indigenous peoples' right to exercise their own 'customary' law (Sieder, 2011). However, the required constitutional reforms never materialized. In May 1999, a national referendum - the 'Consulta Popular' - rejected the reforms proposed in the Peace Accords, leaving hard-won concessions from the state on issues like indigenous rights and reforms to the military in limbo (McAllister & Nelson, 2013; Sieder, 2007, 2011, 2017). A sustained campaign by the

powerful right-wing elite and the private sector alleged that recognizing indigenous law would “balkanize” the country and encourage “reverse discrimination” against the non-indigenous (Sieder, 2017, p. 371). The failure of the ‘Consulta Popular’ suggests that the rights of indigenous people to exercise their own forms of authority and law remain unrecognized²³ (Sieder, 2007, p. 219). The failure to recognize ‘customary law’ in the Constitution means that decisions made by indigenous authorities could be overturned by the courts claiming indigenous law is unconstitutional, since the Constitution gives exclusive jurisdiction to the judiciary. In the absence of constitutional reform, indigenous justice, remains extremely weak in Guatemala (Sieder, 2007, p. 219).

Nonetheless, the ratification of the ILO Convention 169 by the Guatemalan Congress in 1996 provided legal basis for the official recognition of indigenous rights:²⁴

“Rights guaranteed by the Convention include equality of opportunity and treatment, protections of indigenous peoples’ religion and spiritual values and customs, rights to ownership and possession of traditionally valued lands, and rights to appropriate forms of health and educational provisions” (Sieder, 2010, p. 166).

The Convention also commits governments to recognizing the jurisdictional autonomy of indigenous peoples and their right to administer their own forms of justice, as long as they respect fundamental and internationally recognized human rights (Sieder, 2011, p. 247). The Convention also states the right of indigenous peoples to prior consultation on development projects affecting their livelihoods (Sieder, 2011, p. 248).

²³ Sieder has written extensively about judicial reform, access to justice and legal pluralities in Guatemala. We refer to her work for those interested in a more thorough reading of such processes in Guatemala. See (Sieder, 2007, 2010, 2011, 2017).

²⁴ For an indepth discussion of the ILO Convention 169 in Guatemala see (Xiloj, 2016)

The ILO Convention 169 is the first international instrument dealing with indigenous people's rights that is binding on its signatory states, and as such the Convention has been binding to the state of Guatemala since its ratification in April 1996 (Sieder, 2007, 2011; The Observatory, 2015). In the absence of the constitutional reforms needed to recognize 'customary law,' indigenous actors and their allies have increasingly pursued other avenues to obtain recognition, including by bringing cases before the Supreme Court and the Constitutional Court, arguing that Guatemala's ratification of the ILO Convention 169 commits the state to recognize indigenous autonomy for communal governance. The Constitutional Court has issued several rulings reaffirming the legality of the measures applied by indigenous authorities, establishing an emergent jurisprudence favouring the jurisdictional autonomy of indigenous peoples (Sieder, 2017, p. 371).

3.3. The Mining Law, EIAs and public participation

The legal and regulatory framework of the Guatemalan mining sector reflects the market logic of post-war economic liberalization and decentralization. As previously mentioned, one of the results of decentralization was the transferal of responsibilities relating to environmental governance were from the state to the private sector. Under Guatemala's 1997 Mining Law (Decree 48-97), companies seeking mining concessions and exploitation licenses must complete an EIA to be evaluated by the Ministry of Environment and Natural Resources (known by its acronym in Spanish, MARN), which is the public agency responsible for the approval of the EIA. The current EIA process is regulated under the 2016 Regulations on Environmental Evaluation, Control and

Monitoring²⁵, which stipulate that responsibility of carrying out the EIA falls on the mining company itself, although the EIA process must follow the MARN guidelines. The EIA regulations also confer the responsibility of facilitating public participation of communities affected by mining projects onto mining companies themselves, shifting this responsibility from the state to private actors (Aguilar-Støen, 2015; Aguilar-Støen & Hirsch, 2015, 2017). Once an EIA is completed it is to be made public for 30 days at the MARN, located in the capital city. A notice is given to the public that an EIA has been submitted and is available for comment. In practice this usually means publishing a notice in a newspaper or on the radio. Recently, EIAs under review have also become available on the MARN website²⁶, but the layout is cumbersome and EIAs are only available in Spanish²⁷. While the EIA regulations state that affected communities should be included throughout the entire EIA process²⁸, this is rarely the case in Guatemala, and the only ‘formal’ space available to challenge the EIA’s is during the 30-day comment period (Aguilar-Støen & Hirsch, 2017; Amnesty International, 2014). A group of U.S. engineers that were solicited to independently audit several Guatemalan mining EIAs reported that the 30-day comment period on exploitation licenses and EIAs is far too short. The briefness of the comment period handicaps government agencies and the

²⁵ Ministry of Environment and Natural Resources, Government Agreement 137-2016.

²⁶ http://www.marn.gob.gt/paginas/Estudios_de_Impacto_Ambiental_en_Vista_al_Pblico_

²⁷ There are at least 22 languages spoken in Guatemala and many of the speakers of those languages do not speak Spanish or have Spanish as a second or third language.

²⁸ Ministry of Environment and Natural Resources, Government Agreement 137-2016, article 43.

public from providing thorough and thoughtful response. The engineers concluded that the period should be several months long (Robinson, Lauderman, & Montgomery, 2012).

It is well documented that practices of EIAs in Guatemala are rife with irregularities and deficiencies, and often, outright duplicity and manipulation on behalf of mining companies²⁹. For example, in the landmark conflict surrounding the Marlin mine, consultations took place largely after the company completed its EIA, and long after the mine's concession was issued in 1996 (Amnesty International, 2014). In 2005, the Compliance Advisor/Ombudsman (CAO) of the International Finance Corporation of the World Bank carried out an assessment of the Marlin mining conflict, noting that “public disclosure prepared by the company – including the [EIA] – were highly technical and did not at the time have sufficient information to allow for an informed view of the likely adverse impacts of the project” (Office of the Compliance Advisor/Ombudsman International Finance Corporation, 2005, p. ii). In 2011, the UN Special Rapporteur on the Rights of Indigenous peoples concluded that there had been no consultation in the case of the Marlin mine that conformed to applicable international standards such the UN Declaration on the Rights of Indigenous Peoples (Anaya, 2011, p. 31).

Consultation processes were also far from satisfactory in the case of the ‘Tambor’ mining project³⁰, where affected communities only found out about the project after the exploitation license was granted (Aguilar-Støen & Hirsch, 2017, p. 229). The Escobal

²⁹ For a more thorough discussion see Aguilar-Støen (2015), Aguilar-Støen & Hirsch (2015, 2017).

³⁰ Popularly referred to as ‘La Puya’ - the name of the movement that opposes the “El Tambor - Progreso VII Derivada” mining project. See (Pedersen, 2014, 2018) for thorough discussion on the La Puya resistance.

mining conflict in southeastern Guatemala follows similar patterns to the Marlin and Tambor projects. Affected communities reported that they were neither involved in public participation nor consulted. In fact, from day one, the Escobal project was characterized by a lack of transparency on behalf of the mining company and affected populations claim they were never fully informed about the plans surrounding the project (Solano, 2015b). In addition to compliance failures regarding public participation requirements, all of the EIAs for the three mining projects were found to have serious shortcomings with regard to evaluations of potential environmental impacts, particularly with regard to water issues (Aguilar-Støen & Hirsch, 2017; Robinson et al., 2012).

It is safe to say that EIA practices in the Guatemalan mining sector have precluded any type of meaningful participation, consultation or consent from affected communities, non-indigenous and indigenous alike. Not only are EIAs shrouded by a lack of transparency, they are often used as a technical device to delimit and control public participation. EIAs are also almost invariably in Spanish, and EIAs are, by their nature, largely technical documents (Aguilar-Støen & Hirsch, 2015, p. 478). Out of frustration with being excluded from having a say in processes that affect their territories, their livelihoods, and their cultural survival, affected communities increasingly react by contesting hegemonic environmental governance practices, such as EIAs, by creating their own mechanisms for governance and political action.

In the following section we analyze the ways in which communities affected by mining projects have responded to exclusion from environmental decision-making processes. While decentralization has meant that the responsibility of facilitating public participation of affected communities falls upon the private sector, national laws

governing participation, as well as international instruments safeguarding indigenous rights, allow affected communities to have a say in environmental governance. While these results are often contradictory and conflicting, new forms of political action are shaping an emergent jurisprudence of mining conflicts.

4. Community consultations and citizen participation as counterhegemonic resistance

Since the early 2000s, unprecedented environmental struggles led by strong grassroots movements have emerged in response to the imposition of mining and hydroelectric projects in Guatemala (Aguilar-Støen, 2016). These grassroots movements include some of the most marginalized groups in Guatemala – indigenous people and the rural poor. Their resistance addresses a range of interrelated concerns, including claims to political autonomy; the rights to lands and territories; the unjust burden of environmental risk and degradation; the politics of livelihood and cultural survival.

The previous sections of the paper outlined an analytic framework for understanding both why and how anti-mining movements mobilize the law. Our aim is to argue that, using grassroots driven, counterhegemonic mechanism of environmental governance, subaltern actors attempt to subvert hegemonic power relations in environmental struggles. People affected by mining related environmental injustices resist their exclusion from environmental governance by creating ‘hybrid-mechanisms for participation,’ (Cf. Walter & Urkidi, 2017, p. 276) and by constructing ‘alternative legal orders’ (Sieder, 2017, p. 15). In this following section, we analyze the evolving political actions of three anti-mining movements that are of importance to the emergent

Guatemalan jurisprudence of public participation and consultation. We examine how these actors have mobilized to develop political tools and grassroots-driven mechanisms for environmental governance, political participation and political contestation.

4.1 The Guatemalan anti-mining movement

The first transnational mining project in Guatemala was the El Estor nickel mine, which was operated from 1977 to 1982 by the International Nickel Company of Canada, Ltd. (INCO) through its Guatemalan subsidiary, EXMIBAL. During the lifetime of the mine, the army and mining personnel committed severe human rights violations against the area's residents (CEH, 2012; Fox, 2015; Nolin & Stephens, 2010; Solano, 2005, 2005; Urkidi, 2011). The project, which is in the Izabal region, was revived in 1994 as the 'Fenix project' and has since then changed hands between different Canadian mining companies, most recently being acquired by a Russian company. The project continues to be plagued with accounts of terrible human rights violations and violent evictions (Crystal, Imai, & Maheandiran, 2014; Fox, 2015; Nolin & Stephens, 2010). However, it is the emergence of the Marlin mine in 2003 that marks the starting point of the current cycle of mining conflicts in Guatemala (Urkidi, 2011, p. 563). Residents in the municipalities affected by the mine, San Juan Ixtahuacán and Sipakapa, located in the San Marcos department, were neither adequately informed nor consulted prior to the construction of the mine. In response an anti-mining movement then began to take shape between December 2004 and January 2005 as construction of the mine was underway (Dougherty, 2011). The conflict began to escalate when in December 2004 a group of indigenous anti-mining activist and rural farmers organized a blockade in Los Encuentros in Sololá. For more than thirty days the group blocked mining equipment from

proceeding to the mining site in San Marcos. However, the blockade came to an end in January 2005 when the Guatemalan government called in security forces to escort the equipment convoy to the mine. At the time, Guatemalan President Oscar Berger was widely reported saying, “we have to protect the investors” (Nolin & Stephens, 2010). The police and military fiercely repressed the anti-mining protesters, resulting in the death of Raúl Castro Boce, a member of the group, and the injuries of sixteen other people (Dougherty, 2011; Eccarius-Kelly, 2007; Nolin & Stephens, 2010; Yagenova & Garcia, 2009). Following the events in Los Encuentros the opposition against the Marlin mine began to gain broader notice within Guatemala and the anti-mining movement began to spread.

4.2 The Sipakapa community referendum

In 2005, Sipakapa became the first municipality to carry out a community consultation on mining in Guatemala, a process that became a milestone in the history of contemporary anti-mining movements in Guatemala (Urkidi, 2011; Yagenova & Garcia, 2009). Following the events at Los Encuentros, the municipal authorities of Sipakapa announced that they would hold a public consultation on the mining operations, based on the Municipal Code and the ILO 169. The consultation was to be carried out through open community assemblies in different villages according to “indigenous customary law.” The mining company immediately tried to obstruct the process by submitting an injunction to order the municipality to postpone the proceedings. However, the Constitutional Court rejected the appeal. The pressure from the mining company caused municipal authorities to temporarily back down from their plans to go through with the public consultation. However, the local COCODE – established by the 2002

decentralization legislation - carried the consultation regardless on June 18, 2005 (Sieder, 2010, p. 174; Sieder, 2011). Eleven out of the thirteen villages that participated in the referendum voted against mining, one in favour and the other abstained (Gramajo Bauer, 2011; Sieder, 2010, p. 174).

Following the community consultation, the Ministry of Energy and Mines (MEM) (the government institution responsible for the granting of mining licenses) filed an injunction to the Constitutional Court, claiming that the community consultation was unconstitutional. Two years later, in 2007, the Constitutional Court ruled that COMUDES and municipalities do indeed have the right to conduct consultation procedures on issues of community interests. However, the Court found the community consultation non-binding because such conventions and laws were imprecise and not in accordance with the constitution (Walter & Urkidi, 2017; Xiloj & Porras, 2008). Yet, the Court also declared that a lack of internal legislation in that respect “*cannot lead to this right being nullified*³¹.”

Because the Constitutional Court found the results of the Sipakapa consultation to be non-binding, the mine continued to operate from 2005 to 2017, remaining controversial and contested throughout its lifetime³². However, the importance of the Sipakapa process to the Guatemalan anti-mining movement cannot be understated. The Sipakapa

³¹ Constitutional Court, *Record*: 1408-2005.

³² In 2010, after a study conducted by the activist group Physicians for Human Rights determined that the mine posed serious health risks to the communities living downstream, the Inter-American Court of Human Rights called for the suspension of the mine. The state initially indicated that it would comply with the precautionary measure but subsequently petitioned the court to allow the mine to continue operating (Kirsch, 2014, p. 291).

consultation process set in motion what has become one of the most important mechanisms used by subaltern actors involved in environmental struggles in Guatemala.

4.3 The ‘La Puya’ resistance and the Tambor mining project

The ‘La Puya’ resistance refers to an anti-mining movement that opposes the ‘El Tambor - Progreso VII Derivada’ mine, located in the municipalities of San Pedro Ayampuc and San José del Golfo, 20 km north of Guatemala City (Aguilar-Støen & Hirsch, 2017). Here, again, communities affected by the mine were excluded from public participation processes mandated by the EIA regulations and the ILO 169. By the time the affected communities found out about the project, the 30-day comments period, stipulated by the EIA regulations, was already over, making it too late to challenge the EIA (Aguilar-Støen & Hirsch, 2017). The project’s exploitation license was granted in November 2011 and in February 2012 construction of the mine began. Because of the attention garnered by the Marlin conflict, a national anti-mining movement had started to develop in Guatemala. By 2012 increasing knowledge about mining resistance began to spread as nascent activist-networks increasingly shared their experiences of collective resistance against mining. In March 2012, the peaceful encampment of La Puya was established at the entrance of the El Tambor mine site (Pedersen, 2018). The La Puya resistance movement managed to maintain its peaceful blockade at the entrance of the mine until the mine’s license was suspended in 2016, successfully disturbing the operations of the mine – although such successes came at a great cost, with members of the movement suffering violence, repression and criminalization (Pedersen, 2018).

In 2014, the La Puya movement initiated processes of legal action against the mining project. In August that year, members of the anti-mining movement, working

with a domestic environmental NGO, brought a case against the MEM and its sitting minister, Erick Archila. The case cited failure to comply with public participation regulations during the EIA process and failure to consult with indigenous peoples affected by the project, as established by the ILO 169. In October of that same year, community members from El Carrizal and El Guapinol in San Pedro Ayampuc also filed an injunction against the COMUDE for allowing the construction of a mining project without guaranteeing proper consultation and protecting the interests of affected communities (Pedersen, 2018). Finally, in July 2015, the La Puya movement achieved a considerable victory when a Guatemalan appeals court ruled in favor of residents right to prior consultation (Aguilar-Støen & Hirsch, 2017). The mining company was ordered to suspend all construction activities until a community consultation was held. However, the company ignored the court ruling and continued operations. In February 2016, the Guatemalan Supreme Court reaffirmed the decision of the appeals court, giving notice of the suspension of the mine's license based on the lack of consultation with indigenous peoples in the area. Yet again, the mine continued to operate despite its license being suspended. Then in March 2016, the MEM enforced the injunction suspending the mining company's license. Finally, in August 2016, the Supreme Court reaffirmed its suspension of the Tambor mining license due to lack of free, prior and informed consent of indigenous peoples in the area³³ (Pedersen, 2018). Since then the Tambor mining project remains suspended but has been caught up in scandals and charges, relating, for example, to stolen Mayan archeological artifacts and ties to corruption scandals.

³³ Guatemalan Supreme Court (Corte Suprema de Justicia, Amparo 1246-2016).

The 2016 suspension of the Tambor mining license is important because it was the first time Guatemalan courts ruled that an exploitation license be suspended for failure to consult indigenous communities in environmental decision-making processes. The case of La Puya shows how anti-mining movements can use the courts to contest EIAs and environmental governance practices and claim back their right to participate in decision-making processes, however modestly (Aguilar-Støen & Hirsch, 2017).

4.4 The Escobal mine and the anti-mining movement in southeastern Guatemala

The Escobal mining concession is located in the municipality of San Rafael Las Flores, about 73 kilometers east of Guatemala City, in the department of Santa Rosa. Rumors of the proposed mine began to circulate when in 2007 exploration licenses were granted to a Canadian mining company and preliminary mineral exploration began in the area. The exploration licenses extended into the municipalities of San Rafael Las Flores and Casillas in the department of Santa Rosa, the municipalities of San Carlos Alzatate and Mataquescuintla in Jalapa, and San José Pinula in the department of Guatemala. All in all the mining concession includes over twenty-three licenses that expand into the department of Santa Rosa, Jalapa and Jutiapa.

Residents in the municipalities affected by the mine's operations expressed that, from the start, they were never fully informed about the mining project. In late 2009, a group of residents in San Rafael Las Flores met to get informed and discuss the potential impacts of the mine, which led to the founding of the Committee in Defense of Life and Peace (CDP). Following the lead from San Rafael Las Flores, residents in neighboring municipalities began to gather through meetings facilitated by the Catholic Church in Casillas in order to learn about the rising concerns regarding mining activities in the area.

Indigenous Xinka communities, forming part of the ‘Parliament of the Xinka People of Guatemala’ (PAPXGIUA), also joined these discussions. A result of these meetings was the establishment of the Diocese Commission for the Defence of Nature (CODIDENA), which brought together the voices of different groups and organizations in the region. CODIDENA and the CDP worked together to carry out educational and awareness initiatives in the communities, providing advice about how to hold community consultations. Later down the road they also helped provide legal support to members of the anti-mining movement that were facing criminalization by the mining company and the government (Solano, 2015, pp. 7-8).

One of the strategies used by the anti-mining movement in southeastern Guatemala was to emphasize the legal right to prior consultation. The Committee for Defence of Life and Peace, CODIDENA and the Xinka Parliament, aided by two national NGOs – The Centre for Legal Environmental and Social Action (CALAS) and Madre Selva – encouraged residents in Casillas, Nueva Santa Rosa, Santa Rosa de Lima and Mataquescuintla to appeal to their COCODEs and COMUDEs to hold local and municipal referendums regarding the mining project. In 2011 and 2012, municipal consultations were held in Nueva Santa Rosa, Santa Rosa de Lima, Casillas and Mataquescuintla at the request of municipal residents. The consultations were premised on articles 60-66 of the Municipal Code, as well as Article 28 of the Constitution. All of the four referendums concluded in a resounding NO to mining. However, no municipal consultation took place in San Rafael Las Flores, where, despite formal requests from the population, municipal authorities, who were pro-mining at the time, had refused to hold a municipal consultation.

Despite the growing opposition to the mining project and the results of the municipal referendums, the Escobal EIA was approved by MARN in October 2011, clearing the way for the construction of the mine. Then, in April 2013, the MEM announced that it had granted the mineral extraction license for the Escobal project. In early 2013, both leading up to the granting of the Escobal extraction license and in the days following it, eight consultations were carried out in the Municipality of San Rafael Las Flores, using the COCODE law (Decree 11-2002). During this same period the situation in the area kept escalating, with killings, kidnappings and shootings taking place between January and April 2013. In May that same year, the Guatemalan government declared a “state of siege” in the municipalities closest to the mine, deploying thousands of troops to the area and temporarily suspending constitutional rights in the region. Otto Perez Molina, the then-president, justified the state of siege – which can be likened to martial law – on grounds of terrorism and drug trafficking threats (Sveinsdóttir, Aguilar-Støen & Bull, forthcoming).

The state of siege and the criminalization of activists that followed brought a halt to consultations processes being organized in other communities and municipalities (Solano, 2015). It took six months before another municipal consultation was carried out in the municipality of Jalapa. In this referendum, the Xinka communities of Santa María Xalapán voted overwhelmingly against mining. Finally, in December 2013, the Constitutional Court set an important legal precedent when it recognized the results of the 2011 Mataquescuintla municipal consultation as legally binding³⁴. This was the first time

³⁴ Constitutional Court, Records 4639-2012 and 4646-2012.

the Constitutional Court of Guatemala considered the results of a community referendum regarding a mining project as binding. The court's ruling, which was premised on the ILO 169 and the Municipal Code, stated "the right of peoples to be consulted is unquestionable³⁵."

Nonetheless, the Escobal mine commences commercial production and the anti-mining movement in southeastern Guatemala faced extraordinary violence, repression and criminalization, both at the hands of the mine's private security firm, as well as by state security forces. The anti-mining movement in San Rafael Las Flores suffered particularly heavy losses from the repressive measures of the state, and following the state of siege in 2013 most of the anti-mining movement has been organized from within the other municipalities in the movement. In June 2017, the anti-mining movement saw a revival when communities from the areas surrounding the mine established a blockade in Casillas along the main road to San Rafael Las Flores and the Escobal mine. With the blockade they were able to halt mine-related traffic and effectively shut down mining operations. Despite police efforts to break up the blockade, movement members were able to hold their ground – and continue to do so as we write this in spring 2019. Then in July 2017, Guatemala's Supreme Court suspended the mine's exploitation license, citing failure to comply with the ILO Convention 169 by not consulting the indigenous Xinka people in the areas surrounding the mine, as well as article 66 of the constitution.³⁶ In September 2018 the Constitutional Court then recognized the Xinka people's right to

³⁵ "*Es incuestionable el derecho de los pueblos a ser consultados.*"

³⁶ Constitutional Court, Resolución 4785-2017.

consultation, reaffirming the suspension of the mining license, until the MEM carries out a ‘free and informed’ consultation, as established by the ILO 169³⁷.

The case of the anti-mining movement in southeastern Guatemala is important for several reasons. The Mataquescuintla municipal consultation was the first community consultation to be found legally binding, establishing a jurisprudence that acknowledges the peoples unquestionable right to consultation. The Court’s decisions also establish that community consultations are – in the Court’s eyes – an important mechanism for political participation and deliberation through which affected communities can make their opinions heard. The case further reifies that indigenous peoples right to prior consultation cannot be ignored. The anti-mining movement in southeastern Guatemala is also unique in the ways it created new forms of political actions and mobilization that cross ethnic and cultural lines, as well as the ways in which different groups and organizations worked through and with the COCODEs and the COMUDEs in the organization of consultations.

5. Conclusion: The contested terrain of environmental governance and hybrid mechanisms for participation

Throughout this paper we have examined the growing importance of law, legal institutions and legal actors in anti-mining struggles, analyzing both why and how environmental activists mobilize through ‘legal’ forms of political action. We argue that people affected by mining related environmental injustices resist their exclusion from

³⁷ Constitutional Court, Expediente 4785-2018. For the complete court documents see: <https://cc.gob.gt/2018/09/04/resolucion-4785-2017-caso-minera-san-rafael/>

environmental decision-making by creating ‘hybrid mechanisms for participation’, such as community consultations, and by challenging dominant notions of ‘participation’ through their contestation of EIAs and technocratic, market-driven ideas about FPIC.

Changing legal opportunity structures, growing rights consciousness and the codification of collective indigenous rights have shaped the ways in which environmental activists develop innovative ‘legal’ strategies, which they use to pry open political spaces they have historically been excluded from. Changing legal opportunity structures in Guatemala are shaped by legislative and political changes related to post-war democratization, as well as the reshaping of the relationships between state, market and citizens, which stem from economic liberalization that favors a minimalist state. Two important processes explaining changing legal opportunity structures are the transferal of environmental governance responsibilities, such as the undertaking of environmental impact assessment and facilitation of public participation, from the state to the private sector, as well as the transferal of responsibilities relating to citizen participation in local decision-making processes from central to ‘lower’ administrative levels. Post-war political and legislative changes also included the increasing codification of the collective rights of indigenous peoples, affording indigenous peoples some enforceable rights. Of particular importance is the ratification of the ILO Convention 169, which is binding to its signatories and states the right of indigenous peoples to prior consultation on development projects affecting their livelihoods. However, the failure of the 1999 ‘Consulta Popular’ denied indigenous communities their right to ‘customary law’.

Tensions between conflicting and contradictory ideas about citizen participation, and laws that, on one hand, leave the private sector with the responsibility of EIAs and public

participation and, on the other hand, laws that acknowledge communities' right to participation, as well as indigenous peoples' right to prior consultation, shape the contested terrain of environmental governance. Environmental activists maneuver the constraints and possibilities of these changing legal opportunity structures, drawing in novel ways on changing legal and regulatory frameworks, such as the decentralization legislation and the ILO 169, to influence environmental governance and to gain access to decision making arenas.

In analyzing the evolving political actions of anti-mining movements, we find that environmental activists challenge dominant notions of 'participation' through their contestations of technocratic EIAs and market-driven ideas about FPIC. They do so to obtain recognition and to assert the rights of affected communities to self-determination in environmental decision-making processes, and to unsettle the legitimacy of dominant ideas about development and human-environment relations. One of the most powerful ways in which environmental activists are able to challenge their exclusion from environmental decision-making arenas is by generating grassroots driven forms of governance practices, such as community referendums, which have become one of the most common tools for resisting mining development in Guatemala. Walter and Urkidi (2017, p. 276) argue that community consultations are a political tool and a hybrid mechanism of participation. Consultations are both a strategic tool of social movements and an emergent (and contested) participation institution: "Las consultas deben verse solo desde la perspectiva juridical, sino también desde la política."

Many scholars are skeptical about the idea that rights based, and participatory discourses can contribute to transformative politics and environmental justice. Charles

Hale has criticized the multicultural policy model as a project of “neo-liberal multiculturalism,” which recognizes certain aspects of cultural difference while advancing economic policies that contradict indigenous rights to autonomy in practice (Hale, 2002, 2005). Others view ‘state-sponsored multiculturalism’ (Postero, 2007, p. 13) as a mechanism for the reconstitution of hegemony and legitimacy of weak states and fragile democracies, rather than signifying a genuine government commitment to guarantee indigenous rights (Sieder, 2007, 2011). More recently, powerful critiques of participatory processes such as ‘Free, Prior and Informed Consent’ have emerged as scholars suggest that FPIC is increasingly used as a mechanism to facilitate and legitimate development projects, undermining indigenous autonomy (Dunlap, 2018a; Temper, 2019). The question of whether rights can contribute to the realization of progressive social transformations is not a new one (Hunt, 1990; Scheingold, 1974). Yet, as Alan Hunt (1990, p. 325) argues, rights take shape and are constituted by and through struggle. Thus, rights have the capacity to be elements of emancipation, but are neither a perfect nor exclusive vehicle for emancipation.

The mobilization of rights can render injustices legible in the idioms of law and popular legal consciousness (Delaney, 2016; NeJaime, 2011). “Rights that matter are rights that matter” – substantive enforceable claims such as rights to affordable secure shelter; rights to dignified employment, rights to a healthy environment, and so on. That is, rights that impose enforceable obligations on others and substantively reconfigure the relevant fields of power. These are also rights that under the prevailing conditions across the world are ‘no-rights.’ In the words of David Delaney (2016, p. 271): “It’s not

unreasonable to ask, as many have, whether 'rights' are the right means to justice. And it's reasonable to respond: what else you got?"

Chapter five: Corporate-community conflicts in Guatemala: Exploring private sector perspectives on opposition to mining

1. Introduction

In their review of corporate-community conflicts around mining projects, Conde and Le Billon (2017, p. 693) identify three important gaps in the literature: first, ‘the *internal* perspectives of government authorities and mining companies on resistance; second, the increasing criminalization of dissent by the state and the repression of resistance by mining companies; and third, there is a need to deepen the knowledge of the ‘micro-politics and psychological dimensions of conflict escalation’ in places where there are ongoing anti-mining struggles. In this paper I wish to address the first of these gaps by exploring the perspectives of the Guatemalan private sector on corporate-community conflicts surrounding opposition to extractive industries. My aim is to contribute to ongoing discussions, advanced by authors like Aguilar-Støen and Bull (Aguilar-Støen & Bull, 2016; Bull & Aguilar-Støen, 2015, 2016a, 2019), about the ways in which elites and industry actors shape environmental governance.

Mining conflicts have proliferated throughout Guatemala since the early 2000s, when the current cycle of mining conflicts started to emerge in response to the construction of the Marlin mine in the Department of San Marcos. Much of community opposition to mining revolves around a range of interrelated concerns, including the

unjust burden of environmental degradation, the risk to rural and land-based livelihoods, cultural survival, the rights to lands and territories, and claims to political autonomy.

Guatemala's mining sector is characterized by a lack of transparency and communities affected by mining development have historically been excluded from environmental decision-making processes. The private sector and government have by and large dismissed concerns voiced by affected communities and their claims for participation and recognition. Then, as communities started to organize and engage in collective action aimed at demanding their inclusion in environmental decision-making, the government and the private sector responded with criminalization, the escalation of force, and violent repression of anti-mining movements. As a result, levels of mining conflicts are extremely high in Guatemala with intense societal polarization and hostility between pro-mining and anti-mining groups.

In recent years, scholarly attention has primarily focused on 'community-level' responses to extractive projects, increasingly conceptualized as 'political reactions from below' (Li, 2011; Borrás & Franco, 2013; Hall et al., 2015). There is a robust literature that examines how people in Guatemala have reacted - 'from below' - to the spread of extractive projects throughout rural areas in the country (Pedersen, 2013, 2014; Urkidi, 2011; 2017; Fox, 2015; Aguilar-Støen & Hirsch, 2015, 2017). However, less attention has been afforded to better understanding how political reactions 'from above' emerge and take shape in these contexts³⁸. Governments, corporations and elites shape decisions,

³⁸ There is an emerging literature on mobilization against resource extraction that is dedicated to better understanding how political reactions 'from above' emerge and take shape (Cf. Brock & Dunlap, 2018; Dunlap 2018b; Geenen & Verweijen, 2017). This literature attempts to understand

practices and interactions that influence political actions ‘from above’ in environmental conflicts (Sveinsdóttir, Aguilar-Støen and Bull, forthcoming). Yet, there is little research that examines the actual perspectives of these actors on conflicts and opposition to mining. Elites and corporate actors tend to be ‘blackboxed’ - assumed, acknowledged, but rarely approached head on. Elsewhere Aguilar-Støen, Bull and I have examined the dialectic of political actions ‘from above’ and ‘from below’ in environmental conflicts by analyzing the complex configuration of corporate-government-elite networks and how these networks operate in response to anti-mining mobilizations (Sveinsdóttir et al., forthcoming). In this paper I wish to further substantiate the work on political actions ‘from above’ and ‘from below’ by examining the discourses of business leaders and economic elites to analyze how the private sector explains and understands mining conflicts in Guatemala.

The analysis presented in this paper draws on interviews and participant observation conducted in 2016 and 2017 with corporate representatives and business leaders, groups and associations that promote private sector interests, as well as the traditional economic elite, which I will collectively refer to as ‘the private sector’ throughout the paper. I analyze discourses emerging from interviews with these actors, in which they discussed their thoughts on socio-environmental conflicts and what they see as the main challenges currently facing the extractive sector in Guatemala. Bull and Aguilar-Støen (2019) argue that in order to study elite behavior, it is not enough to only study rational calculations. Rather, we must also study ideas and ideologies that justify

the actions taken by governments, corporations and allied elites to legitimize and actualize their operations.

and mobilize joint elite actions. They suggest that we study business discourses to analyze how business groups explain and understand the country's development and how they articulate their own role in such development. I believe that this may also be applied to studying how the private sector explains and understands mining conflicts. In focusing on private sector discourses my hope is to advance a better understanding of how responses to mining opposition emerge and take shape, and the ways in which such discourses contribute to establishing the conditions of possibility of political action.

In what follows I will start by discussing some methodological considerations about interviewing elites and 'studying up.' In this section I will expand on the fieldwork and 'data collection' that inform the analysis in this paper. Following the methodological discussion, I will offer some theoretical considerations on how I conceptualize elite dynamics, why understanding elite discourse matters, and how these are connected and matter in the context of corporate-community mining conflicts. The fourth section of the paper delves into the interviews and explores what the private sector sees as some of the main concerns currently facing extractive industries in the country. The fifth section discusses the analysis of the key discourses used by the private sector to explain corporate-community conflicts. Finally, the conclusion is presented.

2. Methodological considerations on interviewing elite actors and 'studying up'

Increasingly scholars have turned their attention towards the role of elites within society, which in turn has led to an emerging literature on some of the methodological challenges of interviewing elites (Harvey, 2010). In researching the multitude of processes that shape contemporary landscapes of power, it is important to know more

about, and critically engage with, the people who are most influential in shaping these processes, along with those affected by them. Often these people of influence occupy privileged positions in social, economic and political networks and can influence – formally or informally – decisions and practices with key political, economic, social and environmental implications (Bull, 2015). Their status means they are often viewed as belonging to ‘elite’ groups. Although definitions of elites are problematic, and their precise roles in transforming geographies of power are complex, it is nonetheless clear that powerful groups of people in influential institutions and organizations are often key actors in studies that aim to engage critically with the changing character of social, economic and political worlds (Hughes & Cormode, 1998).

Reflections on research practices of interviewing elites have focused on issues of power, positionality, and reflexivity within the research process (Dunn, 2007; McDowell, 1998). While these are issues present in all qualitative research, the challenges of ‘studying up’ are viewed somewhat differently than other types of research, with key themes including issues of access, the dynamics of the interview itself, and the ability to control the results of the research (Oglesby, 2010). Researchers also find themselves having to make sense of the numerous friendly encounters – moments marked by generosity, empathy, or affinity – that disrupts notions of critical distance (Thiem & Robertson, 2010). Alienation is another concern, as researchers who move amongst purported adversaries experience risk of being misunderstood by those they frame as allies (Jansson, 2010). Such stresses accumulate over time, leading Oglesby (2010) to question the long-term sustainability of any given inquiry. All of these issues challenge

the notion that it might be less problematic for researchers to critique the powerful than to produce research on the comparatively 'powerless' (Hughes & Cormode, 1998).

2.1. Gaining access and interview dynamics

Issues of access to elite participants are a reoccurring theme throughout the literature on interviewing elites (Harvey, 2010; Herod, 1999; McDowell, 1998; Mikecz, 2012; Rice, 2010). One of the main challenges associated with gaining access to and interviewing elites revolves around the unequal power relations that lie in wait for researchers (Rice, 2010). Whereas in non-elite studies the researchers have the position of "experts," in elite studies those who are being studied are "in the know." Indeed, one of the reasons that elites are "relatively understudied" is because of their power and ability to protect themselves from intrusion and criticism (Mikecz, 2012). Gaining access to elites has to be carefully negotiated, which can be time consuming and costly, and most elites purposefully erect barriers that set them apart from society (Laurila, 1997; Shenton & Hayter, 2004; Welch, Marschan-Piekkari, Penttinen, & Tahvanainen, 2002).

Elite interviews are very difficult, if not virtually impossible, to repeat, so careful planning is essential. The researcher must negotiate access before the interview and often has to go through large numbers of gatekeepers to get access to the elites. Yeung (1995) suggest that researchers should attempt to use as many different avenues as possible in a polite, yet persistent and opportunistic manner when trying to gain access to elite participants. Herod (1999) stresses the usefulness of "gate-keepers" and discusses that being able to use someone's name or having a letter of introduction, and/or their business card has given him access to high-level officials in other organizations who might otherwise have ignored his requests for help. This shows that networking is important,

since it can help establish a degree of credibility in the eyes of potential interviewees and provides ready answers to the question “how did you get my name?” (p. 316).

McDowell said that the success of gaining access to elites depends a great deal on serendipity, social networks as well as particular circumstances (1998, p. 2135). Oglesby (2010), on the other hand, was surprised by the ease with which she gained access to sugar industry elites in Guatemala. She speculates that sharing a racial and class background with mill owners and managers gained her a level of acceptance. Oglesby also felt that gaining access was sometimes made easier by being a woman; she was probably not perceived as much of a threat and was perhaps able to be more disarming in an interview than a man.

2.2. Research and fieldwork in Guatemala

In my own research, gaining access to elite participants was not without issues. Guatemala’s private sector and business elites are very elusive and given the critical spotlight under which extractive industries find themselves, elites and corporate actors are very guarded. However, through several good initial gatekeepers I was able to get the ball rolling and during fieldwork in 2016 and 2017 I was able to conduct eighteen in-depth interviews with business leaders and elites connected to the Guatemalan extractive sector. The people I interviewed included CEO’s of mining companies, transnational conglomerates, and agro-industrial organizations, the presidents of the Industrial Chamber of Guatemala, the Extractive Industries Business Association (GREMIEXT), and other umbrella organizations promoting private sector interests. I also interviewed the leaders of industry-led environmental non-profit organizations, as well as past- and present public servants responsible for state-led conflict resolution in mining conflicts. I

also interviewed several members of the traditional Guatemalan economic elite. My fieldwork also included visits to two different large-scale mining projects: a mineral mine in the Department of San Marcos, and a cement plant in the Department of Guatemala. While the mine in San Marcos is now closed and undergoing reclamation, both projects experienced strong opposition, having seen violent clashes, repression and criminalization.

My research experience echoes McDowell's (1998, p. 2135) when she says that a great deal depends on luck and chance, connections and networks, and the particular circumstances at the time, as well as a polite, yet persistent and opportunistic manner when trying to gain access to elite participants. I also strongly relate to the issues raised by Thiem and Robertson (2010) about having to make sense of the numerous friendly encounters – moments marked by generosity, empathy, or affinity – that disrupt notions of critical distance. Many of my interviewees challenged my preconceptions about them. I also struggled with emotions about moving among these purported adversaries, while also having strong affinities to the anti-mining movements, perceiving of myself as an ally to those very movements. Not only did I worry about alienating myself from my environmental activist friends, I also came to realize that moving between these two groups could jeopardize the safety of my activist friends. I do not intend for this to be a paper on methodological reflections. However, given the nature of the 'data collection methods' and the context within which they took place it becomes difficult to separate the emotional from the empirical and from the analytical – not that I believe that such a separation can ever really take place.

3. Conceptualizing elite dynamics and environmental governance in Guatemala

The Guatemalan private sector and business elite remain relatively understudied, particularly in the context of environmental governance and extractive conflicts. Elites and corporate actors often feature on the periphery of studies on environmental conflicts in Guatemala, but then usually as the monolithic perpetrator: the capital owners, the business and knowledge elites, and the groups controlling the state, thereby contributing to the marginalization of rural peoples and the overexploitation and degradation of natural resources (Carruthers, 2008). However, elites are rarely the object of direct scrutiny in these studies. There are many reasons for this, the most obvious being the issue of access discussed in the previous section. One may also speculate that in some instances researchers who align themselves with the causes of marginalized social groups see elites and corporations as enemies and, as such, shy away from engaging directly with them. Nevertheless, in recent years both domestic and foreign scholars have increasingly studied the country's elite³⁹.

Much of the traditional literature on elites comes from development theory, focusing particularly on the role elites play in economic growth, industrial upgrading and institutional change⁴⁰. However, as Bull and Aguilar-Støen (2015, 2016) point out, much less attention has been afforded to understanding the complex constellations of elite

³⁹ See e.g. Aguilar-Støen, 2015; Aguilar-Støen and Bull, 2016; Bull, 2005, 2014, 2015; Bull & Aguilar-Støen, 2016; Casaús Arzú, 2010; Dosal, 2005; Palencia Prado, 2012; Solano, 2013; Valdez, 2015.

⁴⁰ See e.g. Amsden *et al.*, 2012; Acemoglu & Robinson, 2012; Amsden, Di Caprio and Robinson, 2012.

dynamics and environmental governance.⁴¹ While the traditional literature on elites has mostly been uninterested in environmental governance, the more critical literature on environmental governance has rarely included elites as the object of direct scrutiny (Bull & Aguilar-Støen, 2016, p. 142). Through their work on elite dynamics and environmental governance in Latin America, scholars Aguilar-Støen and Bull (Aguilar-Støen & Bull, 2016; Bull & Aguilar-Støen, 2015, 2016b) have started to bridge this gap in the literature.

Bull and Aguilar-Støen (2016) provide new insights into the ways in which elites exert influence over decisions and practices with environmental implications. They examine elite shifts throughout Latin America, noting how new elites have emerged, how old elites continue to influence politics and the economy, and how the relationship between new and old elites has affected environmental governance. Their findings illustrate and confirm some of the main problems discussed in the elite literature: how entrenched elites have hindered structural transformations towards an environmental governance that ensures more sustainable and equitable development; the conflicts over land use and how they have their roots in institutions that are kept weak due to historical control by elites; and how new governments accommodate their politics to the demands of the elites (Bull and Aguilar-Støen, 2016b). In the specific context of Guatemala, Aguilar-Støen and Bull (2016a) have also analyzed the role of the elite as partners, intermediaries and beneficiaries of the country's mining sector. Their analysis examines the linkages between different elites and illustrates how alliances created between the elite, the military, and the government engender violence in reaction to anti-mining

⁴¹ There are some exceptions noted by Bull and Aguilar-Støen (2015, p. 6), e.g., in studies dealing with international trade regimes or international environmental treaties (see Cashore, 2002; Levy and Newell, 2002, 2005; McCarthy, 2004)

mobilizations. Sveinsdóttir, Aguilar-Støen and Bull (forthcoming) further expand on this by analyzing how corporate-government-elite networks in Guatemala mobilize in their response to anti-mining resistance. Here the authors focus on the interplay between corporate/state mobilization on the one hand, and anti-mining mobilization on the other, analyzing how they mutually shape each other.

A main finding advanced by Aguilar-Støen, Bull and Sveinsdóttir is that elites and elite dynamics impact, in a multitude of ways, practices, decisions, and interactions that shape how the environment and natural resources are governed. Elites can both strengthen and undermine institutions and situated practices, whether it be through rent seeking behavior like lobbying for the lowering of mining royalties, influencing whose voices get included in public participation and environmental decision-making processes, or demanding the escalation of enforcement to protect projects experiencing community-level opposition.

3.1. Who are the elite in Guatemala?

In Guatemala, business elites are major political actors, through informal groupings, business associations, think tanks and political parties. The distinction between their private roles as business leaders and public roles as political advocates is often blurred, and business leaders not only act individually but also form parts of powerful families and business groups. Most of the social science literature conceptualizes them as collectives such as ‘oligarchies’, ‘elite families’, ‘power groups’ or ‘hegemonic blocks’. However, Bull and Aguilar-Støen prefer to use the term ‘business elites’, but also refer to the organised business elite as ‘private sector’ as this concept is most used in the public debate, and also by business leaders themselves. (Bull &

Aguilar-Støen, 2019, p. 122). Guatemala's business elites and private sector are organized within a peak business association, the Comité de Asociaciones Agrícolas, Comerciales, Industriales y Financieras (CACIF), which is the most important economic entity in Guatemala and a powerful political force. Mining companies are then organized in the Extractive Industries Business Association (Gremiext), which belongs to the Industrial Chamber of Guatemala and which forms part of CACIF. (Aguilar-Støen, 2015; Schneider, 2012).

Guatemala is characterized by the dominance of entrenched elite networks that have controlled the country's means of production (land, labor, commercial institutions, banks and industries) and political system since the colony to the present day (Casaús Arzú, 2010; Dosal, 1995). However, political changes stemming from post-war democratization and economic restructuring in the 1980s and 1990s have led to shifting elite dynamics and the emergence of new elites and new factions within the traditional elite (Aguilar-Støen & Bull, 2016; Bull & Aguilar-Støen, 2016a; Sveinsdóttir et al., forthcoming). Bull and Aguilar-Støen (2019, p. 134) argue that these shifts must be understood in the context of three inter-related processes. First, economic changes have transformed the international and domestic context within which Guatemalan business groups operate, with new transnational competitors who often control access to markets and technology entering the fray. Nonetheless, the traditional business elite remained powerful and adapted to global economic changes by forming alliances with transnational corporations and by expanding globally and regionally (Bull et al., 2014). With regard to the extractive industries new transnational actors are dependent on the domestic business elite, who control important political resources, networks and information without which

international actors could not operate. As a result the Guatemalan private sector has been successful in keeping transnational corporations in subordinate positions (Bull et al., 2014; Schneider, 2012). Second, new business sectors have emerged related to the privatized state enterprises, non-traditional exports, tourism, the media as well as illegal and criminal networks. The emergence of these new actors who challenge the dominance of the traditional elite has resulted in new forms of competition over the control of the state, e.g., through campaign financing. While in the past the traditional elite (CACIF) financed electoral campaigns in Guatemala, currently it is estimated that the traditional private sector provides ca. 25 percent of funding, emerging groups contribute 50 percent of the funding and the rest is estimated to come from criminal groups, mainly drug traffickers (CICIG, 2015). Third, elite control over the state apparatus has been challenged by the ascent of non-elites to power. In Guatemala reforms and demands from non-elite groups have contributed to transformations, particularly in the justice sector, where the traditional elite has lost control (Bull & Aguilar-Støen, 2019). However, despite these shifting elite constellations, Guatemala remains characterized by an extremely elite dominated system, which is also characterized by institutional corruption and exclusion. Any analysis of corporate-community conflicts, elite dynamics and environmental governance in Guatemala must be understood against this backdrop.

3.2. Studying discourses to analyze private sector perspectives and behaviors

Bull and Aguilar-Støen (2019) argue that in order to study elite behavior, it is not enough to only focus on rational calculations. Rather, we must also study ideas and ideologies that justify and mobilize collective elite action. They suggest we study private sector discourse to analyze how business groups explain and understand development and

how they articulate their own role in such development. I believe that this may also be applied to studying how the private sector explains and understands mining conflicts. I follow Bull and Aguilar-Støen's understanding of discourse as "structures of signification that allow us to understand the world and give it meaning." (2019, p. 123). Discourses are relational and contested fields of power. They are the products of power struggles through which we naturalize and internalize hegemonic interpretations, but discourses also where these interpretations are contested and resisted (Dunn and Neumann, 2016). Discourses represent a cognitive unity that contributes to forming identities. Discourse theory suggests that the ways in which something is communicated does not necessarily represent reality in a neutral manner, but can create, change and reconfigure reality (Philips & Jørgensen, 2002). This is not to suggest that reality does not exist beyond the discursive, rather, as Laclau and Mouffe (2001, p. 108) explain:

"An earthquake or the falling of a brick is an event that certainly exists, in the sense that it occurs here and now, independently of my will. But whether their specificity as objects is constructed in terms of 'natural phenomena' or 'expressions of the wrath of God', depends upon the structuring of a discursive field."

Which discourses become dominant and hegemonic depends on the access that different actors have to resources and power so that discourses can be comprehended within a cultural and historical context. This power includes the access that different actors may have to the means through which narratives and discourses are distributed. Discourses do not necessarily reflect cause-effect relationships but if they create an apparent consistency of ideas they can prevail. Discourses contribute to establishing 'common sense' (in the Gramscian sense) at given points in time inasmuch as a discourse is accepted as a frame of reference without major dispute and, as such, discourses

contribute to establishing conditions of possibility (Bull & Aguilar-Støen, 2019, pp. 123-124). In focusing on private sector discourses my hope is to advance a better understanding of how responses to mining opposition emerge and take shape, and the ways in which such discourses contribute to establishing the conditions of possibility of political action.

4. Private sector discourses on corporate-community conflicts and opposition to mining

This paper sets out to explore and analyze the perspectives of Guatemala's private sector on corporate-community conflicts and opposition to extractive industries. In interviews with the economic elite and business leaders, interviewees were asked about their thoughts on opposition to extractive projects; what they understand as the explanations for the emergence of said opposition, as well as their understanding of environmental conflicts more broadly. The following section analyzes the private sector's discourse on what they see as some of the main concerns currently facing extractive industries in the country: the absence of the state from rural areas where mining activities generally take place; the presence of NGOs and 'third-party actors' with vested interests; the lack of legal certainty and insecurity surrounding investments; and the lack of domestic regulation of the ILO Convention 169.

The people interviewed, and whose narratives are examined in the following sections, included the CEO's of transnational mining companies, multinational conglomerates involved in hydropower development, and a leading agro-industrial organization in the sugar industry. I also interviewed leaders of business associations and

industrial business networks, as well as board members of umbrella organizations promoting private sector interests, some of which belong to the traditional Guatemalan economic elite. I interviewed past- and present public officials who had led institutional instrument responsible for state-led conflict resolution in mining conflicts, as well as held roles as private secretary to a president and been members of the Peace Commission (COPAZ).

4.1. The absence of the state

A key discourse emerging from the interviews was that of state's role in socio-environmental conflicts throughout the country. There is a perceived 'absence of the state' from rural areas and an understanding that this absence affects governance and opposition against extractive industries:

“Entonces lo que tu ves sobre todo en el interior del país en esos territorios indígenas es una variable y una dimensión que es verdaderamente la causa de mucha de la problemática de la ingobernabilidad y es la ausencia del Estado.” (Interview #9)

“...so what you see, above all in the interior of the country in these indigenous territories is a variable [sic] and a dimension that is the true cause of the problem of lack of governability and the absence of the State.” (Interview#9)

“Y mucha de la conflictividad creo que viene de esa debilidad del estado. Un estado muy débil, con instituciones débiles, inexistente en ciertas partes del país...”

(Interview #1)

“...and much of the conflicts I believe come from that weakness from the state. A very weak state, with weak institutions, non-existent [institutions] in some parts of the country...” (Interview #1)

Two main narratives emerged within the ‘absence of the state’ logic: first, that because of this absence, the state fails to provide basic services to the rural population. As a result, frustrated rural communities turn to the private sector and demand services, which causes grievances between corporations and communities when the private sector is unable or unwilling take on the role of the state as service provider:

“Pero está muy complicado, porque también desde la lógica de las comunidades como el Estado no aparece, no da salud, no da educación, no hay nada, entonces muchas veces tienen una mentalidad extorsiva a la empresa le tengo que sacar todo lo que pueda, porque obviamente si viene aquí, tiene dinero, tenemos que aprovechar al máximo para sacar beneficios, entonces se da esa situación verdad.” (Interview #11)

“But this is very complicated, because from the logic of the communities since the State does not show up, does not provide health, or education, there is nothing, then many times they [the communities] have an extortion mind set towards the Company, I have to extract as much as I can because obviously if they come here, they have money, we have to get the most out of it to access benefits.” (Interview #11)

“Hay una conflictividad digamos natural, lógica, comprensible, absolutamente porque ante la ausencia del Estado sobre todo en las comunidades más lejanas de la ciudad capital digamos, evidentemente estas comunidades lo que quieren ver es en qué

momento llega a atenderlo, hambre, pobreza extrema, pobreza, falta de salud, falta de servicios de salud, falta de servicios de educación, una mala calidad de salud, o sea ante todos estos factores es lógico que ciertas comunidades sientan el deseo de manifestarse y dar un poco de conflictividad y esa creo que es entendible, es la que se tiene que atender y es la que también en algunos casos el sector privado sustituye al gobierno y genera oportunidades para minimizar estos conflictos, eso es comprensible.” (Interview #5)

“There is a level of conflict that is let’s say, natural, logic, understandable, absolutely because in the face of the absence of the state, above all in faraway communities, evidently, these communities what they want is to see when they can access services, hunger, extreme poverty, poverty, lack of health, lack of health services, lack of education services, bad quality of health, so, in the face of all these factors it is logical that some communities feel the desire to manifest themselves and cause some conflict, and that I think is understandable, that is what we have to take care of, but in some cases it is the private sector taking the place of the government and that generates opportunities to minimize conflicts, that is understandable.” (Interview #5)

The second narrative within the ‘absence of the state’ logic was that the grievances stemming from state absence create room for ‘third-party actors,’ such as environmental NGOs, to take advantage of community frustrations, manipulating communities,⁴² and pitting them against the private sector and the extractive industries:

⁴² I use ‘communities’ because it is the term used both by the private sector and the anti-mining movements themselves.

“Porque prevalece la ausencia del Estado, ha hecho en las comunidades, prevalece aquello que ¿qué beneficio me van a dar a mí? Tiene que dejarme algo. Entonces la minería ha sido satanizada pero sobre todo desde fuera, muchos de estos remanentes del conflicto armado, de los que estuvieron en el verdad, reciben mucho financiamiento de fuera para el tema minero y la industria minera no fue precisamente la que mejor se pudo adaptar a las situaciones, de explicar y todo fue difícil entonces fue satanizada desde un inicio.” (Interview #12)

“Because of the State absence, this has made that in the communities it prevails very much that [idea of] what is in it for me? They have to give me something. Then mining has been demonized, above all from outside, much of this is remnants from the armed conflict, from those who receive funding from foreigner actors for the mining theme and the mining industry has not been the one to adapt best to those situations, of explaining, [they were unable to explain well] everything was difficult and it [mining] was demonized from the start.” (Interview #12)

The private sector grievances regarding the absence of the state seem contradictory considering the private sector and the business elite have been the driving force behind the ‘rolling back of the state’ since the 1980s and the 1990s. One explanation might be that grievances reflect frustrations about a state and society that no longer corresponds solely to the interests of the business elite. The emergence of new elite factions, transnational competitors, as well as the traction gained by non-elite actors and civil society, has resulted in shifting power dynamics and changing opportunity structures within the state apparatus, which have meant that the traditional business elite

are no longer the sole power player in Guatemalan society (Bull & Aguilar-Støen, 2019). A business leader belonging to the traditional economic elite told me: “We believe that in Guatemala two countries exist, two Guatemalas, but we believe that the second Guatemala is the one we have made possible” *“creemos que en Guatemala existen dos países, dos Guatemalas pero creemos que la segunda Guatemala es la que nosotros hemos hecho posible.”* The first Guatemala being the poverty-stricken, underdeveloped Guatemala, the second one, the modern, affluent and business oriented Guatemala, and they – the private sector – are the ones who created it. ‘We made this country’ one could read between the lines.

4.2. NGOs, leftist ideology and foreign manipulation

“...las ONGs ambientalistas...pinches negociantes, sin vergüenza...” (Interview #6)

“...environmental NGOs, fucking shameless business...” (Interview #6)

A main concern of the private sector is the presence and influence of ‘third-party actors’ in lieu of state absence in rural areas. The private sector sees the presence of environmental NGOs and so called ‘third-party actors’ as one of the main drivers for conflict and opposition to extractive industries. The perception is that community opposition only emerges when ‘third-party actors’ with vested financial and political interests insert themselves into communities to turn them against the companies:

“Generalmente cuando tú te sientas con las comunidades, cuando dialogas con ellos, cuando te pones de acuerdo las cosas funcionan bien, hasta que aparece un tercero en discordia, un tercero que en algún momento tiene sus propios intereses también.”

(Interview #11)

“Generally if you sit down with the communities, when you dialogue with them, when you reach agreements, things work well, it is until third parties appear, a third party who has its own interests too...” (Interview #11)

There seem to be two discourses within the anti-NGO logic: first, the narrative that environmental NGOs manipulate communities for financial gain; and second, that foreign countries finance environmental NGOs because of leftist ideologies:

“Entonces comenzaron, como te dije las ONGs salieron, algunas, otras pues ya que empezaron a conocer el negocio porque es un negocio miserable de verdad.”

(Interview #6)

“Then they started, as I told you, NGOs came forward, some of them, others well, when they started to understand the business, because it is a miserable business, truly...” (Interview #6)

“...este tipo de movimientos pseudoambientalistas, que para mí son solo movimientos que se respaldan en el ambientalismo pero de lo que viven es de generar conflicto y que en Guatemala siempre exista conflicto patrocinados en algunos casos por algunos países del extranjero.” (Interview #5)

“That type of pseudo environmental movement, to me they are using environmentalism as an excuse, but they come here to generate conflict and that in Guatemala there will always be a conflict sponsored sometimes by some foreign countries.” (Interview #5)

“...también creo que hay organizaciones de izquierda que se oponen por una razón ideológica, ahí es donde amarro eso con toda la historia del conflicto armado y que eso ayuda como efervescer esa conflictividad.” (Interview#3)

“... I also believe that there are leftist organizations that are against [mining] only for ideological reasons, that is how I link that with the history of the armed conflict and that it helps to fire up that level of conflict.” (Interview#3)

There is a sentiment among some factions of the private sector that *leftist* countries manipulate environmental conflicts and fuel opposition against extractive industries because for ideological reasons. Those who hold to this view seem to view the Nordic countries, Sweden and Norway in particular, and the Netherlands as the main culprits. One interviewee encouraged me to be careful because my last name looks Swedish, and that the Swedes have done much harm to Guatemala – “*nos han hecho mucho daño*” – and as such other business leaders might be reluctant to meet with me. Anti-leftist discourse is of course not new in Guatemala and has its roots in the anti-communist logic of the civil war. Furthermore, the Nordic countries and the Netherlands all played roles in post-war peace building efforts, some of which included their development agencies supporting civil society and capacity building of civil society organizations.

In the context of this perceived manipulation by environmental NGOs and outside forces the private sector again voiced its discontent with the state for being either unable, or unwilling, to deal with these actors:

“Entonces primero tienen un tema de...pero esa parte no es tanto por falta de fuerza pública es más que todo por falta de certeza jurídica porque el mismo policía le da miedo trabajar, o sea ejecutar la orden porque cualquier cosa se va a la cárcel el policía. Si mata a un campesino en defensa propia el que se va al cárcel es el policía, entonces dices tu: qué onda cómo así? Entonces ese tipo de cosas son las que yo creo, esa línea gris porque se han fortalecido mucho la otra parte, la parte socialista que viene de...tu miras a aquí a los embajadores bueno de noruega ya se fue pero a los de Noruega, a los de Holanda y todos estos países europeos y ponen mucha presión para que el Estado no ejecute, para que no actúe.” (Interview #7)

“Then first they (who?) have a theme about... but that part is not so much about lack of public force, it is more about lack of legal certainty because the very police is afraid of doing their work, that means of executing the orders because policemen are set in prison for whatever little reason. If they kill a peasant in self-defense the one who ends up in jail is the policeman, they you say, what? how?. Then that type of things are things that I believe, that gray line because the other side has been strengthened, the socialist part that comes from... you see here the ambassadors well the Norwegian one has left but you see them from Norway, from Holland and all those European countries putting a lot of press impeding the State to execute, so that it does not act” (Interview #7)

The private sector’s strong feelings about environmental NGOs and ‘third-party actors’ must be understood against the backdrop of the civil war, the repercussions of which reverberate throughout Guatemalan society to this day. Activists are often

portrayed in similar ways as insurgents during the war, when the figure of the ‘internal enemy’ was central to normalizing counterinsurgency and genocide:

“Entonces genera un tema ante la realidad del país, entre grupos de interés que nosotros creemos que viven de esto y que adicional hay un tema político detrás hay una guerra...que se firmó la paz...pero que nunca fue aceptada y que sigue haciendo ruido en la sociedad, y eso genera un nivel de conflictividad altísimo. Uno sigue viendo estos grupos de oposición que al final es hasta la victoria verdad, entonces hay un tema de problemas por ausencia del estado, de problemas socioeconómicos reales, de una realidad alterna que cuando se hace un proyecto llega uno a moverla y un tema político que incentiva todo esto y aprovecha todo esto y ese caldo es el que genera esa conflictividad.” (Interview #1)

“Then in the face of the country’s reality a theme emerges, between interest groups we believe live of that and in addition there is a political theme, there is a war behind... peace was signed... but it was never accepted, and it still makes a lot of noise in society and that generates a very high level of conflict. One continues to see this opposition groups that at the end of the day is toward victory, right, then there is a theme related to problems caused by the absence of the State, real socioeconomic problems, of an alternative reality that when one launches a project you see it moving and a political theme that gives incentives to all this and that is the soup where conflict is cooking” (Interview #1)

The linking of opposition to extractive industries to the rhetoric of the civil war, invoking the notion of the internal enemy, is used to justify violence and repression

against environmental activists and social movements. Such an understanding would indicate that the private sector, at least the more conservative hardliners, are less interested in resolving conflict through concessions and compromise, but instead opt for the explicit exclusion and marginalization of opposition (Sveinsdóttir et al., forthcoming).

4.2. Lack of legal certainty and the state's failure to protect investments

Another main concern among the business elite is what they perceive as a 'lack of legal certainty'⁴³ in the judicial system. Judicial insecurity and the state's failure to protect investments are seen as one of the greatest threats to the private sector and economic development in Guatemala:

“en el sector minero e hidroeléctrico, parte de los retos que estamos viviendo es la falta de certeza jurídica, la falta de reglas claras y algunas decisiones de las cortes que únicamente que no generan ese tipo de certeza jurídica y estabilidad.” (Interview #5)

“in the mining and hydroelectric sector, part of the challenges we are experiencing is the lack of legal certainty, the lack of clear rules and some court decisions that do not build that type of legal certainty and stability” (Interview #5)

Since 2016, the Guatemalan courts have suspended the licenses of at least two mining projects and two hydropower projects for failure to properly consult affected communities prior to the installation of the projects (Sveinsdóttir & Aguilar-Støen, forthcoming). The courts based their decisions on the ILO Convention 169, which

⁴³ Interviewees would talk about 'falta de certeza jurídica' or the lack of legal certainty. In law, 'certeza del derecho' (legal certainty) represents the requirement that decisions be made according to legal rules, i.e., be lawful. In short, legal security ('seguridad jurídica') is the legal certainty ('certeza del derecho') given to the individual by the State stating that their person, property and rights will not be violated.

Guatemala ratified in 1996 and is binding to its signatories, citing the infringement on the rights of indigenous peoples to prior consultation. This emerging jurisprudence has become a strong point of contention for the private sector that finds it particularly serious that licenses are being revoked when companies acted in ‘good faith,’ believing they had complied with regulatory and legal requirements set forth by the state:

“Para nosotros es ofensivo que una licencia que está firme, que ya se vencieron todos los plazos para oposición, que existieron todos los plazos para oposición, el Estado venga y la revierta en función de acciones que el estado debió de haber hecho. Lo que están diciendo es que mire el ministro cuando dio su licencia no leyó el expediente y ahora que lo está leyendo dice que debe revocarlo, es tan serio como eso. Estamos muy preocupados por el futuro.” (Interview #1)

“For us it is an offence that a licence that is firm, that has complied with all the deadlines for opposition, that all deadlines for opposition existed, the State comes and reverts it [the licence] due to actions that the State should have taken. What they [who?] are telling is listen minister when you granted the licence you did not read the application and now that you are reading it you say you will revoke it, it is as serious as that. We are very concerned for the future.” (Interview #1)

“En este caso específico de la mina, el Estado...lo que dice el Estado, los tribunales es que el Estado no hizo la consulta por lo tanto revoca la licencia. Entonces el señor de esta mina es una víctima, o sea yo pedí una licencia y el estado me la dio y el Estado dice yo no hice lo que tenía que hacer y la revoco....entonces la posición es estoy de acuerdo revóquela, pero compense los daños por su falta de efectividad.

Entonces ese caso en específico es muy dañino para el Estado de Guatemala, dañino para el país que románticamente se ve como una victoria de grupos que en nuestra opinión, en mi opinión, no son representativos de las comunidades vecinas al proyecto si no que son representativas de grupos de oposición sistemática, esa es mi opinión sobre ese caso específico. Pero el daño no es específicamente a la mina el daño es el daño que le están haciendo al Estado de Guatemala y al tema de qué va a pasar en adelante. Un estado en donde no existe seguridad jurídica es un Estado en donde no se invierte. Ellos lograron su objetivo en que en este país nadie va a invertir y sin inversión lo que va a ver es pobreza y pobreza peor que la que tenemos.”

(Interview #1)

In the specific case of the mine, the State... what the State says, the courts is that the State did not conducted consultations therefore the license is revoked. Then the gentleman from that mine is a victim, I mean I applied for a license and the State gave it to me and then the State says I did not do what I had to do so I will revoke it... then the position is I agree revoke it but you need to compensate for the damage caused by your lack of efficiency. Then that specific case is very harmful for the Guatemalan State, harmful for the country that romantically sees it as a victory of groups that in our opinion, in my opinion do not represent neighboring communities they rather represent systematic opposition groups, that is my opinion on that specific case (what case?). But the harm is not specific to the mine, it is a harm done to the Guatemalan state and what is going to happen in the future. A Sate in which legal certainty does not exist is a State that does not attract investments. They [who?] reach their objective

that is nobody will invest in this country and without investments what we will have is poverty and a type of poverty that is worse than the one we have.” (Interview #1)

Because of the recent suspensions of two major mining projects, El Tambor in 2016 and El Escobal in 2017, many of the interviewees voiced concerns that mining is no longer a viable industry in Guatemala:

“Básicamente con el tema de la Puya, la minería está acabada porque nadie va a creer en una licencia de un Estado que las revoca después que las otorgó, después que el proyecto está terminado. El problema es que me otorgan una licencia, me dejan terminar el proyecto y ahí revocan la licencia. Es un tema de seguridad jurídica terrible pero ese la realidad que estamos viviendo. Entonces la minería se va a acabar...” (Interview #1)

“Basically with the theme of La Puya, mining is going to end because nobody will have faith in a lisenca from a state that revokes the lisenca after granting it, after the Project has ended. The problem is that they grant me a lisenca, they let me finish the project and then they revoke the lisenca. It is a terrible theme of legal certainty, but this is the reality we experience. Then mining is going to end...” (Interview #1)

The discourse surrounding the lack of legal certainty must be understood in the context of how anti-mining movements are increasingly successful in mobilizing the law in their struggles. Much of what the private sector understands as judicial insecurity reflects the innovative ways environmental activists use legal strategies to challenge their exclusion from environmental decision-making arenas. They have done so by generating

grassroots driven forms of governance practices, such as community referendums, which Guatemalan courts have increasingly started to recognize as legally binding, a result of which have been the suspensions of mining and hydropower projects.

4.3. The ILO Convention 169 and the principle of prior consultation

Much of the contention surrounding legal uncertainty and the state's failure to protect investments revolves around the ILO Convention 169, indigenous peoples right to prior consultation, and public participation in environmental decision-making processes more broadly. The private sector argues that Convention is being manipulated by environmental NGOs and again laments the states inability to do its job:

“Y un tema que los une a los dos es el Convenio 169 de la OIT que lamentablemente por más de 20 años el Estado no lo ha sabido reglamentar y eso se ha vuelto un foco de conflictividad ahora porque por decisiones, a nuestro juicio, poco certeras de las cortes a veces por desconocimiento de algunos magistrados están cancelando. Y ahí es donde no entendemos, ¿cómo la corte de Constitucionalidad cuando ya había dictaminado ahora determina totalmente lo contrario?, la Corte Suprema también. Y segundo partiendo que la responsabilidad de las consultas es una responsabilidad del Estado no de las empresas, el hecho de que no sea reglamentado no quiere decir que las consultas que se hagan haya que repetirlas y si hay que repetirlas ok, se repiten pero no cerrando las operaciones de las empresas.” (Interview #5)

“And a theme that joins both [both what?] is the ILO 169 convention from the OIT that unfortunately the State has not known how to make rules and that has become a point of conflict because now, due to decision, in our judgment bad decisions from

the courts, sometimes due to lack of knowledge of some judges they are cancelling. And there is where we do not understand, how is it possible that the constitutional court once it has ruled in one direction now rules in the opposite direction? The supreme court as well. And second departing from the responsibility of the consultations it is a responsibility of the State not of the business, the fact that there are no rules does not mean that consultations that were conducted should be conducted again, if we have to do it again, that is ok but we do them again, the solution is not to cancel the operations of the projects.” (Interview #5)

“El Convenio en los últimos cinco años ha sido utilizado digamos básicamente por grupos, porque no son las poblaciones per se si no son los defensores o los llamados defensores de los pueblos indígenas quienes han utilizada esto como una plataforma legal en oposición a minerías, hidroeléctricas, el caso de la palma africana no lo pueden hacer porque no son inversiones promovidas por el Estado digamos, son inversiones privadas cien por ciento o como el azúcar por ejemplo pero cuando hay de por medio una medida a nivel del Estado entonces es obligatorio hacer esos procesos de consulta, entonces eso ha creado muchísimos problema, ha creado muchísimo desgaste y hoy diría yo que estamos empantanados con ese tipo de cosas. Así que ese es otro gran reto, pensando en cómo se va a poder implementar el Convenio 169 a futuro y que ese realmente se convierta en un convenio de beneficio para las poblaciones. Que atraiga inversión, que atraiga desarrollo, que sin molestar la cultura, sin asimilar a las poblaciones pero que de alguna manera ellos sean sujetos de

derechos humanos como el resto pero también del progreso, así que ese te diría yo que es otro gran reto que tenemos como sector.” (Interview #11)

The convention has been used for the last five years basically by groups, because it is not the populations per se but the defenders or so-called defenders of indigenous peoples who have used this as a legal platform to oppose mining, hydroelectric, the case of African Palm they cannot do it because these are not investments promoted by the State let’s say,, they are private investments one hundred per cent or like sugarcane for example but when there is an intervention on the State level then it is mandatory to conduct the consultations, then this has caused a lot of problems, this has created a lot of worn out y today I would say that we are muddled with that type of things. So this is a huge challenge, thinking about how to implement the Convention 169 in the future and that it becomes a convention that will benefit the populations. That attracts investments, that attracts development without disturbing culture, without assimilating populations, but that in a way they become human rights subjects as everybody else but also of progress, so I would say to you that this is another huge challenge we have as a sector.” (Interview #11)

The emerging jurisprudence in Guatemala, which acknowledges the right of indigenous peoples to prior consultation, is vehemently contested by the private sector, which argues that the Convention is not being applied correctly and needs to be regulated. ‘Prior consultation’ remains an unsettled and contested legal concept and there is no agreement about how the principle of prior consultation should be upheld in practice. However, the Constitutional Court has also declared that lack of internal

legislation on the ILO Convention and the principle of prior consultation “*cannot lead to this right being nullified*”⁴⁴.” Furthermore, indigenous movements in Guatemala have clearly stated that the fundamental issue at hand, from their perspective, is not the realization of prior consultation or their regulation. Rather, the issue is that the state must respect the political autonomy of indigenous people to carry out referendums through their own procedures, with cultural relevance and in the language spoken by the community, and without any type of coercion towards the community. As such, they argue, the state must respect the outcomes of the over 100 community referendums carried out in Guatemala so far (Xiloj, 2016)

However, the private sector believes that the Convention is being manipulated by environmental NGOs and in July 2019, CACIF petitioned the ILO to intervene in Guatemala. CACIF and the private sector claim that recent unfavorable court rulings undermine legal certainty and infringe on the right to freedom enterprise and work, generating social conflict (Bolaños & Gramajo, 2017). The private sector has also denied the existence of indigenous peoples in areas affected by extractive projects in an attempt to negate the need for prior consultation as prescribed by the ILO Convention. In 2017, following the Court’s decision to suspend the licenses of the Escobal mine, the private sector made statements denying the existence of the Xinka people, either outright or in the areas surrounding the mine. The then president of CACIF was quoted saying that the Court’s resolution was based on a “non-existent community” and that the court’s findings were false (Prensa Libre, 2017). Following this the Court ruled that an anthropological study be undertaken in the area to determine whether the Xinka ‘really exist.’ In

⁴⁴ Constitutional Court, Record 1408-2005.

September 2018, the Court ruled that there are indeed Xinka people in the areas surrounding the mine and that the Xinka people's rights to prior consultation had been violated. As such the mine remains suspended, currently awaiting the results of whatever consultation takes place.

The private sector is primarily concerned with who should be responsible for consultations. Currently, with respect to the jurisprudence of the Constitutional Court, it would seem that the state is responsible for facilitating prior consultations as prescribed by the ILO Convention 169. However, in 2013, the Constitutional Court recognized for the first time the results of a community-organized referendum on mining as binding, thus establishing a jurisprudence that acknowledges 'the people's right to be consulted' and that the right to organize such referendums resides with municipalities and communities (Sveinsdóttir and Aguilar-Støen, forthcoming).

5. Discussion

Bull and Aguilar-Støen (2019) argue that to understand elite behavior we must study the ideas and ideologies that justify and mobilize joint elite actions. This following section presents a discussion of the key discourses of how the private sector explains and understands corporate-community conflicts surrounding mining.

5.1. Absence of the state from rural areas

A key discourse of the private sector surrounds the role of the state in mining conflicts and how the 'absence of the state' from rural areas affects corporate-community relationships. The discourses of the private sector and the business elite have most commonly considered development and economic growth to be dependent on roll back of

the state and the freeing of markets. However, as pointed out by Bull and Aguilar-Støen (2019), gradually, a stronger focus on institutions and social dialogue has evolved in the discourse of the elite. There are several factors that might explain this discursive shift: economic changes have transformed the domestic and international context in which Guatemalan business groups operate; and the emergence of new elite factions and transnational competitors, as well as the traction gained by non-elite actors and civil society, has resulted in shifting power dynamics and changing opportunity structures within the state apparatus, which have meant that the traditional business elite are no longer the sole power player in Guatemalan society.

5.2. NGOs, third-party actors and foreign influence

Another discourse of the private sector understands the presence of environmental NGOs and so called ‘third-party actors’ as a driving factor in corporate-community conflicts around mining. The private sector explains that community opposition stems from the interference of ‘third-party actors’ with vested financial and political interests, and who turn communities against the companies. Rural communities are often perceived of as lacking in agency and being malleable to outside manipulation. During the armed conflict, the conservative right-wing accused the rural population and indigenous people of being ‘engañados’ – fooled and manipulated – by outside forces (McAllister & Nelson, 2013).

There is a sentiment among some factions of the private sector that *leftist* countries manipulate environmental conflicts for ideological reasons. They view the Nordic countries, Sweden and Norway in particular, and the Netherlands as the main culprits. Anti-leftist discourse in Guatemala and has its roots in the anti-communist logic

of the civil war. The Nordic countries and the Netherlands all played roles in post-war peace building efforts, some of which included their development agencies supporting civil society and capacity building of civil society organizations.

The private sector's strong feelings about environmental NGOs and 'third-party actors' must be understood against the backdrop of the civil war, the repercussions of which reverberate throughout Guatemalan society to this day. Activists are often portrayed in similar ways as insurgents during the war, when the figure of the 'internal enemy' was central to normalizing counterinsurgency and genocide. The linking of anti-mining movements to the rhetoric of the civil war, invoking the notion of the internal enemy, is used to justify violence and repression against environmental activists and social movements. Such an understanding would indicate that the private sector, at least the more conservative hardliners, are less interested in resolving conflict through concessions and compromise, but instead opt for the explicit exclusion and marginalization of opposition (Sveinsdóttir et al., forthcoming).

5.3. Lack of legal certainty and the ILO Convention 169

The discourse surrounding the lack of legal certainty must be understood in the context of how anti-mining movements are increasingly successful in mobilizing the law in their struggles. Much of what the private sector understands as judicial insecurity reflects the innovative ways environmental activists use legal strategies to challenge their exclusion from environmental decision-making arenas. They have done so by generating grassroots driven forms of governance practices, such as community referendums, which Guatemalan courts have increasingly started to recognize as legally binding, a result of which have been the suspensions of mining and hydropower projects.

Much of the discourse surrounding legal uncertainty and the state's failure to protect investments surrounds the ILO Convention 169. The emerging jurisprudence in Guatemala, which acknowledges the right of indigenous peoples to prior consultation, is vehemently contested by the private sector, which argues that the Convention is being manipulated by environmental NGOs and needs to be regulated. However, more broadly, these discourses can be understood as relating to indigenous peoples right to prior consultation and who gets included in environmental decision-making processes.

6. Conclusion

This paper set out to explore the discourses of Guatemalan business leaders and economic elites to analyze how the private sector explains and understands corporate-community mining conflicts in the country. In doing so, my aim is to contribute to ongoing discussions about how the private sector affects environmental governance and shapes the conditions of possibility of political action in environmental conflicts (Aguilar-Støen, 2015; Aguilar-Støen & Bull, 2016; Bull & Aguilar-Støen, 2015, 2016a, 2019; Sveinsdóttir et al., forthcoming). Elites and corporations' impact, in a multitude of ways, practices, decisions, and interactions that shape environmental governance. Elites can both strengthen and undermine institutions and situated practices, whether it be through rent seeking behavior like lobbying for the lowering of mining royalties, influencing whose voices get included in (or excluded from) public participation and environmental decision-making processes, or demanding the escalation of enforcement to protect projects experiencing opposition. In the past, entrenched elites have hindered structural transformations towards environmental governance that ensures more

sustainable and equitable development, and mining conflicts often have their roots in institutions that are kept weak due to historical control by elites (Bull and Aguilar-Støen, 2016b).

An analysis of how the private sector explains and understands corporate-community mining conflicts reveals that the private sector is increasingly concerned about the role of the state, institutions and the law in environmental governance. The discourses around these concerns were articulated as the ‘absence of the state’ from rural areas; the lack of legal certainty and the state’s failure to protect investments; and the ILO Convention 169 and the principle of prior consultation. These concerns must be understood in the context of several interrelated processes. First, changing opportunity structures and shifting power dynamics have resulted in the emergence of new elite factions and transnational competitors, as well as considerable advances made by non-elite actors and civil society, which means that the business elite are no longer the sole power player in competing for control of the state apparatus. Second, the discourse of ‘lack of legal certainty’ reflects demands for more just environmental governance and anti-mining movements increasing success in mobilizing the law in their opposition to extractive industries. Third, the discourse on the ILO Convention 169 and its lack of regulation must be understood in the context of an emerging jurisprudence that acknowledges the right of indigenous peoples to prior consultation. Finally, the discourse of interference by environmental NGOs and ‘third-party actors’ has to be understood against the backdrop of the civil war and the ways in which its repercussions continue to reverberate throughout Guatemalan society.

However, more broadly, these discourses can be understood as a reflection of struggles over who gets to make decisions about the environment and at what scales. Those who resist extractive industries in Guatemala – most commonly the rural poor and indigenous people - demand access to environmental decision-making arenas, using an array of formal and informal strategies to pry open the political spaces they have historically been excluded from. These actors challenge dominant and hegemonic ideas about participation, about what constitutes as appropriate human-environment relations, and about how the state works and for whom. These conflicting and contradictory notions surrounding corporate-community conflicts are reflected in the discourses of the private sector, which appears to remain resistant to ideas about more inclusive environmental governance. It is evident, even as the private sector emphasizes the role of institutions and the role of law in environmental governance, that the practices of the most powerful members of the elite have changed little. The private sector continues to be linked to illegal financing of political campaigns of (allegedly) corrupt politicians. The killings of human rights defenders, and environmental and indigenous rights activist, continue to rise, and the military has once again strengthened its position within the state apparatus (Bull & Aguilar-Støen, 2019, p. 134).

Chapter six: Conclusion

In the dissertation I focus my analytical gaze on corporate-community conflicts around extractive industries in Guatemala to examine the ways in which environmental struggles emerge and take shape. I use environmental governance as a framework to analyze the processes, institutions, actors, discourses that shape the conditions of possibility of political action and mobilization in environmental struggles. I argue that to understand the conditions of possibility of political action and mobilization in environmental struggles we must study the interplay between political actions ‘from above’ and ‘from below,’ which I see as dialectically interrelated, with dynamic and contested interactions between actors within and between scales. Environmental struggles are part of emergent forms of scalar politics wherein different actors struggle to (re)consolidate power and authority in the hands of competing groups. The complex ways in which corporate-elite-government-military networks shape political actions in environmental conflicts intersects with the strategies of grassroots movements, who themselves are engaged in multi-scalar contentious politics. Spatialities shape the conditions of possibility for political action. They matter for the imaginaries, material practices and emergent trajectories of environmental struggles. By examining the shifting spatialities of political actions we can reveal the articulations of emergent power relations and make visible some of the power geometries in environmental struggles.

Paul Robbins (2004) said that to understand uneven development, unjust social relations, and socio-ecological distribution conflicts, we must ground these processes historically and geographically by tracing the historical processes, legal and institutional infrastructures, and socially implicated assumptions and discourses that typically make unjust outcomes the rule rather than the exception, which is precisely what I have tried to do in this dissertation.

1. Summary of main findings and arguments

The first article, *“This is not a game”*: *Shaping political actions ‘from above’ in environmental conflicts in Guatemala*, examined the interplay between political actions from above and below in extractive conflicts. In the paper, we analyse how the private sector and the government respond to opposition against extractive industries. Responses include tactics and strategies that range from criminalisation and violent repression of activism to publicity campaigns and lobbying. However, we observe that the ways in which social movements resist also influence responses ‘from above,’ e.g. legal and technical contestations to environmental and social standards, community referendums, civil disobedience etc.

We contend that the private sector and government engage in practices that aim to undermine and suppress opposition to extractive industries, and to make extractive operations politically and socially legitimate. Activists are increasingly portrayed in the same way as adversaries during the civil war, justifying counterinsurgency and repression against them, while paradoxically, corporations claim commitment to international human rights standards, such as the ILO’s Convention 169, and to engage in ‘community

development’ and ‘social responsibility.’ The frequent use of violence in response to mining opposition suggest that the private sector and the government are less interested in neutralizing resistance through concessions and forms of compromise, but instead opt for the explicit exclusion and marginalization of oppositional forces by various mechanisms ranging from discursive and legal structures to outright violence and repression.

The second article, *From the streets to the courts: Mobilizing the law to subvert hegemonic power relations in environmental struggles*, examines the growing importance of law, legal institutions and legal actors in anti-mining struggles, analyzing both why and how environmental activists mobilize through ‘legal’ forms of political action. We find that people affected by mining related environmental injustices resist their exclusion from environmental decision-making by creating ‘hybrid mechanisms for participation’, such as community consultations, and by challenging dominant notions of ‘participation’ through their contestation of EIAs and technocratic, market-driven ideas about FPIC.

In analyzing the evolving political actions of anti-mining movements, we find that environmental activists challenge dominant notions of ‘participation’ through their contestations of technocratic EIAs and market-driven ideas about FPIC. They do so to obtain recognition and to assert the rights of affected communities to self-determination in environmental decision-making processes, and to unsettle the legitimacy of dominant ideas about development and human-environment relations. One of the most powerful ways in which environmental activists are able to challenge their exclusion from environmental decision-making arenas is by generating grassroots driven forms of

governance practices, such as community referendums, which have become one of the most common tools for resisting mining development in Guatemala.

The third article, *Corporate community conflicts in Guatemala: Exploring private sector perspectives on opposition to mining*, explored the discourses of Guatemalan business leaders and economic elites in order to analyze how the private sector explains and understands corporate-community mining conflicts in the country.

An analysis of how the private sector explains and understands corporate-community mining conflicts reveals that the private sector is increasingly concerned about the role of the state, institutions and the law in environmental governance, as well as the interference of environmental NGOs and ‘third-party actors.’

The discourse of the private sector should be understood in the context of emergent forms of scalar politics where different actors struggle to consolidate power and authority in the hands of competing groups. Those who resist extractive industries in Guatemala – most commonly the rural poor and indigenous people - demand access to environmental decision-making arenas, using an array of formal and informal strategies to pry open the political spaces they have historically been excluded from. These actors challenge dominant and hegemonic ideas about participation, about what constitutes as appropriate human-environment relations, and about how the state works and for whom. These conflicting and contradictory notions surrounding corporate-community conflicts are reflected in the discourses of the private sector, which appears to remain resistant to ideas about more inclusive environmental governance

2. Future research and final remarks

There is so much more that I would have liked to include in this dissertation, but cannot – because of time, space, my sanity. There is so much more to be said about environmental struggles in Guatemala, and this dissertation offers only the tiniest of glimpses into an incredibly complicated, multifaceted situation.

The articles in this dissertation are just a starting point. At a later point in time I would like to write another paper that builds on the framework laid out in the second article of this dissertation - *From the streets to the courts: Mobilizing the law to subvert hegemonic power relations in environmental struggles*. One of the main findings in that article is the context of criminalization, repression and violence that arises with the emergence of community consultations or ‘hybrid mechanisms for participation.’ To further substantiate this finding empirically I would like to examine the extraordinary escalation measures taken by the state and the private sector in attempts to hinder consultation processes from taking place in the Departments of Santa Rosa and Jalapa. Such a paper would also further substantiate the findings of the first paper in my dissertation - *“This is not a game”*: *Shaping political actions ‘from above’ in environmental conflicts in Guatemala* – to further emphasize that these processes of ongoing contestations about environmental governance reflect emergent scalar politics about who gets to make decisions about the environment.

There are several avenues that I wish to pursue in my future research. I intend to continue my engagement with research on socio-environmental conflicts in Guatemala and Central America. I think that it may be particularly interesting to continue examining

the interplay between legal arenas and environmental contestations from a political ecology perspective. In studying environmental struggles, political ecology as a field, with its focus on informal and extra-legal dynamics, has paid far too little attention to legal geographies that are central to environmental conflicts in many places. I wish to address these lacunae by further developing my research on the judicialization of environmental struggles, in Central America, as well as in other parts of the Global South and the Global North.

I am also very interested in expanding my future research to include research on the political ecologies of environmental struggles and resource extraction in North America, and ultimately adding a comparative component to my current research. I am particularly interested in exploring the environmental politics of pipeline development and energy infrastructure in the United States and Canada, for example examining the social and environmental impacts of projects like the Dakota Access Pipeline, the Keystone Pipeline System and the Enbridge Pipeline. I recall following the conflict surrounding the Dakota Access Pipeline as it was unfolding in 2016 and being taken aback by many of the parallels with what I have observed in Guatemala. This sparked an interest in expanding my future research to include research on the politics of environmental struggles and resource extraction in North America.

One thing I am sure of: wherever the future takes me, Guatemala will always be with me. Guatemala – Iximulew – país de eterna primavera, you have touched me to the very core of my soul and for that I will always be grateful.

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