

**EXPORTING CANADA'S EXTRACTIVES APPROACH TO DEVELOPMENT:
THE NEXUS OF LAW, VIOLENCE AND DEVELOPMENT IN THE CASE OF TAHOE
RESOURCES INC. IN GUATEMALA**

by

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Abstract

Drawing on theories of critical legal geography and critical development studies, this thesis examines how law shapes processes of repression and resistance in conflicts over resource extraction. Through the lens of Canadian mining in Guatemala and the specific case of Tahoe Resources' El Escobal Mine, I reflect on how law impacts the production, control, and remaking of space and place. A discourse analysis of documents obtained via Access to Information and Privacy (ATIP) requests, as well as an analysis of fieldwork notes and semi-structured interviews conducted in Guatemala and Canada between May and September 2018, demonstrate that a lack of government oversight and accountability reinforces a status quo of impunity for human rights abuses related to Canada's extractive sector. While home state litigation may enforce a measure of accountability for parent companies in their operations abroad, the ideological structures enabling mining corporations to operate with ease across borders remain intact.

“Take these messages and report them to the countries that invest in and profit from this mine.”

Lorena Cabnal (2018, May 7), Indigenous Xinca woman and leader speaking to Victoria Tauli-Corpuz, United Nations (UN) Special Rapporteur for the Rights of Indigenous Peoples during her May 2018 visit to Casillas, Guatemala, near Tahoe Resources’ El Escobal Mine.

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Glossary

AmCham	<i>Camara de Comercio Guatemalteco-Americana</i> (American Chamber of Commerce in Guatemala)
BCSC	British Columbia Securities Commission
BTS	Maritimes-Guatemala Breaking the Silence Network
CACIF	<i>Comité de Asociaciones Agrícolas, Comerciales, Industriales y Financieras</i> (Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations)
CALAS	<i>Centro de Acción Legal, Ambiental y Social de Guatemala</i> (Guatemala Centre for Legal, Environmental and Social Action)
CanCham	<i>Camara de Comercio Guatemalteco-Canadiense</i> (Canadian Chamber of Commerce in Guatemala)
CCDA	<i>Comité Campesino del Altiplano</i> (Campesino Committee of the Highlands)
CCIJ	Canadian Council for International Justice
CICIG	<i>Comisión Internacional contra la Impunidad en Guatemala</i> , International Commission against Impunity in Guatemala
CIDH	<i>Comisión Interamericana de Derechos Humanos</i> , Inter-American Human Rights Commission
CNCA	Canadian Network on Corporate Accountability
CNS	<i>El Consejo Nacional de Seguridad</i> (National Security Commission)
COCODE	<i>Consejo Comunitario de Desarrollo</i> (Community Development Council)
CODECA	<i>Comité de Desarrollo Campesino</i> (Committee for Campesino Development)
CODIDENA	<i>Comisión Diocesana de Defensa de la Naturaleza</i> (Diocesan Committee in Defense of Nature)
<i>Consulta</i>	<i>Consulta comunitaria</i> (community consultation)
CSR	Corporate Social Responsibility
EDC	Export Development Canada
EIA	Environmental Impact Assessment
FPIC	Free, Prior and Informed Consent
GHRC	Guatemala Human Rights Commission
GREMIEXT	<i>Gremial de Industrias Extractivas</i> (Association of Extractive Industries)
IFIs	International Financial Institutions

ILO	International Labour Organization
IMF	International Monetary Fund
MARN	<i>Ministerio de Ambiente y Recursos Naturales</i> (Ministry of the Environment and Natural Resources)
MEM	<i>Ministeria de Energía y Minas</i> (Ministry of Energy and Mines)
MISN	Mining Injustice Solidarity Network
MNC	Multi-National Corporation
MSR	<i>Minera San Rafael</i> (San Rafael Mining)
NCP	National Contact Point
NGO	Non-Governmental Organization
NISGUA	Network in Solidarity with the People of Guatemala
NRCan	Natural Resources Canada
OECD	Organisation of Economic Co-operation and Development
PAPXIGUA	<i>Parlamento del Pueblo Xinka de Guatemala</i> (Parliament of the Xinca People)
SAPs	Structural Adjustment Programs
UDEFEGUA	<i>Unidad de Protección a Defensoras y Defensores de Derechos Humanos Guatemala</i> (Unit for the Protection of Human Rights Defenders in Guatemala)
UMJ	United for Mining Justice
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
VPs	Voluntary Principles on Security and Human Rights

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CHAPTER 1: INTRODUCTION

Guatemala is a country of extremes. Its topography – both physical and social – is scarred by violence, exclusion and trauma. Its lands, however, are also permeated with the hope, tenacity and resistance of its peoples. The ideological and material configuration of the country's diverse places became clearer to me in May 2018¹ as I travelled through its rolling hills, from the dry corridor (FAO 2017) to the lush rainforest, and through its vast plantations of African palm, sugar cane and bananas. In visiting four major mines sprawled from the far northwest of the country to the southeast, including Canadian-owned Tahoe Resources Inc.'s (Tahoe) El Escobal (Escobal) Mine (now owned by Pan American Silver as of January 2019, another Canadian company) and Goldcorp Inc.'s Marlin Mine, it became clear to me that Canada, too, is a country of extremes (see Appendix I, Figure 1). Despite our reputation as a benevolent and progressive global player, the Canadian government and the companies headquartered within our territories produced the landscapes of displacement and dispossession I first read about and then witnessed.

Regardless of the company, the mineral to be extracted or the community impacted, the story is the same throughout the country: mining licenses are granted corruptly, after a deficient Environmental Impact Assessment (EIA) and without prior consultation of local communities (Amnesty International 2014; Imai, Ladan & Sander 2007; MiningWatch Canada 2015). After granting a mining license to the relevant multi-national corporation (MNC) (concessions which are often gained with the help of the Canadian Embassy²), the

¹ From May 5 - May 18, 2018, I participated in the UNBC Geography & Rights Action Field School to Guatemala, led by Dr. Catherine Nolin and Grahame Russell, and as part of the experiential learning course, "Geographies of Culture, Rights & Power: The Global Order, Injustice and Resistance in Guatemala."

² Tahoe was granted its exploitation license on April 3, 2013, just two weeks after the kidnapping of four Indigenous Xinca leaders and the murder of one from the mining affected communities (see Appendix II, Timeline of Events Related to the Escobal Mine Conflict). Canadian Ambassador to Guatemala Hughes

Guatemalan government and their corporate allies criminalize³ those seeking to defend their land and territory. In the case of mining conflicts, the use of violence and forced evictions on the part of the military, police and private security reveals the collusion of public and private interests in enforcing a neoliberal version of development, as the government protects the interests of property ‘owners’ while denying the people a say over their land and livelihoods (Kamphuis 2012).

Forced evictions in Guatemala have deep historical roots, with the state using its monopoly of force to appropriate communal lands in the interest of domestic and international capital, coercing Indigenous and *campesino* peoples to work as exploited labour on agricultural plantations, in mines and maquiladoras (Nolin 2006). W. George Lovell (1988, 30), for example, describes how the Spanish conquistadors usurped land “considered to belong to the Crown” to organize space and control population movements towards cocoa plantations and indigo farms in the 16th and 17th centuries. The political and economic violence experienced by Indigenous and *campesino* communities in Guatemala today has roots in the sovereign and, as I argue, imperial order which grants the ‘nation-state’ complete authority over the ‘bare life’ of its populations in a totalizing and immanent way (Agamben 1998; Tyner 2012a).

Clear continuities exist between the past and the present, particularly in terms of the modalities of power employed (Allen 2003). In visiting the community of Río Negro, the site where the Guatemalan military massacred more than 440 Maya Achi in 1982 to make way for the construction of the World Bank and Inter-American Development Bank’s Chixoy

Rousseau emailed his colleagues to congratulate them on the license approval, stating “everyone’s perseverance finally paid off today” (A201501699, 55).

³ Criminalization refers to the unjust use of legal and penitentiary systems to persecute and repress political opponents.

hydroelectric dam, I came to understand how such genocidal violence represents a political strategy to rid the land of Indigenous peoples to allow for ‘development’ (Einbinder 2017), and to discipline and eliminate those perceived to represent a threat to national unity and development (Tyner 2012a). As would later be described in the Recovery of Historical Memory Project (REMHI 1999) report *Nunca Más*, the wholesale destruction of villages was justified by the mischaracterization of all Indigenous communities as communist guerrillas. As we travelled throughout Guatemala, I would hear again and again about the government’s violent appropriation of communal lands, the burning of homes and belongings, and its complete disregard for land and life. As Indigenous Maya Q’eqchi’ leader Angelica Choc⁴ (2018, May 17) emphasized, “all the harms from the past are the same harms we suffer today.” Maria (2018, May 17), a Maya Q’eqchi’ mother from the remote community of Chab’il Ch’och’,⁵ elaborates:

It fills me with rage and sadness to tell you these stories again. I think in my own life as a child: I lived through bullets being shot at us and forced evictions, and now, as an adult, I am living through more bullets and forced evictions...The treatment we Indigenous people get from our own government and corrupt sectors – discrimination, criminalization, evictions – they’re taking everything from us.

The cycles of repression that Indigenous and *campesino* communities have lived through in Guatemala must be understood within this context of historical racism and discrimination, with violence being used to maintain institutionalized systems of inequality. These violent campaigns are then supported by a development discourse and a defamation

⁴ The community members who provided their *testimonios* (the personal recounting of individual and collective experiences [Nolin Hanlon & Shankar 2000, 265]) wanted to be named, heard and recognized, justifying the use of their real names in this thesis, and with the permission of the UNBC Research Ethics Board’s approval for the field course and my independent research.

⁵ Chab’il Ch’och’ is a community along the Río Dulce in the Izabal Department of north-east Guatemala. The Guatemalan military violently evicted the community from their ancestral lands during the height of the Guatemalan genocide (1981-1983), again by former President Otto Pérez Molina (2012-2015) for the construction of his private ranch, and by President Morales (2016-present) when he sent a contingent of 1800 police to vacate the land on behalf of narco-traffickers interests (Rankin 2017).

strategy which together justify the repression and dispossession of those resisting mineral development and other mega-projects (Nolin & Russell 2016a). In the words of former Canadian Ambassador to Guatemala Hugues Rousseau, faced with discontented local populations, “the Gov [*sic*] and the companies are ready to defend themselves with an aggressive campaign on the benefits of responsible extractive industry activities” (A201501699, 55). But as ecological activist Magalí Rey Rosa (2018, 88) points out, “it is perverse to claim as beneficial activities that destroy the jungles, forests, and mountains, contaminate the water and the soil, and make people ill.”

In addition to the cyclical nature of past and present violations, important connections are evident between the local, national and international levels when examining issues of impoverishment, exploitation and inequality. While MNCs execute the global economy at the local level, contributing to landscapes of fear and repression, policies and practices of the national government *as well as* global actors enable these companies to act with impunity. As Sandra Morán (2018, May 6), an Indigenous Guatemalan Congresswoman, posed to us: “if they are corrupt, who are the corrupters?” Knowing that development projects, from mines to monocrop plantations, are dependent upon the legal, financial, economic and political support of foreign governments, investors, banks, international financial institutions (IFIs) and development agencies, I attempt to reveal and explain in this thesis the complex and varied relations between Canada and Guatemala that work to sustain spaces of injustice in the global political economy of resource extraction. In linking these different places, we can begin to understand the common strategies and struggles involved in processes of resource extraction at the global, national and local levels. Following John Allen (2003), I seek to uncover how power operates over multiple scales and in diverse ways. While this is an

important and critical exercise in terms of understanding the everyday choices made by political and corporate elites, if we are to responsibly and sustainably manage our natural resources, we must start from the land and its people (Field notes 2018, May 13). In this thesis, I prioritize the self-determination of communities to dictate their own development. My work is grounded in the viewpoints, values and understandings of Indigenous and *campesino* communities resisting resource development on their land and territories, who are struggling for a more humane world. As Leocadio Juracán (2018, May 10), an Indigenous Guatemalan Congressman explains, the global economic system is predicated on the exploitation and marginalization of the poor:

The underlying issue is the imported neoliberal economic development model that is based on resource extraction, monocrop production and the privatization of rivers and lakes for hydroelectric projects. This model serves the interests of the elites and not the needs of the population.

This dominant development model, upheld and perpetuated by international institutions, states and corporations, denies communities' right to control their own development (Power 2003). So long as the institutions – both ideological and physical – underpinning and sustaining spaces of violence and injustice exist, political and corporate elites will continue to hold power over local populations. As Maya Q'eqchi' leader Ramiro Choc (2018, May 16) shared:

At the national level, our leaders talk about bringing peace and development – they go to international meetings and they try to get loans for democracy, peace and development – the debt grows, and all that money ends up in their pockets because they are so corrupt. There is clearly no democracy, peace or development.

The premise of corruption and poverty is then used by countries such as the United States (U.S.) and Canada to legitimate imperial interventions, to strengthen the ‘rule of law,’⁶ that is, to make the country safe for investment. Eduardo Galeano (1974), decades ago, described how the development and prosperity of the ‘first world’ is made possible through the impoverishment and exploitation of the ‘third world.’ Historian Greg Grandin (2004) also points out that one need only look at the long history of U.S. intervention in Guatemala – from the CIA-direct coup of President Jacobo Árbenz’s socially progressive government in 1954 on behalf of the American-owned United Fruit Company to the Structural Adjustment Programs (SAPs)⁷ of the 1980s – to understand how imperialism has contributed to the country’s crises of insecurity, political repression and forced migration. As Congresswoman Sandra Morán (2018, May 6) declaimed,

We are not poor; we are harmed and exploited countries. We have a lot of wealth and we know what we need to do to lead healthy lives. It is systems of imperialism that prevent Guatemalans from ‘refounding’ their country.

In this case, “underdevelopment is a historically produced victimization of weaker and more enclosed communities and not the disease of a lesser people” (Mattei & Nader 2008, 6). Thus, the Cold War rhetoric has since been replaced by the discourse of the war on terrorism, whereby those formerly labeled as communists are now labelled as terrorists to continue to legitimate a violent model of development based on foreign ownership and control. For the Western Peoples Council (CPO) of Guatemala, extractivism symbolizes “a

⁶ According to the World Bank, the rule of law requires “transparent legislation, fair laws, predictable enforcement, and accountable governments to maintain order, promote the private sector growth, fight poverty and have legitimacy” (Mattei & Nader 2008, 15).

⁷ The ‘Washington Consensus’, an initiative spearheaded by the World Bank and International Monetary Fund (IMF), included a set of economic policy recommendations for ‘developing countries,’ including Structural Adjustment Programs (SAPs). SAPs included conditionalities imposed on ‘poor’ nations seeking loans for development projects, which focused on trade liberalization, deregulation and privatization (Agnew & Coleman 2019, 299-300).

new invasion of our territories that represents displacement, occupation, contamination, social control and death for our communities” (2013, quoted in MiningWatch Canada 2015, 24).

And so even with the proliferation of international legal regimes, national laws and state constitutions asserting and protecting human rights and the rights of Indigenous peoples (Rombouts 2014), resource extraction projects funded and supported by governments, investors, MNCs and IFIs continue to negatively affect the enjoyment of these rights. The situation is particularly dire in Guatemala: at least 15 Indigenous land defenders were killed between January and November 2018 (Guatemala Human Rights Commission [GHRC] 2018, 1). All 15 were active members in resistance movements⁸ against national and international extractive companies (Front Line Defenders [FLD] 2018). Local populations continue to face discrimination, racism and dispossession in ‘development’ processes despite their demands for greater inclusion in the political and economic processes that have real consequences for their land and livelihoods, as well as the Guatemalan government’s corresponding legal obligation⁹ to consult with Indigenous peoples before the approval of policies and projects that will impact their territories. What’s more, dominant discourses surrounding these types of systematic rights violations in Guatemala contribute to geographical imaginings of the country as a place of corruption and impunity (Canada 2018a), often without attention to global historical and contemporary structures of

⁸ Those killed were members of the *Comité Campesino del Altiplano* / *Campesino* Committee of the Highlands (CCDA) and *Comité de Desarrollo Campesino* / Committee for Campesino Development (CODECA).

⁹ “According to the Agreement on Identity and Rights of Indigenous Peoples in Guatemala’s Peace Accords, the American Convention on Human Rights, the International Labour Organization Convention (ILO) No. 169 and the UN Declaration on the Rights of Indigenous Peoples, Guatemala is obliged to respect the collective right of indigenous peoples to free, prior and informed consent for any project that could adversely impact them, and to consult with them before passing laws or administrative initiatives that would affect their rights.” (NISGUA 2013a, ¶7).

exploitation such as colonialism and neoliberal globalization that have produced and benefitted directly from such outcomes (Power 2003).

Through the lens of Canadian mining operations in Guatemala and the specific case of Tahoe's Escobal Mine, I analyze how discourses of development¹⁰ are employed by national and international actors to erase, obscure and otherwise delegitimize accounts of violence and repression on the part of communities adversely impacted by extractive projects, as a means of maintaining Guatemala's image as a 'place to do business.' With an understanding of how law and power are spatialized (Allen 2003), shaping both repression and resistance, the goal of this thesis is to explore the meaning of human rights and Indigenous rights in a globalized economy that legitimates plunder¹¹ and enables violations of these same rights. In dissecting the governance relationships between states, MNCs, IFIs and communities, and the corresponding distribution of rights and responsibilities among these actors, I reflect on the geographies of power that both sustain and undermine a violent global political economy of resource extraction. The unwillingness and ultimate failure of both the Canadian and Guatemalan governments to protect and guarantee the human rights of those adversely affected by Canadian mining operations is reflective of the collusion of public and private interests in natural resource governance processes under a global neoliberal economic order.

The personal is political

My upbringing was extraordinarily privileged by most standards. This privilege stemmed in large part from the luck my father encountered when he was adopted at the age

¹⁰ Understood as an "interwoven set of languages and practices" (Crush 1995, xiii).

¹¹ Plunder refers to "property stolen by fraud or force" (American Heritage Dictionary, quoted in Mattei & Nader 2008, 11).

of six months from an Irish Catholic orphanage by a Canadian liberal parliamentarian, John J. Connolly, who would later serve as Leader of the Government in the Canadian Senate and Minister Without Portfolio under Lester B. Pearson. This family history is important in understanding my positionality and ultimately my motivations in pursuing this research, as it was this history that informed my understanding of the world and Canada's place in it. Growing up, my family members and teachers would tell me how lucky I was to have been born in Canada, which was upheld as the best country in the world. From universal healthcare to peacekeeping, I was told that Canada was a progressive, honest and caring nation that relentlessly worked towards greater democracy and freedom for all. Through my post-secondary education, however, I have come to understand this imagining of Canada's identity and history as romanticized or, in other and less gentle words, heavily sanitized. From colonialism to present-day policies of neoliberal capitalism, Canada has not always defended the rights of the most vulnerable; in fact, our governments – both liberal and conservative – have purposively engaged in violent practices of dispossession and exploitation, often in the name of 'development' and 'progress'. And yet, I still yearn to see Canada through my father's eyes. It is from this intimate place that I write this thesis, as a Canadian who deeply cares about the reputation of my country, both at home and abroad. While I know my life-experience is very different than those negatively impacted by processes of colonization and neoliberal globalization, as a Canadian, I want to understand how I can join with others in creating new ways of being in the world, informed by our common humanity.

My decision to pursue graduate studies at UNBC under the supervision of Dr. Catherine Nolin was informed by my desire to contribute to a transnational human rights

movement aimed at amplifying the voices of individuals and communities impacted by Canadian mining operations. Likewise, my involvement over the past ten years with advocacy organizations in the field of international human rights and health, and my specific interest in corporate and government accountability as it relates mineral extraction in the resource-rich regions of the ‘Global South,’ informs my methodological approach to research. Specifically, my research can be considered advocacy-oriented (Charmaz 2011) in that my overarching objective is to advocate for specific policy changes aimed at bringing the Canadian government and its corporations to account for their roles in environmental, social and human rights abuses abroad. In situating my research as a means of resistance, the purpose is not to affect social change by simply sharing my results after data collection (Lewis, 2012). Rather, I view the research process itself as a political act. Beyond my academic interest in this topic, this research reflects my commitment to support the resistance of communities fighting for control over their lives, resources, and futures.

Negotiating the power and privilege I yield as a researcher from the ‘Global North,’ however, entails a continual process of reflexivity (Falcon 2016). Reflexivity, the continuous self-questioning of one’s thinking, actions and behaviours throughout the research process, is a key part of my methodological approach and of ensuring the credibility of my research (Dowling 2016). I possess many unearned privileges as a Canadian graduate student. As a researcher, I play an important role in the production of knowledge about other peoples and the ways their lives are represented (Tuhiwai Smith 1999). Thus, while I may be ideologically and normatively motivated to contribute to social change, I must go beyond critiquing dominant power structures to examining my own position and role in the research process (Naples 2003). This first chapter describes the ways in which I plan to affect social

change *through* my research objectives and methodologies. Here, it is important to note that feminist and anti-colonial research is not so much about a specific methodology or method, but instead is defined by the motivations, values, concerns and priorities of the researcher (Falcon 2016; Swadener & Mutua 2008).

Research questions and objectives

“You cannot have a functioning global economy with a dysfunctional global legal system: there has to be a somewhere, somehow, that people who feel that their rights have been trampled on can attempt redress.”

Former Supreme Court Justice Ian Binnie speaking at a Canadian Bar Association and Department of Justice event in 2008 (quoted in Deonandan & Dougherty 2016, 250)

In June 2014, the Canadian Centre for International Justice (CCIJ) and the Guatemalan Centre for Legal, Environmental & Social Action (CALAS) filed a civil lawsuit against a Vancouver-based mining company, Tahoe Resources, for the shooting of seven protesters by the company’s private security personnel at the Escobal silver mine in the southeastern region of Guatemala. As one of five ongoing cases brought to Canadian courts concerning the alleged abuses of Canadian mining companies abroad,¹² the Tahoe lawsuit could have significant impacts for the regulation of Canada's extractive sector. As a form of voluntary compliance, Corporate Social Responsibility (CSR) is increasingly recognized as an inadequate substitute for state regulation (Laplante & Nolin 2011; Nolin & Stephens 2010). The judicial system in the host state of the mining operation is often characterized by a lack of due process, corruption and impunity (Amnesty International 2017). Likewise, there

¹² In addition to the civil suit against Tahoe in British Columbia (B.C.) courts, there is another against Nevsun Resources also in B.C. and three proceeding against HudBay Minerals in Ontario (see Brown 2015).

are multiple legal hurdles¹³ to holding the parent company to account in its home country,¹⁴ where control and decision-making power most often reside (Eisenbrandt 2018, September 4). The governance gap between the home and host states has compelled victims, in partnership with local and international non-governmental organizations (NGOs), to submit legal claims in the home state of the multi-national corporation in hopes of achieving access to justice and remedy for a range of violations. In the civil suit proceeding against Tahoe in Canadian courts, the plaintiffs allege that the parent company expressly or implicitly authorized the use of excessive force by its private security or was negligent in failing to prevent the use of excessive force (Garcia v. Tahoe Resources 2014, 3). If successful, this claim has the potential to establish a novel duty of care for Canadian parent corporations, whereby they can be held directly liable for their failure to respect human rights (Bryant, Romano, O’Callaghan 2015). As former Supreme Court Justice Ian Binnie wrote, “why shouldn’t legal responsibility follow the money up the corporate food chain?” (Chevron Corp. v. Yaiguaje 2014, 7).

Drawing on theories of critical legal geography and critical development studies, this thesis considers the tensions between natural resource extraction, international human rights and state and indigenous sovereignty, with attention to the use of law as a tool of both repression and resistance in the exercise of power (von Benda-Beckmann, von Benda-

¹³ These include the *forum non conveniens* doctrine and the corporate veil principle. As defined by Amnesty International (2017, 11) “*Forum non conveniens* is the discretionary power of a court to decline jurisdiction to hear a case when another court is deemed better suited to do so. In transnational litigation against corporations, this doctrine continues to be a major barrier to justice.” The corporate veil principle, also known as the “separate legal personality,” makes it difficult to hold parent companies legally accountable for harms committed by their subsidiaries (Amnesty International 2017, 2).

¹⁴ The home state can be defined as the jurisdiction within which the MNC is *incorporated*, not necessarily headquartered. In the case of Tahoe, for example, their headquarters are in Nevada, but they are incorporated under B.C. laws. A MNC can be registered with multiple security commissions so that they may participate in multiple stock markets and receive associated financial, technical and monetary benefits.

Beckmann & Griffiths 2009; Delaney 2010). In adopting a multi-scalar and multi-sited approach to theorizing natural resource governance, this study contributes to the field of legal geography by exploring the interactions between global, regional and local actors and legal institutions involved in mining conflicts in Guatemala.

As a cross-sectional, explanatory study, this project aims to provide an in-depth understanding of the current governance gap that exists with regard to Canada's extractive sector and the efforts to address it. More specifically, I examine how Canadian multi-national mining companies evade accountability for their social, environmental and human rights abuses abroad and, conversely, how communities directly impacted by mining operations resist these forms of violence in partnership with local and international NGOs. The main objective is to understand how the relationships between Tahoe Resources, its investors and the Canadian and Guatemalan governments work to reinforce a climate of impunity. The secondary objective is to analyze whether home state litigation can practically challenge this context of impunity, from the point of view of local and international NGOs working in solidarity with mining-affected communities. As such, my research is guided by two main questions:

1. What are the causes of the current governance gap with regard to Canada's extractive sector and its evasion of accountability for the social, environmental and human rights abuses committed by Canadian multi-national mining companies abroad?
2. What are the perceived benefits and limitations of home state litigation in addressing the current governance gap, from the point of view of local and international NGOs?

Given the ongoing nature of the Tahoe lawsuit, this study does not definitively assess the success or failure of home state litigation in increasing corporate accountability. Rather, this study aims to examine the various understandings of the lawsuit in terms of its benefits and limitations within the broader context of corporate impunity, and to analyze how local

and international NGOs partner to resist government, corporate and investor policies and practices. Through a close examination of the Garcia v. Tahoe lawsuit and the Escobal Mine conflict, this qualitative study explores the factors enabling Canadian mining companies to operate with impunity abroad and the transnational human rights movement seeking to enforce greater corporate accountability at the local, national and international scales.

Methodologies

“Join together with other people and amongst each other - but become activists. Work together for our common humanity. Only if we work together for our common humanity will these foreign companies stop coming in here and treating us the way they do.”

María Choc (2018, May 16), Indigenous Maya Q’eqchi’ Leader

This study falls under the broad category of phenomenology in that my objective is to understand people’s perspectives and understandings (Lewis-Beck, Bryman & Futing Liao 2004, 88) of the accountability gap that exists in the context of Canada’s extractive sector. In applying an interpretive framework of social constructivism, my research reflects the collective analysis of the parties involved in the research process. In this social-constructionist epistemological approach to research, “validity becomes the goal, rather than generalizability and replicability” (Nolin 2006, 17). My hope is that a detailed, “thick description” (Geertz 1973, 5) of the Tahoe case (Baxter 2016) illuminates the political, social, economic and legal processes that work to reinforce a climate of impunity, as played out in the contexts of Guatemala and Canada.

This project can be considered activist-oriented in that its goal is to contribute to political change, namely by advancing understandings of how we can better effect administrative, civil and criminal law reform in Canada’s extractive sector. Activist research “means committing to social change and taking an active role in that change” (Brown & Strega 2005, 255). In aligning myself with ‘marginalized’ groups in the struggle for a more

just and equitable global community, I go beyond mere cultural critique to direct engagement with the political issues I am studying (Hale 2006). I reject positivist epistemologies premised on objectivity and neutrality and instead re-imagine research as a power construct and social science as a disciplinary practice as a means of working towards social justice (Denzin & Lincoln 2008). Activist research argues for a “situated partisan knowledge” that does not seek to relay truth, but instead produces tools “you can fight with” (Russell 2015, 222). In the activist methodological framework, the supposed dichotomy between activist and academic is viewed as a product of a certain worldview and way of knowing that distances itself from both the self and others in research.

I view my research as a political act, one informed by feminist and post-colonial approaches that are critical of imperialism and unequal power relationships (Gregory 2004; Naples 2003). As an activist researcher, I approach my research with an “explicit value stance and agenda for change” (Charmaz 2011, 360). Kobayashi, Brooks, de Leeuw, Lewis, Nolin & Sutherland (2014) identify a ‘recursive relationship’ between social geography and political participation, arguing that theories inform actions, and advocacy, in turn, enriches and informs theories. This theory-action dialectic complex is something I incorporate into my own research, using my results to refine theory, in addition to contributing to social change. In line with this objective, I volunteer with the Justice & Corporate Accountability Project (JCAP) to categorize and analyze Access to Information and Privacy (ATIP) requests related to the Tahoe case, with the intention of producing a public report describing the involvement of Global Affairs Canada and the Canadian Embassy (the Embassy) in Guatemala in facilitating and supporting Tahoe’s operations, despite credible reports of human rights violations associated with the mining operation. I also produced a template letter for

Canadian citizens concerned about Tahoe's activities in Guatemala to send to their Member of Parliament as well as a zine to graphically depict my research in an accessible way (see Appendix III).

My position as a social geographer and political activist is supported by feminist scholarship that challenges conventional positivist notions of objectivity and calls for a more reflexive, positioned approach to research that is attentive to issues of power, ethics, representation and readership in the construction of knowledge (England 1994; Kobayashi et al. 2014; Madge 2016). In recognizing the 'researcher as instrument,' that is, an embodied knower complicit in the production of knowledge, I can better account for the partial and situated nature of truth (Canella & Lincoln 2009; Nast 1994). This methodological emphasis on advocacy requires that I clearly acknowledge my positionality and critically interrogate the ways in which my biases and motivations influence my research.

To position myself as a researcher in pursuit of social justice, I must also recognize that I continue to benefit from various forms of colonization (Lewis 2012), for activist research requires not only an explicit personal commitment to social justice but also "involves making explicit the political practices of creating knowledge" (Brown & Strega 2005, 55). To align myself in solidarity with others in a counter-colonial position, I must engage in critical reflexivity, recognizing my own 'imperial privilege' and its impact on the research process (Falcon 2016). As Cannella & Manuelito (2008, 50) explain, egalitarian forms of activism in research require "dialogue with self and others regarding re-conceptualization of even the techniques designed to counter colonialism."

Feminist epistemologies provide a salient framework for performing a "critical transnational feminist methodology" (Falcon 2016, 174). Beyond outward critique, feminist

research turns inward to make “visible how power operates during the research process and in the production of narrative accounts” (Naples 2003, 3). This self-reflective component in feminist research is shared with anti-colonial perspectives. Canella & Lincoln (2011, 321), for example, argue that anti-colonial research must examine “its own will to emancipate” to prevent the reinforcement of the researcher’s privilege and power.” To ‘join with’ rather than ‘know and save,’ the researcher must avoid the “perpetuation or maintenance of inquirer-oriented power (as saviour, decolonizer, or one that would empower)” (Cannella & Lincoln 2011, 82). Together, feminist and anti-colonial approaches to research lend attention to the assumptions, motivations and values underlying research practices as the first step towards decolonizing knowledge production.

In this vein, it is important that I align myself in solidarity with the struggles of the communities affected by the Escobal Mine, explicitly communicating my support for their position to build trust and rapport (Nolin 2006, Chapter 1). I decided not to perform structured interviews with political and corporate elites, in part, because I do not want to risk compromising my relationship with the community. I elected instead to converse informally with current and former diplomats at Global Affairs Canada in the hopes of franker discussions than ‘on the record’ communications.¹⁵ This prioritization of the perspectives of the community members, as well the activists and NGOs involved in the resistance against Tahoe, is justified by my anti-colonial and feminist orientation. In amplifying their voices, I recognize the legitimacy of their knowledge, of other ways of knowing and being in the world, against those hegemonic discourses which perpetuate imperialism and neo-

¹⁵ I spoke to two former and current Canadian diplomats in the hopes they could clarify the Canadian government’s position on issues of economic diplomacy and human rights. Both regurgitated what can be read on government websites and so I reference this published material in this thesis.

colonialism (Howitt & Stevens, 2016). As Kobayashi (1994, 78) writes, “I do not use other people’s struggles as the basis of my research; I use my research as a basis for struggles of which I am a part.” Denzin & Lincoln (2008, 49) support this approach to research, stating that “the notion of anti-colonialism then requires an orientation that is radically activist and does not support a false separation between academic researcher and transformative actions in the contemporary world.”

However, due to the power differentials inherent to the research process, anti-colonial scholars such as Cannella & Manuelito (2008), Denzin & Lincoln (2008) and Tuhiwai Smith (1999) have questioned the appropriateness of collecting data from ‘others.’ Recognizing that the discourse of empowerment in critical theory has perpetuated neocolonial sentiments by essentializing and speaking on behalf of the Other, these theorists argue that anti-colonial research should focus on Western systems of knowledge, rather than marginalized peoples, as the object of inquiry. In keeping with the characteristics of anti-colonial research, my project mainly focuses on analyzing the political discourses and policy practices of the dominant group, rather than trying to “know, define or represent the ‘other’” (Cannella & Manuelito 2008, 56). By focusing on structures of power and contemporary systems of domination, I open up “decolonizing spaces” and contribute to a “new politics of possibility,” towards “equitable and socially just futures” (Cannella & Lincoln 2011, 82). Likewise, as Howitt & Stevens (2016, 60) argue, it is the “capacity to explain how the institutions, values and practices of non-Aboriginal society work that is the greatest values for Aboriginal people – not their expertise in cross-cultural matters.” I hope that by analyzing the institutions and actors involved in producing and sustaining violence, my research can provide more benefit for Canadians and Guatemalans alike who are implicated in, and adversely affected by,

processes of ‘development.’ Anti-colonial research is “enmeshed with activism” as it demands a “continuing interrogation of not only the process of research but also its outcomes/outputs” (Swadener & Mutua 2008, 33). As a privileged Western researcher who benefits from colonial and neo-colonial processes that directly impact Indigenous peoples, my goal is to engage in research as an ‘allied other’ and a ‘friendly insider’ who wishes “to deconstruct from within the Western academy and its positivist epistemologies” (Denzin & Lincoln 2008, 6).

Anti-colonial research still requires attention to local struggles and to the specific spatial-temporal experiences of colonization. For this reason, Denzin & Lincoln (2008) argue for the grounding of critical theory in specific and local Indigenous contexts. As Tuhiwai Smith (1999, 229) writes, we cannot treat critique and resistance “as if they have universal characteristics that are independent of history, context and agency.” Similarly, a feminist approach demands attention to the ways in which power imbalances affect peoples in real and material ways (Kobayashi et al. 2014). The UNBC Geography & Rights Action field school to Guatemala was important to documenting the on-the-ground realities of development related to Canadian mining operations on Indigenous and *campesino* lands. Thus, while my focus is on North-South relations, an anti-colonial approach requires attention to the local context to guard against universalizing and/or essentializing discourses. Likewise, by traveling to Guatemala and listening to the people affected by the Escobal Mine, I am better able to analyze the webs of power that connect communities to transnational actors (Braverman 2014).

Overview

This thesis focuses on certain inter-related themes, including global impunity and the complicity of international actors in human rights and Indigenous rights violations in Guatemala; the role of Guatemalan national elites in implementing an imposed neoliberal economic development model, both in the past and present; and the resistance of Indigenous and *campesino* communities in response to this violent model that denies them their rights and denigrates the environment. In surveying these inter-connected issues, at various scales and at various times, this thesis contemplates on how we can build global alliances between North and South based on an awareness of our common humanity and a desire for a more just and equitable world (Russell 2018, May 6).

In Chapter 2, I outline my theoretical (critical legal geography) and conceptual (critical discourse analysis) frameworks and explain how they are best suited to respond to my research questions and objectives, namely to expose the power dynamics involved in processes of natural resource governance at varying scales. I follow this explanation of my theoretical and conceptual positioning with a comprehensive literature review, drawing from authors in critical development studies and legal geography, as well as from theories of territoriality and state sovereignty. The objective of this section is to highlight how the law and violence are used in the exercise of power and in service of a hegemonic development model that violates individual and collective rights by displacing and dispossessing communities from their land, water and livelihoods.

In response to the calls of Indigenous and *campesino* communities negatively impacted by resource extraction projects in Guatemala, I begin Chapter 3 (study context) by analyzing the broader ideological (political, economic and legal) structures existing within Canada that enable its mining companies to operate with impunity abroad. I position Canada

as an imperial power that employs state institutions in support of extractive capital, as a means of advancing the country's economic and geopolitical interests (Harvey 2006). I then survey Guatemala's particular history of development that enables Canadian mining companies to exploit the country's status quo of corruption and impunity in the present day and follow this with a short background on Tahoe Resources and the Escobal mine.

This understanding of mining conflicts in Guatemala as both a local and global problem was garnered through the experience of doing fieldwork. In the methods section (Chapter 4), I reflect on 'being in the field' and how this experience contributed to my own processes of 'unlearning,' with attention to ethical imperatives and requirements. I describe the importance of *testimonio* as an empowering method by which individuals and communities can share stories of oppression as well as hope (Nolin Hanlon & Shankar 2000, 265). In bringing the voice of communities into my project, I amplify their demands for a more just and equitable development model. I explain how I use the data collected through textual analysis and semi-structured interviews to support the views and claims of community members 'on the ground' and to highlight the transnational political, economic and legal connections between Guatemala and Canada. I conclude this section explaining my data coding and analysis techniques, with attention to issues of rigour and credibility.

Through a close examination of the ongoing conflict surrounding Tahoe Resources' Escobal Mine project, the analysis section (Chapter 5) details how the structural violence associated with the global political economy of resource extraction facilitates and legitimates direct violence at the national and local level in Guatemala (Tyner 2012b). Here, structural violence is understood to represent a repressive system that maintains unequal power relations by protecting the interests of political and economic elites (Kalman 2010). I reflect

on the ‘geography of neoliberalism’ produced by the interaction between global and national discourses on the one hand, and local cultures and environments on the other (Nolin & Stephens 2010).

In reviewing the causes of the current governance gap and evaluating potential remedies (Chapter 6), I draw on the work of critical geographers concerned with human rights discourses and related invocations and denials of responsibility (Laliberté 2015, Connolly Carmalt 2007) to analyze whether international human rights standards can alter unequal power relations. I place these attempts at strengthening so-called ‘global governance’ to ensure that extractive companies comply with human rights standards within the broader context of neoliberalism and the power of MNCs over local populations and their desires. I enrich this analysis with the work of legal geographers (Blomley & Bakan 1992; Sibley 2001) who examine the public/private divide in national and international law and the consequences this abstraction has for the promotion and protection of human rights. The goal in this section is to understand the various legal and quasi-legal efforts to regulate commercial behaviour and thus challenge the context of impunity within which Canadian mining companies currently operate (Vogel 2010).

When assessing the benefits and limitations of home state litigation as a means of holding Canadian multi-national mining corporations to account for their abuses abroad, I look at how the home state’s legal framework may constrain and limit accountability, with attention to issues such as sovereignty and the *forum non conveniens* doctrine as well as parent company liability and duty of care (Extra-territorial Obligations [ETO] 2017, Imai et al. 2007, Seck 2012). I highlight the barriers to legal justice at the national and international levels in a context of state-corporate political, economic and legal collusion and provide a

preliminary analysis of the potential implications of the Tahoe lawsuit for the regulation of human rights for the home state (Canada) and for those individuals and communities negatively impacted by Canadian mining operations internationally. I conclude by reflecting on the contributions of my thesis in both an academic and activist sense, highlighting its theoretical advances as well as its practical applications to ongoing policy discussions surrounding Canada's extractive sector.

CHAPTER 2: CONCEPTUAL FRAMEWORK AND LITERATURE REVIEW

Critical legal geography

Legal geography is an interdisciplinary project that examines the conjoined nature of law and space (Braverman, Blomley, Delaney & Kedar, 2014). Braverman et al. (2014, 1) describe law as “always ‘worlded’” and “social spaces, lived places, and landscapes [as] inscribed with legal significance.” In other words, legal practices and their meanings are actively constituted in space and place, making the law dynamic: open to interpretation, contestation and transformation. *Critical* legal geography exposes how power and responsibility are exercised through legal institutions. I draw on Allen (2003, 2) to dissect the particularities of power, for “power is never power in general, but always power of a particular kind,” including “acts as domination, authority, seduction, manipulation, coercion and the like [which] possess their own relational particularities.” Critical legal geography examines the co-dependence of law and resistance, as people resist unjust forms of law in local, national and transnational settings.

Following Finchett-Maddock (2014, 3), I focus on critiques of property and capital and the relationship of these doctrines to processes of discrimination, exclusion and violence. Finchett-Maddock (2014, 4) draws on Agamben (1998) in situating unjust law as a “biopolitical imposition” on “community,” defined as “the vernacular flipside of the force of law.” Communities resisting extractivism in their local, national and transnational settings are seeking just forms of law. In Guatemala, Indigenous and *campesino* communities express a desire for a rule of law based on self-determination, self-governance, pluralism, environmental sustainability and respect for natural law (Field notes 2018). In addition to

law, I consider the impact of regulations and policies in state-directed resource governance frameworks on socio-spatial relations at various scales (Jessop 2015).

I have chosen critical legal geography as a conceptual framework because I want to expose power dynamics. I believe it is my responsibility as a Canadian to understand and uncover those policies and practices of my government which produce various forms of injustice in Guatemala to the benefit of Canadians. My goal is to analyze the spatial production of social injustice; that is, to make visible the systems and institutions which perpetuate unequal relations between the ‘Global North’ and the ‘Global South.’ I focus on corporate, government and NGO reports to uncover how elite networks function and undertake an institutional study of the legal process itself concerning the Tahoe case using relevant court documents. The choices, interests and influence of the relevant state and non-state actors are revealed through an analysis of the complex political, economic and legal relationships at play in the Escobal Mine conflict. Using the geographical concepts of spatiality, scale, power, discourse and representation, I analyze the ways in which the Canadian and Guatemalan states, MNCs and their investors produce forms of domination, exclusion and erasure to reinforce processes of imperialism through specific power structures and relations (Gordon & Webber 2016). Conversely, I describe resistance to these processes of marginalization to highlight the dynamics of natural resource governance at the local, national and transnational scales (Kobayashi et al. 2014).

Critical discourse analysis

I employ Foucauldian discourse analysis to examine how legal, corporate and government documents legitimate neoliberal development practices and projects, thereby maintaining uneven power relations between states and corporations, on the one hand, and

local communities on the other. These texts and the language they employ can provide insights into how the spaces of development under interrogation (i.e. the Escobal Mine) are understood, constructed and altered by various institutional actors. As Naples (2003, 7) argues, postmodern analyses of power and language provide a salient framework to examine issues of capitalism and neo-colonialism in different geographical contexts. I use feminist and anti-colonialist methodologies to deconstruct dominant forms of knowledge and institutional practices that produce discursive and material forms of oppression, resulting in the marginalization and silencing of non-Western epistemologies and the ‘othering’ of non-Western subjects (Swadener & Mutua 2008, 34). These critical approaches challenge the “underlying assumptions that serve to conceal the power relations that exist within society and the ways in which dominant groups construct concepts of ‘common sense’ and ‘facts’ to provide *ad hoc* justification for the maintenance of inequalities and continued oppression of peoples” (Tuhiwai Smith 1999, 185-6).

I challenge dominant discourses surrounding natural resource extraction and development in Guatemala and Canada by examining the policies and practices of relevant political, financial, economic and legal actors in these two countries. As Foucault writes, “discourse transmits and produces power; it reinforces it, but also undermines and exposes it, renders it fragile and makes it possible to thwart it” (quoted in Naples 2003, 29). By focusing on the technologies of colonization, including language and Western ways of knowing and representing, I also avoid re-inscribing my privilege as a researcher from the Global North (Swadener & Mutua 2008). I draw on documents made available via ATIP requests, as well

as insights from transnational activists¹⁶ to analyze transnational political and legal institutions and the relationships that underpin and sustain spaces of violence and injustice. I utilize the discursive frames used by these social movements to understand how these networks use human rights and social justice claims to challenge state and corporate power.

Literature Review

Drawing on theories of legal geography and critical development studies, this review explores the complex relationships between law, space and power within the broader context of ‘development’ and its various meanings. At the centre of the dispute between mining-affected communities and state and corporate actors are conflicting ideas over ‘development’ and what this concept entails in practice (GHRC 2014). While the latter group seeks to enforce a neoliberal vision of development, premised on foreign direct investment, the sanctity of private property, profit, and the primacy of the free market, the former advocates for alternative ways of being in the world, outside of hegemonic development paradigms that promote the commodification of nature and social life. The goal of this review, then, is to deconstruct how law and policy – just and unjust – is used to enact and deny particular visions of development in the global economy. It dissects the precise mechanisms by which power is exercised and relations of domination are established in place, between the state and the corporation on the one hand, and local communities and NGOs on the other, within the context of development theory and practice.

The first section of this review contextualizes development within the scholarly literature. The subsequent section analyzes the nexus between law, violence and development

¹⁶ I define transnational activists as those local and national NGOs in Guatemala who have partnered with Canadian NGOs to monitor corporate practices and advocate for various policy reforms aimed at holding government and business to account for upholding human rights standards.

in the exercise of power, highlighting the multiple and contested sovereignties involved in natural resource governance at the local, national and international scales. The final portion of the review examines how political and legal institutions, and relations and practices within and between the ‘Global North’ and ‘Global South’ work to create, reproduce and sustain spaces of capitalist development. The ways in which spaces are invested with power in the global political economy of resource extraction are complex and varied, making a multi-actor and multi-scalar analysis necessary to understanding both the intentions and outcomes of development processes.

Defining and re-defining development

Lawson (2007) describes development as situated knowledge that links language, power and material life. Embedded in post-Second World War Anglo-American thought,¹⁷ mainstream approaches to development are characterized by a neo-colonial approach wherein Western worldviews and interventions are imposed upon less powerful states as means of control and domination (Cowen & Shenton 1995; Power 2003). This ‘power over’ enables the West to pursue its geopolitical interests, sometimes through intermediaries such as MNCs, international organizations, local governments or even NGOs (Esteva & Prakash 2014). In this context, discourses surrounding foreign investment, private property, profit and the primacy of the free market are instrumental to the advancement of corporate and political interests at the expense of local populations and their needs and desires. According to Crush (1995, 3), it is their “stylized and repetitive form, their spatial imaginary and symbolism, their use and abuse of history, their modes of establishing expertise and authority and

¹⁷ While Eastern countries such as China, Japan, Russia as well as Islamic countries promote their own forms of capitalist development, the ideological institutions discussed here refer explicitly to the Bretton Woods Institutions (IMF, World Bank, World Trade Organization [WTO]) and the Washington Consensus.

silencing alternative voices” which reveal the ideologically and historically specific nature of these discourses.

In the context of global capitalist development, the extractivist model focuses on the over-exploitation of natural resources in the ‘Global South’ which are then exported as primary commodities with little added value processing to clients in the ‘Global North’ to be later transformed into consumer goods (see Tahoe’s chain of production in Appendix I, Figure 2). This model is enabled by similar political and legal frameworks throughout the world, which emphasize the privatization of land and resources, end to restrictions on foreign ownership, weak environmental and labor laws, access to capital, lower rates of taxation and royalties and profit-maximization (Mattei & Nader 2008). These ideological policies have been promoted by the World Bank and the governments of powerful countries under the Washington Consensus, leading to mining code reforms in some 100 countries between the 1980s and early 2000s (MiningWatch Canada 2015, 20). Bilateral and multilateral free trade and investment protection agreements are also key to this dominant development model, as they reduce tariffs, protect intellectual property rights and regulate investment, even allowing companies to sue governments for compensation if regulatory actions are taken that negatively affect the former’s income (known as expropriation) (Simons & Macklin 2014). These policies of privatization, deregulation, corporatization and free markets help to ‘open the veins’ of the Global South to foreign investment, including for the purposes of mineral extraction (Galeano 1974).

As argued by Mattei & Nader (2008, 35), neoliberalism is the ‘economic engine of plunder’: a hegemonic ‘development’ framework legalized by an imperial ‘rule of law.’ Here, rule of law “refers to institutions that secure property rights against governmental

taking and that guarantee contractual obligations” (Mattei & Nader 2008, 14). While neoliberalism can be traced back to the 1980s, its roots lie in European colonialism and the fundamental structures of Western law which legitimize extractivist ideologies on a global scale. In this framework, poverty is used as a justification for legal and political interventions on the part of more powerful countries (Ayers 2008; Mattei & Nader 2008; Power 2003; Richmond 2007). ‘Poor’ countries are blamed as being incapable of producing the political and legal conditions necessary for ‘development’ (understood here as the global spread of the market economy), a discursive strategy which “depresses the locals, reinforces racist attitudes in public opinion (broadly intended) of the hegemonic powers, and eventually weakens resistance to plunder” (Mattei & Nader 2008, 133). Poverty, even when produced by ‘neo-colonial interventions’ in the first place, then legitimizes ‘secondary’ interventions (Mattei & Nader 2008, 133), for example, reforms to mining laws intended to enhance economic growth and improve global competitiveness. These ‘modernizing’ interventions, however, only institutionalize plunder, in turn deepening poverty and reproducing North-South inequities. For this reason, Mattei & Nader (2008, 2) characterize development as “legal imperialism,” whereby neo-colonial relationships are expanded through the legal and institutional transformations central to economic globalization. The remainder of this section elaborates on how extractivism in its neoliberal varieties silences other visions of development, often creating conflicts between the state and corporation on the one hand, and local communities on the other.

Despite the representation of ‘development’ as the solution to local and national problems in dominant discourses, the active resistance of Indigenous and *campesino* communities to processes of neoliberal development more broadly and natural resource

extraction in particular reveal their violent and contested nature. While the ideology of the ‘national interest’ is often used to characterize resistance to mining as “denying society what it needs for economic growth, jobs and social programs” (MiningWatch Canada 2015, 16), this discourse obscures and erases the negative social and environmental effects of resource extraction on people’s land, water, health, livelihoods and self-determination. In this vein, post-development approaches advocated by the likes of Escobar (1995), Esteva & Prakash (2014) and Sidaway (2008) critique the very idea of ‘development’ itself, arguing that development often entails the loss of Indigenous culture and of environmentally and socially sustainable ways of life. Rather, hegemonic development discourses and practices actively impoverish, exploit and repress local populations.

Critiques of market-based approaches to development are key to understanding the conflict between communities and state and corporate actors, as communities witness the degradation of their land, the depletion and pollution of their water resources, and increased social conflict with the violent penetration of neoliberal capitalism. These actors have very different ideas of ‘progress’ and how to achieve it (Wright 2004). While modernization, or the ‘culture of progress,’ presents capitalism and commodification as creation, the destruction of land and livelihoods at the local level reveals its true violent and dehumanizing nature (Esteva & Prakash 2014). By privatizing the land and natural resources through laws and regulations, state and corporate actors destroy the autonomy and sovereignty of local communities by denying them the right to dictate their own development, prioritizing the market and private profit instead.

Neoliberal development thought and practice represents a form of both ideological and economic violence that destroys community life (Esteva & Prakash 2014). The

mainstream development ideologies imposed by powerful actors at both the international and national level can be considered a form of structural violence (Farmer 2004) in that they limit the field of possibilities and restrict the space for imagining alternatives to development. As the structure that legitimates and facilitates the economic and social domination of communities, neoliberal capitalism gives the state and corporation permission to control, manage and discipline ‘redundant’ or ‘surplus’ populations – who must either be punished into submission or removed to allow for capitalist development (Foucault 1982). This democratic deficit, wherein the state and corporations possess the ability to mobilize the law to dispossess people from their lives and livelihoods, highlights the “state of exception” within which rural Guatemalan communities live, as the government exerts control of the bare life of its citizens (Agamben 1998, 12). Beyond a lack of equal participation in political life, the idea of bare life conceptualized by Agamben (1998) refers to the totalizing control of political authority over biological life, which denies the right of citizens to define and pursue their own ways of living, in all their potentialities.

Critical development scholars such as Lawson (2007), Harvey (2006) and Esteva & Prakash (2014) believe that it is those social movements against neoliberalism capitalism and, more broadly, a violent and imperial nation-state system which offer us alternative ways of being in the world, outside of hegemonic development paradigms that promote the commodification of nature and social life. In resisting the domination of the state and the corporation and refusing the blueprints of modernization, communities are reclaiming their lives, land, places and culture (Esteva & Prakash 2014). They are challenging those laws that create and expand corporate rule, including the ideology and practices of free trade and

property rights, which allow the state to police and regulate its citizens on behalf of the corporation.

Enacting power: the nexus of law, violence and development in resource extraction

“The only true political action... is that which serves the nexus between violence and law.”

Giorgio Agamben (2005), quoted in Mattei & Nader (2008, 1)

This section details the role of unjust law in a violent political economy of resource extraction and in the broader expansion of global corporate-capitalist relations, highlighting the law’s imperial and oppressive uses. As Mattei & Nader (2008, 1) write, law is a “mechanism for constructing and legitimizing plunder.” Following Lefebvre (1991), I argue that all politics can be characterized as an effort to control, reproduce, and/or remake space. The law plays a crucial role in both legitimating and dismantling dominant representations of space. As von Benda-Beckmann et al. (2009, 4) write, law is “used in a variety of ways by different social actors to create frameworks for the exercise of power and control over people and resources on varying scales.” I situate the transnational propagation of the ‘rule of law’ as central to practices of extraction and exploitation (Mattei & Nader 2008, 2), a process which is led by states, elites, and MNCs at the expense of local populations and their land and livelihoods. As Mattei & Nader (2008, 3) elaborate, the rule of law “justifies looting to the paradoxical point of being itself illegal.”¹⁸

As a tool used by actors to advance their own visions of development at the expense of others, the law has important consequences for the production and regulation of space. Legal geographers such as Blomley (1994), Delaney (2010) and Sibley (2001) describe the ways in

¹⁸Illegal is when the law “is applied criminally, arbitrarily, and capriciously, victimizing weaker subjects” or “when those in power purposefully and systematically do not enforce the law or enforce it based on double standards or discriminatorily” (Mattei & Nader 2008, 4).

which social, economic and political relationships are produced and regulated by law, with attention to law's impacts on the organization of space and place. As a form of exercising power, "law is a crucial way of constructing, organizing and legitimating spaces, places and boundaries" (von Benda-Beckmann et al. 2009, 3). Here, Allen (2003, 187) describes the contradictory nature of social space as embodying our competing ideologies of social and economic life, with conflicts over the inscribed meaning of space giving rise to the "tangled arrangements of power." Power, as Allen (2016, 2) writes, is "reproduced differently." In other words, multiple avenues exist by which political authority can be exercised, by various actors at varying scales. In this framework, the law is used as a tool by actors to materialize their respective representations of space, highlighting "how law contributes to the social organization of power" (Sibley 2001, 271). Thus, law can be used as both a tool of repression and resistance in the exercise of power, in turn configuring and re-configuring the spaces and places of 'development.'

In the context of resource conflicts, law is a crucial mechanism of control and domination employed by state and corporate actors in the protection of capitalist spaces of extraction, but it is a double-edge sword: communities can leverage the law to contest dominant representations of space and place. To understand the multiple and contested sovereignties involved in natural resource governance at the local, national and international scales, one must understand how the law is used to construct specific spaces of political and economic authority both within and outside the state. Theorists concerned with the social production of space (Harvey 2006; Lefebvre 1991) can help us understand capitalist processes at the local, national and international level. Imperialism, for example, is a certain form of the production of space wherein powerful countries and corporations expand

capitalist market relations beyond their geographical borders through investments in social and physical infrastructure, including trade regulations and property rights (Lefebvre 1991; 2009). In this context, law facilitates capital investments and creates the market economies needed for modernization (Sibley 2001). For example, the U.S.- Dominican Republic and Central America Free Trade Agreement (CAFTA-DR) allows investors to sue countries for non-compliance in the event the latter enact regulations that adversely affect the formers' income, even if said regulations are in the interest of local populations (Aguilar-Støen 2015, 133). Such agreements represent a “mechanism through which market discipline is advanced and the power of investors in the dominant capitalist countries is consolidated” (North, Clark & Patroni 2006 quoted in MiningWatch Canada 2015, 21). As Delaney (2001, 252) argues, legal phenomena are deeply implicated in the “material transformations and transactions identified with the process of globalization.” At the national level, on the other hand, the capitalist nation-state abides by the morality of the market economy, seeing public regulation of private companies as unfavourable to its own financial interests. The state ensures the security of property and contracts but does not promote environmental protection or human rights.

Market imperatives create a division between public and private law, and between politics and economics in the broader context of neoliberalism and globalization (Sibley 2001). While the governance gap is usually described as “the gap between where law extends compared to where business activity goes” (Institute for Human Rights & Business 2017), Sibley (2001, 262) explains how the accountability gap exists both within and between states: “the private law regime of property and contracts, at both the national and international levels, is an apolitical realm, merely supportive of private initiative and decisions, immune

from public or political contestations and without redistributive consequences.” Uneven geographical development can be explained by the legal rules that facilitate the global economy and retrench the divide between nation-states and within countries themselves (Harvey 2006; Lawson 2007). For this reason, Sibley (2001) argues that globalization, defined as the spread of free market capitalism and liberal legalism, to be a “form of postmodern colonialism” in that Western countries can shape the economic and social realities of other nations through legal devices that regulate market exchange.

These imperial processes are often facilitated with the active support and participation of nation-level elites who benefit politically, economically and financially from their alliances with powerful countries (Fanon 1961). As Lefebvre (2009) explains, the state, as the sovereign legal authority, plays a central role in perpetuating relations of commodification and capital accumulation by making a variety of investments and interventions in the built environment to facilitate industrial production. As stated in Guatemala’s own Constitution, “it is declared of public usefulness and necessity that there be technical and rational exploitation of hydrocarbons, minerals and other non-renewable resources. The state will establish and facilitate conditions for their expropriation, exploitation and marketing” (A201501699, 62).¹⁹

Such capitalist modes of production, however, often create conflicts over territory, as the state asserts sovereign ownership of lands and to subsurface minerals, despite Indigenous peoples and local communities’ historical occupation and use of said land. These conflicts, in turn, problematize the legitimacy of relevant laws, including the Western doctrine of

¹⁹ Since 1927, Guatemala’s Constitution has provided the state with sovereign rights to all sub-surface minerals. Up until 1945, only the state or Guatemalan companies could engage in exploitation. Guatemala has since abandoned a nationalist developmental ideology, instead favouring the promotion of national and foreign capital investments. Congress also no longer plays a role in approving mineral exploitation (Aguilar-Støen 2015, 135).

discovery (Mattei & Nader 2008). While the state decides when and how to grant concessions and licenses to individuals and corporations, and “under what conditions or restrictions” (MiningWatch Canada, 2015, 16), these policies and practices often violate the individual and collective rights of local communities and Indigenous peoples. I argue that by protecting capitalist spaces through law (e.g. through notions of private property), the state legitimates corporate control of community land, resources and livelihoods. For the reasons enumerated above, the power of MNCs must also be understood as intimately tied up with that of the state, as the two collude to deepen capitalist modes of production, often at the expense of human rights.

In this context, both violence and law can be understood as socio-spatial practices of control and domination. Numerous scholars interested in the political economy of resource extraction have explored the links between neoliberalism, violence and human rights violations (see Le Billon 2005; Springer & Le Billon 2016, Tyner 2016; Watts 2005). Following Springer (2011; 2015), I place these links within the broader context of law and its impact on the control, organization, reproduction and remaking of space (Lefebvre 2009). Development, as a political project, requires a geographical imagination in that actors must construct certain spaces as in ‘need of development’, and, accordingly, define what activities can and cannot occur in these spaces – sometimes using law and/or physical force to achieve their visions. “Political violence is inseparable from the law’s own violence,” write Gregory & Pred (2017, 4), as it is through states of exception (i.e. where laws are suspended and rights denied to certain groups) that people are reduced to what Agamben (1998) calls bare life. The state of exception represents a form of biopower wherein the sovereign suspends constitutional rights during times of emergency or crisis in service of political ends

(Agamben 1998; Foucault 1982). This reduction of the population to bare life ultimately enables the state to transform land and labor towards the desired system of market capitalism.

As Kearns (2006, 13) asserts, “colonialism was always a violent rearrangement of property and persons.” Agamben (1998) and Foucault (1982) believe it is this right to exclude and deny life that is the basis of modern state sovereignty, with violence often used to gain control of territory for capitalist development. Political violence “compresses the sometimes forbiddingly abstract spaces of geopolitics and geo-economics into the intimacies of everyday life and the innermost recesses of the human body” (Gregory & Pred 2017, 6). The re-organization of space by capitalist accumulation highlights how law, violence, and processes of development are constituted in place. This relationship between power and the production of space (at various scales) is critical to understanding how violence is deployed and legitimized in the re-making of the social and physical world.

In short, our ideological representations of space and place are materialized through various spatial practices, including violence and law (Tyner 2012b). Protests, for example, become defined as ‘illegal’ or as unlawful assemblies to legitimize the forced removal of people standing in the way of capitalist development. Likewise, the criminalization and use of violence against land-and environment-defenders represents an attempt to discipline those individuals and groups who represent a challenge to the neoliberal status quo, thereby restricting the space for political debate (Johnson 2018; Nolin 2018). Such criminalization entails the use of “civil, criminal, or administrative law to undermine criticism, difference, or protest, that challenge projects and policies regarding the natural commons and ultimately question an economic development model premised on industrial natural resource extraction” (MiningWatch Canada 2015, 7). The criminalization of dissent, as the “systematic

manipulation of concepts of law and order” (MiningWatch Canada 2015, 12), then legitimizes “specific modes of production and social regimes” that are “spatialized in a unique way” (Aguilar-Støen 2015, 134). Here, the social and the material interact to produce exclusionary spaces, with spatial practices putting people in their ‘proper’ place (Allen 2003).

While there are important ideological, socioeconomic and political forces at play in valorizing spaces of ‘development’ internationally, the flows of globalization are not unidirectionally. These homogenizing flows interact with specific territorial ‘spatio-temporal fixes’ (Jessop 2015, 8), generating diverse responses ‘on the ground’ and changing the social, economic and political relationships between actors at the local, national and international scales. As Harvey (2006, 60) writes, “capitalist activity is always grounded somewhere.” People can disrupt and subvert these dominant representations of space through representational spaces or spaces of resistance (Allen 2003, 161). Here, Allen’s (2003) spatial understanding of power as relational applies: the state and corporation’s ‘power over’ clashes with the communities’ and NGOs’ ‘power-to,’ reconfiguring identities and places in the process. While the former group seeks to produce an extractive space, the latter seeks to defend place (Aguilar-Støen 2015).

For example, Indigenous communities adversely affected by resource extraction projects can leverage the ILO Convention 169, which codifies their right to Free, Prior and Informed Consent (FPIC). In fact, ILO 169 has been ratified in the constitutions of numerous nation-states, including Guatemala (Rombouts 2014). Thus, while law is a means of governance and control on the part of states, communities are also able to mobilize law to regain control over space. In the context of mining conflicts, it is the tension between the

“current model of mineral extraction promoted by the central government and local claims for environmental and social justice” which reflect “conflicts between the commodification of *spaces* versus local aspirations for the development of *places*” (Aguilar-Støen 2015, 140). In this landscape of struggle, the law is employed by different actors for different ends, often resulting in contradictory effects but always impacting the power relations between them. Power is inherently relational and spatial (Allen 2003). As Tyner (2012b, 15) writes, the production of space “through social relations and material practices” is imbued with power.

Development as imperialism

This section elaborates on the concept of ‘development as imperialism’ by introducing the specific role played by Canada in global processes of capitalist development and natural resource extraction, with specific attention to the issue of impunity. Understood as the political domination of the Other, imperialism is a relationship wherein the colonizer attempts to control subjugated peoples and their territories to make them safe for economic extraction (Fanon 1961). Drawing on Allen’s (2003, 87) conceptualization of de-territorialized power, imperial sovereignty is understood as a logic or apparatus of rule that “manifests itself in an immanent fashion” and entails the extension of neoliberal capitalism to all elements of social life through the institutions of the world market and through a series of national and supranational organizations (e.g. MNCs, IFIs, and so forth). In the context of Canadian mining in Guatemala, for instance, there are specific networked relationships of power “diffusing moral, normative and institutional ‘imperatives’” that enable government and their auxiliaries to “reach so far into the lives and subjectivities of individuals” in far away places (Allen 2003, 87).

Following Duffield (2003) and in line with a post-colonial approach (McEwan 2008), I argue that the development enterprise – rather than reducing the economic gap between the ‘developed’ and ‘developing’ world – represents a liberal technology of security designed to contain the circulatory effects of economic globalization. As Duffield (2003) explains, the idea and practice of ‘development’ is a way for Western countries to keep the lid on growing insecurity without addressing the core reasons of dissent, insulating the ‘developed world’ from the negative effects of poverty, war and crime, while preserving the essential elements of neoliberal globalization. In addition to the multiple power relations within Guatemala, the socio-spatial relations between Guatemala and Canada are key to understanding the local, national and international dynamics of capital accumulation and the associated unevenness of development.

While resource extraction has long played a role in processes of colonization and capitalist development globally, Veltmeyer (2013) traces the history of Canada’s ‘extractive imperialism’ in Latin America to the early 1990s, after neoliberal policies of trade liberalization, deregulation and privatization opened the continent up to greater foreign direct investment (FDI). Since that time, Canada has come to dominate the global mining industry, with Canada home to approximately half of the world’s publicly listed mining and exploration firms (Natural Resources Canada [NRCan] 2018, ¶1). Latin America alone accounts for 54% of Canadian mining assets abroad, with a total value of \$88 billion in 2016 (NRCan 2018, ¶6). This reality, Gordon and Webber (2008, 64) argue, positions Canada as a “core capitalist power with imperial ambitions in the developing world,” with the imperial state contributing to processes of “accumulation by dispossession” (Harvey 2016, 245) elsewhere to facilitate its own capitalist development. In this framework, “the structures of

law and governance guaranteed by a ‘facilitative state’” are key to understanding the dynamics of global capitalism (Harvey 2004, 73).

In many ways, Canada’s domestic and foreign policies concerning the extractive sector negatively affect the enjoyment of human rights in Guatemala by perpetuating a climate of impunity. Canada supports its multi-national mining companies and promotes FDI more broadly in Guatemala through trade agreements, special tax treatment and export credits, among many other interventions (Gordon & Webber 2016). Under Canada’s economic diplomacy program introduced under the government of Stephen Harper and continued under Prime Minister Justin Trudeau, Global Affairs, Canadian Embassies and the Trade Commissioner Service (TCS) are mandated to promote, support and protect Canadian corporations in their business operations abroad (Canada 2013). The imperial power’s support for the continued penetration of capitalism in the neo-colonial state is key to the dynamics of accumulation and the corresponding exploitation of local populations (Harvey 2006). Despite widespread resistance to mining (Amnesty International 2014; Imai, Gardner & Weinberger 2016; Permanent Peoples Tribunal [PPT] 2014), the Canadian government defends the extractive industry as a whole, and supports individual companies in protecting their interests, citing the economic benefits of resource development for local populations (Canada 2018b). At several Canadian-owned mines, companies have neglected the human rights due diligence and disclosure standards defined in international public law, with many failing to obtain the free, prior and informed consent of communities (Amnesty International 2017).

And while the rise in global capitalism has been accompanied by increasing pressures for MNCs to conform to basic human rights principles, the CSR guidelines supported by

corporations, governments and NGOs alike are voluntary and non-binding in nature. Thus, while the Canadian government goes to great lengths to advertise that its companies abide by a series of standards (as outlined in ‘*Canada’s Enhanced Corporate Social Responsibility Strategy to Strengthen Canada’s Extractive Sector Abroad*,’ introduced in 2014; Canada 2018b), these standards are in no way enforced. Canada also actively discourages Guatemala from adopting environmental and human rights regulations through its international investment agreements (PPT 2014). In this context, scholars and activists alike argue that the universality of human rights can only be guaranteed through the home state’s recognition of its extraterritorial obligations to guarantee these rights beyond the domestic sphere (ETO 2017). In the analysis section of this thesis, I assess whether states and companies can be held to account through international human rights treaties, which currently fall under the category of soft law (i.e. non-binding).²⁰ While the civil lawsuit against Tahoe is being pursued under Canadian law, an understanding of international human rights law is key to analyzing issues of accountability and access to remedy.

Corporate power: decentralization and de-territorialization

Also central to analyzing issues of accountability and access to remedy is an understanding of the contemporary expansion of the multi-national corporation and the legal doctrines designed to shield it from accountability in the modern global economy. As eloquently explained by MiningWatch Canada (2015, 20), “corporate globalization is the backdrop to the process that has propelled extractivism principally based on the territorial expansion of transnational corporations whose decisions and growth respond to the logic of financial capital

²⁰ Such voluntary regimes include CSR principles like the *UN Guiding Principles on Business & Human Rights* (UNHCHR 2011), the *Voluntary Principles on Security & Human Rights* (2000) and the *UN Declaration on the Rights of Indigenous Peoples* (UN 2007).

that has, over the years, managed to install the conditions for political actors to implement policies in their favour.” Despite the ever-evolving, ever-expanding nature of the multi-national corporation, the law remains relatively static, unable to respond to evolutions in global business practices.

One legal principle in particular protects the intellectual authors of transnational corporate crimes: the corporate veil. As explained by Canadian Justice Ian Binnie (Simons & Macklin 2014, xii), the corporate veil principle, “despite being developed in a different century for different purposes in a very different context,” allows MNCs to “operate pyramids of companies with feet in many different jurisdictions,” with “the lowest level of the corporate pyramid being exposed to liability” (see, for example, Tahoe’s corporate structure in Appendix I, Figure 3). Transnational corporate groups, including the parent company, subsidiaries, foreign affiliates, and so forth, are treated as disaggregated entities, “each subject to the domestic laws of the state within which they are incorporated” (Simon & Macklin 2014, 8). In this legal framework, “control and investment decisions flow down *from* the top but profits rise up the corporate structure *to* the top” (Binnie in Simons & Macklin 2014, xii).

Thus, while there is often “one consolidated, centrally directed enterprise,” its legal stratification, “adopted for tax and other purposes,” exclude parent companies from liability for human rights abuses (Binnie in Simons & Macklin 2014, xii). The host state’s ability to regulate corporations headquartered within its territory is then limited by international trade and investment laws. Likewise, the home state’s power to regulate is confined by the doctrine of state sovereignty, which limits its responsibility to non-citizens beyond its territorial borders. In other words, the “scope of extraterritorial dimension of the home state obligation *to protect* human rights is contested” (Simons & Macklin 2015, 19). That said, jurisdiction can be

established through the accepted principles of territoriality and nationality, of which the precedent-setting lawsuits in Canada are attempting to leverage to enforce a measure of accountability.

The corporation's accumulation of power through practices of legal disaggregation is a central theme in the evasion of accountability for mining-related human rights abuses. While the recent precedent-setting lawsuits in Canada aim to establish the parent company's *de facto* control of its subsidiaries in the hopes of challenging the concept of the separate legal personality, Simons & Macklin (2015, 9) note that this is not likely unless the corporation was intentionally incorporated to perpetrate fraud or avoid existing legal obligations. Unfortunately, the evasion of accountability through the principle of the corporate veil in and of itself does not meet these requirements: in fact, the corporate veil emerged in Western law as a means to protect the profits of a corporation, which is legally required to manage business for the benefit of shareholders. In this instance, "law is a superstructure of the economy," used to protect the bottom line (Mattei & Nader 2008, 13). One cannot also discount the powerful political incentives to avoid corporate regulation, in the interest of global competitiveness and economic profit. This thesis details attempts to challenge this context of impunity, that is, the current regime of voluntary, self-regulation, through an examination of the civil suit submitted against Tahoe in its home state of Canada.

CHAPTER 3: EXPORTING CANADA'S EXTRACTIVE MODEL

Study Context: A global and local problem

This chapter elaborates on the fluid transnational political and legal relationships between states, corporations, and local communities in the case of the Escobal Mine conflict (Herod, Tuathail & Roberts 1998; Kennedy 2016), to uncover how power relations produce and are produced by law. It details how the concrete political, economic and legal interventions of the Canadian and Guatemalan governments and Tahoe retrench neo-colonial relationships of plunder. In analyzing the relationships between places and scales, discourses and practices, and actors and institutions, I reveal how different versions of development are both promoted and challenged in the global economy. Likewise, by using a '*geographically wide*' and '*historically deep*' approach (Farmer 2004, 42), I highlight the spatiality of imperialism, capitalism and violence itself, within the context of neoliberal globalization and transnational resource extraction.

I examine how Canada's role as an imperial power and Guatemala's position as a post-conflict 'developing' state (as defined by Canada 2018a) intersect to produce spaces of violence and injustice. More specifically, I dissect how Guatemalan domestic and Canadian foreign law and policy interact to enable mining companies to operate with impunity. Rather than viewing Guatemala and Canada as separate polities, we must understand them as "unequally connected nodes in a global network in which states, elites and corporations form strategic alliances to produce geographies of security and capital accumulation" (Copeland 2017, ¶3). Likewise, rather than viewing Guatemala's contemporary crises of inequality and insecurity as 'internal' problems, we must come to understand them as "externalities of a capitalist Utopia built through centuries of colonial and imperial rule" (Copeland 2017, ¶3).

The goal of this chapter is to critically examine how social and legal institutions, and political and economic relations and practices within and between these two countries work to create, reproduce and sustain spaces of capitalist development. This objective responds to the call by critical development geographers to examine the role of the ‘Global North’ in development processes, towards relational understandings of inequality (Farmer 2004; Harvey 2006; Lawson 2007; Power 2003). I first discuss ideas and practices of development within the context of Canadian economic diplomacy, followed by an analysis of the Guatemalan state’s experience of development. While Canada can be viewed as the ‘development agent,’ Guatemala can be situated as the theoretical space and physical place often acted upon as the ‘developing country’. That said, I do not view the Guatemalan state to be a passive agent: there is significant collaboration between international and national elites, as theories of the comprador bourgeoisie stipulate (see Fanon 1961). In fact, “foreign companies need the support, networks and political resources controlled by the local elites to establish their operations in the country” (Aguilar-Støen 2015, 144). Here, law can be characterized as a “social and political tool that empowers local elites to interface with the global economy in the face of increasing social inequities” (Mattei & Nader 2008, 7). Following Lawson (2007, 3), this thesis understands development as the “material and discursive relations between peoples and places across the globe.”

Canadian extractive imperialism and the spatiality of empire

“Mining and natural resource exploitation is a cornerstone of the Canadian economy. Could Guatemala use this model to develop their industry?”

Talking point prepared for Governor General David Johnston by the Canadian Embassy to Guatemala (A20131117, 170)

In addition to my moral obligation as a Canadian citizen to hold my government to account for its policies and practices, the decision to focus on a Canadian company in Guatemala is three-fold. First, Canadian corporations operate thousands of extractive projects internationally, with many of these mine operations provoking violence, accelerating environment degradation and adversely affecting the health and overall livelihoods of communities (Gordon & Webber 2016). A classified report commissioned by the Prospectors and Developers Association of Canada found that Canadian companies were responsible for two-thirds of the 171 high profile CSR violations surveyed by Canadian mining companies between 1999 and 2009 (Canadian Centre for the Study of Resource Conflict [CCSRC] 2009, 9). Secondly, the Government of Canada has highly permissive policies in favor of the extractive sector, both domestically and abroad. In addition, the Canadian government's agencies, from Global Affairs Canada and host country embassies to Export Development Canada (EDC), provide legal, economic, financial and political support to companies. For example, the federal government assists companies in securing market access through trade negotiations, providing subsidies, export credits, risk insurance, infrastructure and special tax treatment (Deneault & Sacher 2012). Meanwhile, efforts to promote human rights, labour standards and environmental protections are distinguished as voluntary measures, codified in non-binding agreements only (Kuyek 2006). Finally, in a study of violent incidents related to Canadian-owned mining projects in Latin America, Guatemala was found to have the highest prevalence of reports of physical violence (Imai et al. 2016, 12). In fact, the evidence of systemic corruption in the Guatemalan judiciary, in addition to the political repression of racialized and marginalized populations, has led to the advancement of several human rights claims in Canadian courts against Tahoe and Nevsun Resources in British Columbia (B.C.)

and HudBay Minerals in Ontario (Bennett 2016). Therefore, a study of corporate accountability in the context of Canadian mining abuses in Guatemala is appropriate for gathering relevant empirical research within the project limits.

Given the extensive political, legal, economic and financial support provided to Canadian mining companies by the Canadian government (Imai et al. 2016), any analysis of the activities of said companies requires attention to the broader relations between the ‘Global North’ and ‘Global South’ (Galeano 1974). As Gordon & Webber (2008, 64) note, “Canada is an advanced capitalist state within a hierarchy of nations operating within the global capitalist economy.” Here, Laplante & Nolin (2014, 242) highlight the “ungoverned spaces between home states such as Canada and ‘weak states’ such as Guatemala” which allow Canadian multi-national mining companies to commit rights violations with impunity. The following section describes this so-called ‘governance gap’ through an analysis of the Canadian government’s policies and practices regarding corporate responsibility and accountability, with the aim of understanding how the imperial territorial state and the global economy are entangled with one another.

Numerous reports detail how the Canadian government supports its extractive sector in foreign ventures through political, economic, financial and legal benefits, without requiring companies to respect the environment and human rights, leading to systematic violations of national and international law (Advisory Group 2007; Imai et al. 2016; PPT 2014; SCFAIT 2005; Working Group 2014). To date, the Canadian government has advocated for, and enabled through concrete policies and practices, a voluntary regime of self-regulation when it comes to the behaviour of its extractive companies abroad (Laplante & Nolin 2011). Initially introduced by Stephen Harper’s government in March 2009, *Building the Canadian*

Advantage: A Corporate Social Responsibility Strategy (CSR) for the Canadian International Extractive Sector represents Canada's hallmark approach to 'assuring' its companies respect environmental and human rights norms in their operations abroad (Canada 2018b). As indicated in the Strategy's title, the number one priority is to build 'Canada's advantage' (rather than protect and promote human rights), namely by fostering the image of a 'responsible' and therefore 'investable' (and thus profitable) international extractive sector. As per Global Affairs Canada's stated mission "to preserve and nurture Canadian prosperity," this strategy supposedly seeks to build a more "just, inclusive and sustainable world" by promoting Canada's economic interests internationally (Canada 2018c, ¶1). The argument here is that extractive companies not only "make a major contribution to Canadian prosperity" but also to "economic development in other countries" (Canada 2018b, ¶1).

While Canada's history may demonstrate "that the extractive sector can help build a country" (Canada 2018b, ¶1), this nation-building project was at the expense of Indigenous peoples who suffered untold exploitation, abuse, and dispossession. As Kearns (2006) and Tyner (2012a) explain, the modern territorial state uses its sovereignty, defined as a monopoly over legitimate violence, to discipline and order its population for such 'nation-building' purposes. Writing on Canadian mining in Africa, Butler (2015) argues that contemporary processes of Canadian extraction internationally are underpinned by this same colonial mentality. She contends that Canadians are not just financially invested in extracting resource wealth, but also culturally and psychologically invested, as extraction is legitimized through neoliberal ideologies and a national myth of benevolence (Butler 2015). Canada's 'Enhanced' CSR Strategy,²¹ for example, places an emphasis on the 'Canadian way' of doing business,

²¹ In November 2014, an 'Enhanced' Strategy was announced, entitled '*Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada's Extractive Sector Abroad*' (Canada 2018b).

understood as a “way of doing business that not only contributes to success abroad but also reflects Canadian values” (Canada 2018b, ¶8). But as Kamphuis (2018, 16) points out, this policy neither defines the standard of ‘Canadian values’ nor refers directly to international human rights law.

The embedded assumption in Canadian development policy that lower-income countries can ‘catch-up’ with Canada in terms of increasing Gross Domestic Product (GDP) through resource extraction valorizes Western models of development as the universal model of development elsewhere, without ever questioning the underlying basis by which we assess a country’s economic and political progress (Power 2003). More importantly, it obscures the violence of dominant development models, which are predicated on displacement and dispossession (Paley 2007). Thus, while the Canadian government states that the “Canadian extractive sector activity abroad can result in a win-win outcome both for the Canadian economy and that of host countries” (Canada 2018b, ¶1), this is often a justification for the violent accumulation of wealth (Russell 2018, May 6).

The Canadian government’s construction of ‘poor’ countries such as Guatemala as ‘weak’ and as lacking in the ‘rule of law’ is a means of justifying direct and indirect forms of control in the name of development (Canada 2018a, ¶4). Here, Ayers (2012, 261) describes how the “privileging of internality” serves to legitimize civilizing interventions by imperial actors. The privileging of internality refers to the tendency of global actors to first dichotomize between internal/external or domestic/international factors and to then prioritize internal factors as the root causes of political violence, thus excluding “from consideration global structures of economic and political inequities as well as those of social and cultural expansion” (Ayers 2012, 261). In this vein, dominant narratives of political instability in

Guatemala are parochial in that they focus almost exclusively on corruption and impunity at the domestic level, without recognizing how these factors are historically and globally constituted (Ayers 2012). The privileging of the internality thereby legitimates “imperial narratives which aver that the degrading conditions of the vast majority result solely from the ineptitude of certain despotic and self-serving rulers and/or fanatic primordialist groups” (Ayers 2012, 261).

Meanwhile, the so-called ‘international community,’²² a guise for the interests of Western powers, is portrayed as an impartial and benevolent actor interested in promoting the rule of law, peace and reconciliation (Ayers 2012). This geographical imagining of internal political realities, however, obscures the root causes of Guatemala’s contemporary crises of “poverty, inequality and insecurity” (Canada 2018a, ¶6). As the documentary *Crisis in Central America: The Yankee Years* (Vecchione 1985) reveals, the century-long history of U.S. imperial intervention in Latin America has contributed and continues to contribute to the very problems that it now seeks to contain, including the current refugee crisis and the so-called war on drugs (see Estévez 2016; Green 2011; Nolin 2006; Perrigo 2016). The Canadian government and its various ‘development’ agencies have also contributed to Guatemala’s status quo of corruption and impunity. Nolin & Stephens (2010, 37), for example, describe the entry of Canadian multi-national mining companies in Guatemala since the 1996 Peace Accords as a key element in the country’s neoliberal transformation: “the Canadian government’s pro-business, pro-mining stance, through its Embassy’s activities, is shaping the very nature of the ‘development model’ for [Guatemala],” with

²² Western powers often deploy the language of ‘international community’ to mask their hegemonic interests and portray neoliberal development as a universal good/desire (Ayers 2012). Therefore, I consider ‘the West’ as an unified or single actor.

“neoliberal development schemes of mining, oil extraction and hydroelectric projects [being] embraced by post-conflict Guatemala as the way forward on the path to democratization.”²³

Development in Guatemala: A violent history

At this juncture, it is useful to examine how Canada has contributed to Guatemala’s contemporary crises of “poverty, inequality and insecurity” (Canada 2018a, ¶6), with an understanding of the country’s history, particularly its post-genocide political, economic and social formations. While there are powerful global forces, namely neoliberal discourses and practices, re-shaping local polities and livelihoods in similar ways across the globe, development processes play out differently in different contexts. A closer examination of Guatemala’s specific experience of development is required to understand the dynamics of capitalist accumulation across scales. With an understanding of the global historical political-economic context within which Guatemala is embedded, we can better analyze the discourses advanced by corporate and political elites used to legitimize mining as good for ‘development.’ As Lawson (2007, 27) writes, “historical, social and political processes of development are actively constituted in places.” To this end, this section focuses on Guatemala’s particular history of development that enables Canadian mining companies to operate with impunity in the present day.

Guatemala illustrates the pervasive influence of colonialism on identity formation and associated race, class and religious divisions. Throughout its history, political conflict has been shaped by both internal policies and disparities as well as external influence. While the October Revolution of 1944 and the election of President Arévalo (1944-1950) fostered hope for a socialized democracy, a U.S.-backed coup in 1954 created a permanent state of

²³ See Appendix I, Figure 4 to see the breadth and scope of proposed and actual economic development projects in Guatemala’s southeastern region, of which the Escobal Mine is a part.

counterinsurgency, pitting the non-Indigenous Ladino ruling minority against the Indigenous Maya majority, the latter being construed by the government as subversive communists under the influence of the Catholic Church (Grandin 2004, xv). Four decades of violent conflict between these two opposing groups and their respective international supporters eventually culminated in a racialized genocide, the height of which was from 1981-1983, with over 200,000 Mayas and progressive Ladinos murdered by the state and more than 45,000 disappeared by state forces (Nolin 2006, Chapter 3). The Guatemalan state's campaign of terror was characterized by death squads, rape, torture, disappearances, kidnappings and massacres (Carmack 1988). At the heart of this prolonged struggle was not only competing identities, but also competing visions of social and economic life. While the Ladino ruling elite sought to deepen an exploitative and neo-colonial system of capitalism, the Indigenous peoples struggled to maintain their subsistence way of life on their ancestral lands (Handy 1984).

This violent history informs present-day resistance to neoliberal policies and practices that seek to further dispossess Indigenous and *campesino* communities from their lands and livelihoods, in the name of 'development.' Granovsky-Larsen (2013) details that after the signing of the 1996 Peace Accords, Guatemala experienced an intensified period of neoliberal restructuring and increased foreign investment, cementing a new model of 'accumulation by dispossession' (Harvey 2006; Solano 2013). It is in the aftermath of genocide that Canadian mining companies have expanded their dominance and control over the country's political economy, with the help of Guatemalan elites. In 2014 alone, Canadian assets in Guatemala's mining sector totaled U.S.\$1.16 billion (A201501699, 22). Nolin (Laplante & Nolin 2014, 234) describes this phenomenon as the "fourth invasion" of the

country, following the three cycles of conquest described by Lovell (1988, 27), namely the conquest first by imperial Spain, then by local and international capitalism, and finally by state terror. Guatemalan politicians and business leaders have maintained key relationships with transnational elites throughout these processes of globalization, with each group leveraging their respective resources, networks and information to enhance their power and protect their mutual interests in advancing corporate capitalism (Aguilar-Støen 2015, 131). Processes of ‘development’ in Guatemala must be understood as shaped by both internal policies and disparities as well as external influences.

At this juncture, it is useful to dissect the “logic of rule” underpinning Guatemala’s post-conflict transition, by looking at how global trade, open markets, human rights, and democracy are integrated to create “immanent landscapes of power” (Allen 2003, 87) under a “neoliberal peace” (Copeland 2017, ¶3). Post-conflict states are often redesigned as neoliberal democracies rather than social democracies, based on the assumption that all social and economic problems can be more efficiently solved by the self-regulating market (Ayers 2008). In this context, the promotion of FDI (through transnational mining ventures, for example) is said to increase economic growth and thus ‘development,’ leading to greater stability and security (Canada 2018a, 2018b; Stern & Öjendal 2010). However, if one dissects the neoliberal peace imposed upon Guatemala, it is clear that the political and economic liberalization measures instituted favour the rich and the powerful, rather than historically disenfranchised communities (Abell 1999). More specifically, Guatemala was pressured by IFIs and Western states to adopt neoliberal policies, including trade liberalization, deregulation and privatization, as part of the peace process (Granovsky-Larsen 2013). While these measures were touted as the key to post-conflict recovery and

democratization, they facilitated the entry of capital and multi-national corporations into the country (Benson, Fischer & Thomas 2008), resulting in increased environmental and social degradation in local communities to the benefit of Guatemalan elites, corporate executives, investors and consumers in the Global North.

Various policy and legal instruments helped to retrench the political and economic dominance of state and corporate actors over local populations, including the country's mining code (*Decree 48-97*, 1997), introduced shortly after the 1996 Peace Accords (Laplante & Nolin 2014). Crafted with the help of the World Bank and foreign investors, Guatemala's mining law simplified the process for obtaining licenses and reduced restrictions on the size of concessions (Gordon & Webber 2016, 119). Most notably, the law lowered royalty rates from 6% to 1% in 1997 and removed foreign ownership limits (Van de Sandt 2009, 11), allowing companies to generate enormous profit while communities witnessed the further destruction of their land and livelihoods (Laplante & Nolin 2014). As a result of these legal changes, mineral exploration in Guatemala increased by 1000% between 1998 and 2010 (Aguilar-Støen 2015, 133). Thus, while these reforms helped to solidify international trade and commercial agreements between Guatemala and other states, companies and investors, those environmental, human rights and social regulations needed to protect Guatemala's own citizenry were sorely lacking. For example, the Environmental Impact Assessments (EIAs) required by the mining law prior to the exploitation phase are proponent-led, with companies setting the parameters for environmental mitigation and public consultation (Ilavsky 2013). As Rey Rosa (2018, 115) explains, Guatemala is attractive to mining companies because "there is neither the political will nor the

administrative capacity to adequately supervise mining activities. Nor do companies have to worry about the legal consequences of accidents or abuses committed by security personnel.”

In both official discourse and policy, mining is positioned as key to Guatemala’s economic development. Yet, the mining sector only contributes 0.09% directly to Guatemala’s GDP (A201702339, 273). Aguilar-Støen (2015, 140) explains that “by prioritizing mineral extraction as a strategy to create income revenues, the Guatemalan government disregards local interest and recasts places into ‘extractive spaces.’” In this shifting global and local political landscape, traditional business elites in Guatemala, dominated by a limited number of family networks, have managed to absorb “rising sectors while maintaining control of agro-exports, industry, services and the financial sector as well as the media” (Aguilar-Støen 2015, 131). These elites are represented by the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (*Comité de Asociaciones Agrícolas, Comerciales, Industriales y Financieras*, CACIF) and its ancillary, the Association of Extractive Industries (*Gremial de Industrias Extractivas*, GREMIEXT), which collaborate extensively with the Canadian and American Chambers of Commerce in Guatemala (*Camara de Comercio Guatemalteco-Canadiense*, CanCham, and *Camara de Comercio Guatemalteco-Americana*, Amcham), as well as the embassies of these two countries. An internal report produced by Global Affairs Canada confirms this transnational alliance of political and economic elites. Following a 2012 proposed amendment to Guatemala’s Constitution (Article 125) that would increase government ownership or equity of mineral projects up to 40%, “all stakeholders (companies, GREMIEXT, CACIF, Canadian and American Chambers of Commerce (CANCHAM, AMCHAM) worked in a coordinated fashion with both the Canadian and American embassies” to prevent the Presidency and

Congress from adopting the revision, which “threatens a competitive and stable investment climate in Guatemala” (A201501699, 57).²⁴ Ironically, the Canadian government claims it shares its ‘expertise’ and ‘knowledge’ when other governments ‘ask’ for Canada’s input because “the Government of Canada respects the national sovereignty of foreign government to manage their own natural resources.”²⁵ In reality, Canada interferes politically and undemocratically to impose neoliberal policies in its own economic and financial interest. The corresponding violent penetration of capital has reignited conflict between foreign governments, MNCs, investors and the Guatemalan state, on the one hand, and Indigenous and *campesino* communities on the other (Solano 2013).

The various legal, policy and discursive instruments described above are complemented by a coercive apparatus that together produce spaces of mineral extraction. Thus, while Guatemala is supposedly a ‘post-conflict’ state, the same elitist and corrupt system remains, with the “continuum of violence” reflected in the methods of repression and in the ongoing impunity for crimes committed by the powerful (Manz 2008). Political assassinations, for example, are used to terrorize communities and create a society of fear, as demonstrated by the recent killing of at least 15 *campesino*-Indigenous activists from the CCDA and CODECA in 2018 (GHRC 2018). As Granovsky-Larsen (2018) explains, this

²⁴ The Embassy stipulates that it was the “strong concerns generated among foreign investors and the local business community,” which resulted in the withdrawal of the proposal (A201702036, 95). In a January 2014 report, the Canadian Embassy writes that “neither the Congressional Mining Commission nor the floor has the official mandate to review and present a decision on these proposals,” commenting that reforms to the mining law can only be ratified with sanction from the President (A201702339, 157). The Embassy demonstrates a troubling aversion to deliberative democracy and public consultation, writing that it was not a “savvy communications move to announce Constitutional amendments in the paper without thorough consultations with stakeholders” (A201301117, 93). Stakeholders seem to refer exclusively to the business community, rather than those local populations affected by mining.

²⁵ Anil Anora, Assistant Deputy Minister for the Department of Natural Resources, writes these words in a response to a September 2012 letter expressing concerns about the criminalization of human rights defenders in the case of the Escobal Mine (A201702036, 111).

present-day violence carried out by *sicarios* (paid assassins) can be linked to the death squads that operated during the genocide. Police and military institutions were never reformed, “allowing for organized criminal networks, largely based in the old military structure, to flourish” – what is often referred to as the ‘hidden powers’ in Guatemala (Granovsky-Larsen 2018, ¶14). The current administration of President Jimmy Morales employs the same tactics of militarization and repression adopted by previous regimes, civilian and military alike, to facilitate processes of capitalist accumulation, with the continued Canadian, U.S. and Israeli²⁶ political, financial, technical and discursive support (Schirmer 1998). Multi-national corporations, too, have adopted strategies of militarization as evinced by the proliferation of private security companies (Solano 2015). Tahoe, for one, has been implicated in an espionage network involving members of the National Police, which was set up to “track the movements of community leaders who opposed mining” and to infiltrate and subsequently incriminate the resistance movement (Rey Rosa 2018, 114).

To legitimate these policies and practices of criminalization, militarization and repression, the state, alongside its corporate allies, frequently define opponents to mining as terrorists, an iteration of previous discourses prevalent during Guatemala’s armed conflict and genocide.²⁷ These actors stipulate that ‘anti-mining’ movements are controlled by organized crime, foreign/international NGOs, former guerrilla leaders, and the Catholic

²⁶ There are important contemporary and historical connections between Guatemala and Israel. The close relationship between the two nation-states has roots in Guatemala’s civil war; Israeli military forces trained the soldiers of General José Efraín Ríos Montt, Guatemala former President (1982-1983) who would later be convicted of genocide. More recently, Guatemala was the only country to support President Donald Trump’s decision to re-locate the U.S. Embassy in Israel from Tel Aviv to Jerusalem, recognizing the latter as the country’s capital despite Palestinian contestations (De Ferrari 2018).

²⁷ Alberto Rotondo, former security manager for Tahoe, advocated for a criminalization strategy to be adopted in response to social protest, as written in a July 2012 incident report: “a strategic legal and public media communications campaign to prove the involvement of those groups responsible for these actions, especially the involvement of the Catholic Church so that the authorities could take legal action against them” (MiningWatch Canada 2015, 33).

Church, and that they represent a conspiracy against the economic development of the country.²⁸ The Canadian Embassy often reinforces these problematic discourses, characterizing resistance to mining as a phenomenon produced and orchestrated by national and international NGOs.²⁹ At other times, they describe local communities as poor and uneducated, thus lacking the capacity for self-determination.³⁰ The deployment of neoliberal definitions of development ultimately allow the Guatemalan and Canadian governments and their corporate allies to rationalize Indigenous and *campesino* dispossession, characterizing opponents to mining as obstacles to progress (Nolin & Stephens 2010). By defining human rights and land defenders as “criminals” who foment “intimidation and violence” (Lakhani 2017, ¶37), these actors legitimize their criminalization and repression, thereby maintain uneven power relations.

The implementation of Canada’s neoliberal foreign policies in Guatemala reflects a lack of democratic and transparent decision-making on the part of political and economic elites within and between these two countries. By using the language of modernization, development, good governance, democratization, and peace-building, however, Canada masks its imperial interests and furthers neoliberal strategies aimed at transitioning Guatemala towards what Richmond (2007) calls a “liberal peace model.” As Richmond

²⁸ Tahoe (2017a, ¶3) characterized the lawsuit submitted by CALAS against the MEM (for its failure to consult the Xinca prior to approval of the *Minera San Rafael*’s [MSR]) license as “an attempt by an anti-mining NGO to oppose mining and other development in Guatemala despite the many benefits that these projects bring to local communities.”

²⁹ In response to complaints regarding the Escobal Mine, Deputy Director of Trade for Global Affairs Canada Peter Egyed wrote: “this group of concerned citizens from Pictou NS who went down to Guatemala last fall, heard the spiel on Cdn mining in Central America from local NGOs, and came back with a decision to blanket ministers’ offices with letters ‘demanding’, ‘asking for’ and ‘requesting’ an investigation by the GoC [*sic*, Government of Canada] into the activities of Tahoe Resources” (A201702036, 31).

³⁰ In a July 2012 report regarding proposed constitutional reforms in Guatemala, Kim Stirling, Senior Policy Advisor for Natural Resources Canada, writes “in a country where education and understanding of the political system is weak, it is not easy for the population to determine the merits of the reforms” (A201501699, 58).

(2007) describes, the liberal peace model promotes ideologically specific (rather than universal) Western institutions, norms and practices into local political arrangements at the expense of Indigenous notions of social organization. We can begin to understand how Guatemala's seemingly progressive Constitution instituted during the Peace Process, while recognizing Indigenous peoples' and women's rights, fails to offer any substantive enjoyment of said rights. As Congresswoman Sandra Morán (2018, May 6) exclaimed, "while the Constitution recognizes the rights of Indigenous peoples and women, it is not good for us to *exercise* our rights." Isabel Solís of the GHRC (2018, May 25) adds, "we do not need more laws. We have a very beautiful Constitution wherein they develop rights for all, both the individual and collective rights of Indigenous peoples, but the law was done only for an international image." These sentiments are reinforced by Nolin & Stephens (2010, 45) who write, "it remains common practice in post-authoritarian countries to repress Indigenous rights and instead fuel development projects and state economies in the name of democracy."

In fact, Copeland (2017) argues that the counter-insurgency of the late 1970s and early 1980s set the stage for neoliberal democracy in Guatemala, as progressive movements were violently repressed and thus popular demands contained during a free market transition. The land was physically cleared of communities regarded as obstacles to development (Russell 2017). As a regime of power, neoliberalism redirected politics "into the neutralized domains of market activity and electoral politics where individuals and private interests compete for access and advancement" (Copeland 2017, ¶5). In short, rather than advancing well-being, the global development industry and its prioritization of neoliberal capitalism has perpetuated inequalities and restricted alternative paths to development (Power 2003). As Galeano (1974, 2) emphasizes, "the history of Latin America's underdevelopment is an integral part of world

capitalism's development... our wealth has always generated our poverty by nourishing the prosperity of others.”

Mining-affected communities, however, are increasingly politicized by state and corporate repression and continue to resist attempts to incorporate them into an exploitative system of market capitalism. The rising opposition from *campesino* and Indigenous groups have put numerous foreign investments in mining at risk, as evinced by the proliferation of roadblocks and protests in response to these large-scale projects (Amnesty International 2014). In 2006 and 2014, moratoriums were placed on new licenses after challenges to the mining law were made for its failure to protect the right of Indigenous peoples to FPIC, as outlined by ILO 169 and Guatemala's Constitution (Gordon & Webber 2016). Since then, numerous reforms have been proposed to the Mining Law, including legislation to formalize and increase the country's current system of voluntary royalty payments, a fund to distribute income from royalties to local governments, requirements for community consultation prior to the granting of a license, and regulations for the reclamation of abandon mines (Amnesty International 2014). None of these reforms materialized, with communities continuing to experience the negative impacts of mining, including ongoing environmental pollution, water depletion and human rights violations (PPT 2014).

Background to Tahoe Resources and the Escobal Mine conflict

The contemporary history of state and corporate violence and grassroots resistance described above informs the current and ongoing conflict at the Escobal Mine. Tahoe Resources is a mid-tier precious metals company headquartered in Reno, Nevada, incorporated in Vancouver, B.C., and listed on the Toronto and New York stock exchanges (Imai 2017). In addition to being registered with the BC Securities Commission (BCSC),

Tahoe is also registered under the U.S. Securities Act. While Tahoe is a modestly-sized company, it is the relational arrangements of which Tahoe is a part that provide this MNC with a significant degree of power in both the Guatemalan and Canadian contexts (Allen 2003). Tahoe is a child of one of largest gold producers in the world, Goldcorp Inc., which sold the Escobal project to Tahoe in June 2010 and held 40% of the company's shares until June 2015 (Imai 2017, 3).³¹ Tahoe operates through its wholly-owned Guatemalan subsidiary, *Minera San Rafael* (MSR), with profits funnelled through two shell companies in Barbados (Escobal Resources Holdings Limited) and Switzerland (Tahoe Swiss) to avoid taxation (S. Imai 2018; see Appendix I, Figure 2 for Tahoe's corporate structure).

Tahoe's stratified corporate structure has contributed to significant confusion and obfuscation at both the political and judicial levels, as Canadian officials maintain that Tahoe "does not meet the definition of a Canadian company," defined as "companies with their Head Office (HO) or principal office located in Canada and that are not controlled by a foreign entity" (A201501699, 44). Despite its incorporation in Canada, Tahoe has no employees in the country and "repeatedly reports the company offices as located in Reno," while still including a Vancouver byline in all press releases (A201501699, 44). For years, officials at Global Affairs Canada would struggle over the identity of this multi-national corporation, especially as it came under fire for potential human rights abuses, all while continuing to support it economically and politically. This contradiction, wherein the company can benefit from the goods and services of the territorial state to facilitate its

³¹ Goldcorp executives still hold multiple positions on Tahoe's Board of Directors (Imai 2017). Goldcorp's Marlin Mine in the northwestern highlands of Guatemala, while now in the reclamation phase, is the subject of ongoing tension over the company's refusal to pay reparations for the impacts of the mine, particularly the depletion and contamination of water resources and related health issues (Field notes 2018, May 9).

operations abroad while simultaneously avoiding domestic and international legal accountability, will be elaborated upon in the analysis section (Chapter 5).

Tahoe's silver mine in Guatemala is located in the municipality of San Rafael Las Flores (San Rafael) in the Department of Santa Rosa, approximately 40 kilometres (km) southeast of Guatemala City (see Appendix I, Figures 6 and 7 for its location and concessions). Goldcorp obtained concessions for the Escobal project in 2007,³² with exploration beginning in 2010 after its sale to Tahoe. Construction of the mine lasted from 2011-2013, with the final exploitation license granted April 3, 2013 and full commercial production beginning in January 2014. The lifespan of the mine is presented to be approximately 15 years, with reclamation and rehabilitation beginning in 2030 (A201501699, 74). In addition to silver deposits, the mine produces gold, lead, and zinc using "long hole stopping methods with processing by differential flotation to create concentrates," at a capacity of 4,500 tonnes per day (Tahoe 2018a, ¶4).

While the Escobal Mine is located in San Rafael, the Government of Guatemala has granted Tahoe concessions and exploration licenses spanning the departments of Santa Rosa, Jalapa and Jutiapa, encompassing 10 cities and up to 50 towns, totalling approximately 2,500 km² (Imai 2017, 8; see Appendix I, Figures 7, 8, 9). The Escobal Mine is estimated to be the second-largest silver deposit in the world and was Tahoe's sole and prize asset in the first couple years of its operations before the company acquired the La Arena mine in Peru (2015) and the Timmins West Mine and the Bell Creek Mine in Ontario (2016) (Tahoe 2018a). Notably, Tahoe has faced allegations of environmental and labor abuses at its La Arena mine in Peru, with protests even forcing the company to temporarily halt its operations in

³² The Escobal Project was originally comprised of three exploration concessions covering approximately 129 km² called the Oasis, Lucero and Andres (A201501699, 46-47).

September 2018.³³ In January 2019, Tahoe was acquired by Pan American Silver Corp. in a U.S.\$1.1 billion deal to create the “world’s premier silver mining company” (Pan American Silver 2018, ¶1). Pan American’s share prices fell by more than 12% shortly after the initial announcement of this deal on November 14, 2018 (Friedman 2018).

Since its inception, Tahoe has exercised its power through corruption, deception and dissimulation. For instance, Guatemala’s Ministry of Energy and Mines (MEM) approved Tahoe’s exploitation license on April 3, 2013, after the dismissal of more than 250 individual complaints about the environmental risks of the project (MiningWatch Canada 2014, ¶8). Since 2010, 14 plebiscites have been held in the six municipalities closest to the mine, with communities voting overwhelming against mining (NISGUA 2018a, ¶12). The municipality of Mataquescuintla has prevented Tahoe from connecting to the main electricity grid since 2012, requiring the company to operate the mine using diesel-powered generators (Imai 2017, 13). Nonetheless, Tahoe insists on its contribution to Guatemala’s GDP through mining royalties and highlights the local and regional socioeconomic benefits of its voluntary royalty regime. While Tahoe presents itself as a socially responsible company, numerous grassroots movements resist the Escobal Mine and Tahoe’s presence in the region in general, including the Peaceful Resistance of Santa Rosa, Jalapa and Jutiapa (hereinafter the Peaceful Resistance), the Diocesan Committee in Defense of Nature (*Comisión Diocesana de Defensa de la Naturaleza, CODIDENA*) and the Committee in Defense of Life and Peace (*Comité de Defensa de la Vida y la Paz*). The Parliament of the Xinca People (*Parlamento del Pueblo Xinka de Guatemala, PAPXIGUA*) have also vocalized their resistance to the mine, even winning a lawsuit against Tahoe at the Supreme Court in July 2017 for its failure to obtain

³³ ‘Some 600 cubic meters of cyanide and gold bearing solution may have leaked from Tahoe’s mine site (Taylor 2018, ¶7).

their FPIC, resulting in the suspension of two of Tahoe's licenses (MiningWatch Canada 2018a). The Xinca are a non-Mayan Indigenous people of Guatemala who have undergone a cultural and political re-visibility movement with the imposition of the Escobal Mine on their territories (Maldonado, May 24), with the company and the government choosing to negate the Xinca's existence, identity and culture (Rankin 2018, May 25). Tahoe and the Guatemalan government maintain that Indigenous peoples do not exist in the 'area of the mine,'³⁴ despite the Xinca's sustained opposition (see NISGUA 2018b).

In the face of popular and widespread resistance, the Guatemalan government designated the Escobal Mine as a "strategic natural resource" and thus a national security concern. Correspondingly, the National Security Commission established an 'Inter-Institutional Office for Integrated Development' in March 2013 tasked with managing security issues in the communities surrounding the mine (Hernández 2014; Solano 2015, 17). Shortly after the shooting of seven protestors by Tahoe's private security on April 27, 2013, the Guatemalan state imposed a month-long military siege in four municipalities beginning May 3, 2013, with 100 residents facing trumped-up criminal charges and arbitrary detention for their opposition to the mine (Imai et al. 2016, 15; Rodríguez 2013). There have been numerous other human rights violations and serious crimes associated with the mine, including the murder of a 16-year-old activist, Topacio Reynoso, and the kidnapping of four Indigenous leaders and murder of one (Rights Action 2013). Those responsible for these attacks have yet to be held accountable, with human rights defenders continually targeted by paramilitary, private security, and local and national police forces. In addition to issues of

³⁴ Tahoe relied on a 15-year-old census and an exclusionary birth registry to make this determination in its Environmental Impact Statement (EIS). In September 2017, Guatemala's Supreme Court limited consultation to Xinca communities in the four municipalities closest to the mine: Casillas, Nueva Santa Rosa, Mataquescuintla and San Rafael (Tahoe 2017b).

physical violence, community members in areas surrounding the mine report significant water contamination and depletion as well as noise and dust pollution (Nolin & Russell 2016b). In nearby La Cuchilla, numerous homes collapsed due to Tahoe's use of explosives in its tunnels, with residents forced to relocate elsewhere (Tahoe 2016a). In response to ongoing violence and impunity, the Xinca Parliament and Peaceful Resistance installed a road blockade in Casillas, Santa Rosa in June 2017 to prevent mine-related traffic from reaching the project, effectively suspending the project (NISGUA 2017a).³⁵

In this context of militarization and dispossession, Tahoe has omitted or concealed facts necessary for investors to judge the risks involved with the on-going opposition to the mine (Imai 2017). This strategy of deception is a relevant issue when interrogating the 'unevenness of development' as investors facilitate the operations of mining through their provision of financial capital (Harvey 2006). Evidence for the company's pattern of poor disclosure is reflected in the recent submission of three class-action lawsuits filed in the U.S. and one in Canada by shareholders for material losses due to the company's failure to report on its lack of social license and indigenous consent (E. Moore 2018, ¶4). The Canadian Pension Plan (CPP) Investment Board remains silent in Tahoe's suppression of community dissent, despite the Norwegian Fund's decision to divest from the company in 2015 due to human rights concerns (Norway Government Pension Fund Global 2014), making the CCP knowingly complicit as it profits from such processes of exploitation and repression.

On September 3, 2018, the Guatemalan Constitutional Court issued its final ruling on the process of consultation with the Xinca people, ordering the suspension of the Escobal Mine until consultation was completed according to the principles of ILO 169 (Tahoe

³⁵ Tahoe continued to fly diesel to the mine via helicopter "in order to maintain safety standards (eg. Environmental standards, extracting water from the tunnels etc)" (A201701581, 3).

2018b). Even with this ruling, Tahoe continues to employ tactics of dissimulation to advance its operations by denying the Xinca their right to political participation. Tahoe and the MEM declared the completion of stage I³⁶ of the consultation process on November 15, 2018, without ever informing the Xinca leadership, the rightful co-plaintiffs in the ILO 169 case (E. Moore 2018, ¶7).³⁷ As a result, the Xinca believe the MEM and the Ministry of the Environment and Natural Resources (*Ministerio de Ambiente y Recursos Naturales*, MARN) acted illegally in beginning the renewed consultation process alongside Tahoe, without their knowledge. These actions have been accompanied by an aggressive media relations campaign that stresses the benefits of mining and offers ‘donations’ to community members (Imai 2019; see Appendix I, Figure 5 for Tahoe’s ‘*Démosle Vuelta a la Tortilla*’ campaign), despite requirements for consultation to be free and without pressure and coercion by the company (E. Moore 2018, ¶14). As part of this effort to manipulate and deceive, Tahoe noted its achievement of “important agreements with communities and important actors in the area,” ignoring its legal obligation to engage with the legitimate Xinca authorities³⁸ in a formal consultation process (E. Moore 2018, ¶15).

Tahoe employed various duplicitous strategies designed to manipulate “power relationships to secure the position of powerful actors,” a process which has also required “controlling certain knowledge and discourses” (Aguilar-Støen 2015, 141-142). While these

³⁶ As part of stage I, the MEM and Ministry of Environment and Natural Resources (MARN) agreed on the area of influence, which was determined to be the same as in Tahoe’s original EIS. Thus, the geographical area decided upon limits the area of affected rights and denies the Xinca’s right to FPIC, once again (Imai 2019).

³⁷ While the Xinca filed a legal action to request that the Supreme Court of Justice “issue a due diligence measure to ensure they would be notified prior to the start of the consultation process,” the Court only confirmed that “the enforcement order to initiate the consultation is still pending and so has yet to begin” (E. Moore 2018, ¶10).

³⁸ In October 2018, the Xinca leadership rejected an invitation from the Catholic organization Caritá Política to meet with Tahoe in Rome, because “of the possibility that the meeting would be manipulated by the mining company and because ‘Caritá Política’ does not take an impartial stance.” Caritá then invited six individuals who were not authorized representatives of the Xinca Parliament (EarthWorks 2018).

deceptive practices attempt to silence opposition and legitimate violent repression, the Peaceful Resistance and Xinca Parliament have been steadfast in their resistance against those imperial and neo-colonial forces seeking to dispossess them of their land and livelihoods. The next chapter details the research methods employed to gain a better understanding of the Escobal Mine conflict and associated struggles between the Canadian and Guatemalan governments and Tahoe on the one hand, and affected communities, activists and NGOs on the other.

CHAPTER 4: METHODS

Reflections on being ‘in the field’

Fieldwork represented an opportunity to combine theories of geography with applied research to analyze issues of global inequality, corruption and impunity, as they relate to my first-hand observations of political repression and resistance in Guatemala. By using translated testimonies gathered during the fieldwork, I prioritize the understandings and visions of Indigenous and *campesino* communities fighting for control over the land, lives and futures. Fieldwork was also critical to enhancing my understandings of how power operates in place, in time and across scales (Allen 2003). For example, when thinking about the spatialization of power, both within Guatemalan and between Guatemala and Canada, fieldwork illuminated how a multi-national corporation’s control of space at the local level entails a loss of rights for the original habitants of the land. As we drove to San Rafael, the location of Tahoe’s Escobal Mine, I saw how the imposing fences, barbed wire and security guards coded this space as ‘private property’ (Allen 2003), revealing how ideological representations of ‘development’ are materialized. Mining companies, however, not only assert their control over space through the built environment, but also through strategies of intimidation and harassment that seek to remove those standing in the way of capitalist development. For example, in Casillas, we met with Luis Fernando Garcia, a young man who was shot in the face by Tahoe’s private security during the April 27, 2013 incident. He is now pursuing justice in Canada alongside his father, Adolfo Garcia, as part of the civil lawsuit against Tahoe in B.C. courts (Garcia v. Tahoe 2017). One only need to listen to Luis’ story to understand the violence that ‘development’ brings.

The social and spatial exclusion of Indigenous and *campesino* communities by state and corporate actors also became clear to me when I saw the blockade installed by the resistance movement in Casillas, Santa Rosa on the way to the Escobal Mine, wherein citizens reclaimed this space not only to prevent mine-related traffic from reaching the project, but also to assert their political and civil rights to freedom of assembly and peaceful protest. Likewise, during the public gathering in Casillas for the official visit of the United Nations Special Rapporteur for the Rights of Indigenous Peoples (hereinafter ‘UN Special Rapporteur’), Victoria Tauli-Corpuz, members from nearby communities affected by the Escobal Mine spoke of how mining companies like Tahoe come from foreign countries to harm ‘Mother Earth,’ with complete disregard for the Indigenous peoples originally from the land they seek to exploit – the ones who will suffer from the environment and social impacts of the mine long after the company is gone. Meanwhile, the benefits of the mine, millions of dollars, go elsewhere; but not without a trace. It is for this reason that mining-affected communities exclaim that “a mining corporation from another country cannot come here and exploit our land. Not for any amount of money” (Aleisar Arana, President of the Xinca Parliament 2018, May 7).

Fieldwork enhanced my understandings of the spatiality of sites of resistance, particularly their inter-connectivity and multi-scalar nature. In each community we visited, Indigenous and *campesino* leaders explained how they drew strength from the land, from its history and from their ancestors to continue to fight for justice. By visiting them in ‘place’ and seeing how they have sought to assert control over their traditional territories, I gained an appreciation for the connections between land, culture and resistance. In discussing the ‘geographies of conquest’ in Guatemala, for example, Lovell (1988, 27) identifies three

critical elements to Mayan cultural survival: land, community and an attachment to place. This is the common thread that unites the various social movements in Guatemala, as Indigenous and *campesino* peoples stand in defense of their land and territory. They fight for their families and for future generations, and for a sustainable environment.

Fieldwork allowed me to gain an appreciation for how local, national and global issues are intertwined, and how the abuses of the past inform present-day landscapes of political violence and repression, but also of cultural survival and resistance. Through popular movements, Guatemalans are continuously working towards change, to combat a corrupt status quo. These struggles represent a commitment to a different type of society, one governed by the rule of (just) law and a radical democratic politics. Indigenous and *campesino* communities fight against a violent, exploitative and imposing state, but also for the air, the water and the land – for themselves, their children and for future generations (Field notes 2018, May 10). They fight for a just and equitable development model not only for their communities, but for all of humanity. And while there may be a continuum of violence in Guatemala, there is also a continual struggle.

In listening to the stories of activists and communities in Guatemala, I witnessed how the global economy works differently in different spaces, in unjust and often violent ways. It works because of violence, dispossession and a fundamental disregard for human dignity. From export mono-crop plantations to large open-pit mines, I saw how privatization, weak environmental and labor regulations, a corrupt national government and imperial international forces come together to siphon resources for the benefit of a few at the expense of the many (Field notes 2018). The trip was not only about Guatemala: these problems are *our* problems as well (Russell 2018, May 6). As investors, consumers, voting citizens and the

ultimate beneficiaries of the neoliberal development model, we must recognize our complicity and find just and equitable ways of being in the world. One need only look to the people of Guatemala for inspiration.

Ethics

I focus on existing literature and interviews with well-known activists to avoid exacerbating power differentials and to mitigate potential and actual risks in the process of doing research. The field school represented an opportunity to gather the *testimonios* of those Indigenous, religious and political leaders willing and able to speak about their resistance to the Escobal Mine and Tahoe. Issues of mining are highly divisive and conflictual within communities, in part due to the strategies of repression, corruption and manipulation employed by companies and the state (Maldonado 2018, May 24). Semi-structured interviews with citizens could expose participants to social, political and even bodily harm, and would require the assistance of a local guide to ensure research was conducted in a safe and ethical way. I elected to interview activists already visible within the Guatemalan political sphere for practical, financial and safety reasons. This approach received approval by the UNBC Research Ethics Board (see Appendix IV).

I employ the concept of ‘community’ in a broad fashion, to encapsulate the people from the Departments of Santa Rosa, Jalapa and Jutiapa as well as the Xinca People’s Parliament, in which the vast majority have said no to mining in 18 village and municipal consultations (Imai 2017; NISGUA 2018b).³⁹ A discussion of support for mining in these

³⁹ This statistic includes both community-organized *consultas* (consultations) and plebiscites sanctioned through Guatemala’s Municipal Code. For example, 98.29% of voters in Santa Maria Xalapán and other Xinca communities in the Department of Jalapa said no to mining through a *consulta* (NISGUA 2013b, ¶2). In Casillas, Nueva Santa Rosa and Santa Rosa de Lima in the Department of Santa Rosa, 98% voted no to mining in municipal plebiscites (Walter & Urkidi 2016, 299). In San Rafael, where the mining infrastructure is located, citizens planned to hold a municipal consultation but the request was denied by the mayor (Maldonado

same regions is beyond the scope of this thesis: yet, all communities express a diversity of opinions. My intention is to neither homogenize nor romanticize communities in resistance, but instead to amplify the voices of the democratic majority who have very clearly and continuously rejected the Escobal Mine and its political, legal, economic and financial backers.

Nonetheless, it is important to avoid constructing ‘others’ through Western ideology when writing about communities. Academic research, as a power construct, is deeply embedded in modernist thought. As Mansvelt & Berg (2016, 404) write, research “cannot be separated from the labels, terms, or categories used to describe and interpret it.” For example, in Western thought and practice, human rights are understood in legal and individualistic terms, as opposed to in a socio-cultural and collective sense (Falcon 2016). To “theorize in a respectful way,” I adopt a relational ontology, one that values multiple worldviews in the construction of my arguments (Falcon 2016, 180). This relational orientation informs the decision to use *testimonio* as a culturally safe method that allows participants to speak on their own terms while the researcher bears witness in a sympathetic way (Nolin Hanlon & Shankar 2000). I respond to the power dynamics inherent to the research process by engaging in critical reflexivity, which helps to guide my relations with individual participants and communities in a respectful way.

Critical, anticolonial and feminist methodologies require that the researcher reflect upon how their social location influences the research process, from “the questions we ask, how we conduct our research, and how we write our research” (England 1994, 87). Grappling with ethical issues related to voice and representation in the conceptualization and execution

2018, May 24). The consultations, while valid, are not legally-binding as the Guatemalan Constitution gives the state full ownership of sub-surface minerals (Laplante 2014, 22).

of research is key to avoiding essentializing and marginalizing ‘others’ (Dowling 2016). Not all peoples are given the right to know, name, talk and be heard, and so carrying out research in a way that is respectful of communities requires a relational approach to ethics (Falcon 2016; Cannella & Lincoln 2011; Lewis 2012; Swadener & Mutua 2008). I go beyond institutional codes and regulations in redirecting “the purposes of inquiry to engage with the struggle for equity and justice, while at the same time examining (and countering) individual power created for the researcher within the context of inquiry” (Cannella & Lincoln 2011, 82). This reflective component of critical research is key to ensuring a trustworthy and rigorous account of one’s knowledge (Stratford & Bradshaw 2016).

In line with the ethical objectives described above, primary and secondary sources are employed to support the stories and views of the communities. This epistemological pluralism increases my ability to research and write in a way conducive to building solidarity. This approach responds, at least in part, to Kobayashi’s (1994, 78) question: “who speaks with whom, and how?” That said, there is the potential for meaning loss in translation. Throughout the field school, Mr. Russell simultaneously interpreted the *testimonios* of community leaders and activists from Spanish to English.⁴⁰ I took notes in English and recorded the meetings to verify their accuracy. During my interviews with Rafael Maldonado of CALAS and Isabel Solis of the GHRC, interpreters known and trusted by the two participants simultaneously translated the conversation. Especially with translation, it is difficult to understand the perceptual language of others. In an effort to mitigate issues of meaning related to translation, I took intermediate Spanish classes and worked with a Spanish-speaking transcriptionist who helped me interpret phrases and metaphors in field

⁴⁰ The majority of Xinca people are native Spanish speakers. While few Xinca speak their traditional language, they are currently undergoing a cultural revitalization process (Maldonado 2018, May 24; Solis 2018, May 25).

school recordings. Nonetheless, language embodies one's cultural worldview and as an outsider I cannot simply appropriate other ways of knowing. In appreciating that researching and writing is not just a "matter of telling" but about "knowing the world in a certain way" (Mansvelt & Berg, 2016, p. 405), it is important to provide research participants and readers insight into how one constructs and articulate knowledge. The remainder of this section describes the methods used to gain a fuller understanding of the phenomenon of interest.

Testimonio

In the case of uneven power relations, for example, when a researcher is interviewing 'marginalized' groups, an unstructured method of interviewing is important as it has potential to be an empowering process for the participant. Questions asked on the researcher's own terms may stifle the ability of participants to share their opinions, feelings, and perspectives by limiting the parameters of the conversation. As Dunn (2016, 150) writes, in informal interviews, the conversation "is directed by the informant rather than a set of questions." Considered a more flexible alternative to formal interviews, *testimonio* is a listening approach to data collection that allows individuals and communities to recount personal experiences and collective struggles (Nolin Hanlon & Shankar 2000). It is a method that recognizes the agency and authority of research participants to speak for themselves, rather than researcher 'giving voice' to them. As a tool of shared witnessing, *testimonio* is salient when the researcher is in solidarity with the community (Nolin Hanlon & Shankar 2000).

During the UNBC Geography & Rights Action Field School to Guatemala in May 2018, nine other students and I had the opportunity to visit the sites of four major mining struggles in the country. We heard from local leaders, Indigenous activists and Members of Congress about the historical, political, economic and social issues affecting racialized and

marginalized communities in Guatemala. Given the high risks involved and my corresponding duty to protect participants from harm (Tri-Council Policy Statement [TCPS] 2014), I relied on my supervisors, Dr. Catherine Nolin and Mr. Grahame Russell to invite individuals to share their *testimonio*, as they have formed trusted relationships with community members over the years and are familiar with the security risks involved as well as the cultural norms. Most *testimonialista/os* were known activists in their communities. During the field school, we also had the opportunity to participate in a large gathering organized by the communities affected by the Escobal Mine, for the official visit of UN Special Rapporteur Victoria Tauli-Corpuz in Casillas, Santa Rosa. Local mayors, Indigenous and religious leaders, and community activists shared their *testimonios*, actively interpreted by Grahame Russell. The recordings of the meeting were later transcribed in both English and Spanish.

My goal is to amplify the voices of activists and community leaders in resistance against Tahoe and the Escobal Mine. Treated as a unique form of discourse, narratives are understood as a way for individuals and communities to communicate meaning about their lived experiences and their own understandings of specific actions and events (Chase 2011). In analyzing the *testimonio*, I focused on how the narrator made sense of Tahoe's presence in the community and the impact the mine has had on social, political, economic and environmental conditions. I am attentive to issues of power in this approach, as I am seeking to understand the life of the 'other'.

Textual Analysis

Textual analysis, as a method "generally predicated on a constructionist epistemology," "actively engages with the spoken and unspoken meanings or discourses

encoded within a text” (Winchester & Rofo 2016, 10). It is common for qualitative researchers to approach textual analysis without any predefined protocol, treating it instead as a recursive and flexible process that seeks to identify key themes (Perakyla & Ruusuvuori 2011). Using discourse analysis, I evaluate documents from Tahoe, the Canadian and Guatemalan governments, and NGOs in investigating the research questions. Examples of texts include Tahoe’s press releases, ATIP requests, legal submissions and court rulings, and CSR guidelines. Discourse analysis is a textual strategy of inquiry that can be used to deconstruct dominant forms of knowledge and ways of thinking that underpin hierarchal social structures and social inequities (Holstein & Gubriun 2011). Pioneered by the work of Foucault, discourse analysis focuses on the nexus between power and knowledge in the constitution of the social world (Waitt 2016). In analyzing how texts produce governance processes and practices, I reveal the political and legal rationalities that normalize uneven power relations. Likewise, by mapping “ruling relations,” I illustrate how abstract and generalizing ideas impact people’s lives in concrete ways (Naples 2003, 85).

More specifically, I compare the discursive framing of human rights movements with that of corporate and political elites to explain how these differently situated actors produce and sustain meanings and engage in collective action. For example, by situating Tahoe’s corporate reports in their wider cultural and institutional context, I reveal the social logic underpinning their use of language and discuss how their framing of certain issues influences their policies and practices, which impact people in real and material ways. Conversely, the human rights norms articulated by NGOs can be considered discursive strategies used to set the parameters for the pursuit of legal, political, economic and social justice. Framing, in this way, is an “active, process-derived phenomenon that implies agency and contention at the

level of reality construction,” helping to institutionalize social relations among and between actors (Snow & Benford 1992 quoted in Naples 2003, 136).

I decided to rely on legal, financial, and government documents to uncover how institutions and expert networks function in both Guatemala and Canada, rather than interviewing corporate and political elites, as I want to dissect official discourse and policy. Given my focus on North-South relations, this multi-sited approach to collecting and analyzing secondary data allows me to explore manifestations of power in text through various points in time and space (Braverman 2014). This text-based strategy to data collection reveals the complex process by which government and corporate policies are both enacted and resisted. By exploring institutional policies, organizational processes, and the discursive frames used by actors to achieve their goals, I achieve a “thick description” (Geertz 1973, 20) of how power operates in specific socio-political contexts. Textual analysis contributed to the development of emerging themes and helped refine my conceptual framework, providing the context and content for qualitative interviews (Dunn 2016).

Semi-structured interviews:

As a content-focused method, semi-structured interviews with key NGO personnel help fill in gaps in the literature (Dunn 2016), particularly with regard to the benefits and limitations of home state litigation. This method of purposive sampling allowed for an in-depth understanding of the perspectives of those involved in the resistance against Tahoe, rather than a generalizable representation of the study group (Stratford & Bradshaw 2016). A total of nine interviews were conducted, with individuals employed by NGOs involved in the resistance against Tahoe (see Appendix V for a list of interview participants). In Guatemala, participants were drawn from the following organizations: CALAS, the GHRC, the Network

in Solidarity with the People of Guatemala (NISGUA) and the Maritimes-Guatemala Breaking the Silence Network (BTS). In Canada, individuals were interviewed from: Camp Fiorate Matthews & Mogerman LLP, the Canadian Network on Corporate Accountability (CNCA), Mining Injustice Solidarity Network (MISN), MiningWatch Canada and United for Mining Justice (UMJ).

Interviews with participants from CALAS and GHRC were conducted in Spanish, with the help of trusted interpreters known by the organizations. Interviews were actively interpreted from Spanish-to-English and English-to-Spanish and then later transcribed by the interpreters in both languages. Interviews were conducted in-person in Guatemala in May 2018 and from June to September 2018 in Canada. Prior to the interviews, relevant secondary sources pertaining to the organization were thematically analyzed to provide an understanding of their position and involvement in the Tahoe case. While the interviews were focused, there was flexibility for changes in topic direction (see Appendix VI for the interview guides).

It is critical to note that mining activists in Guatemala are routinely harassed and intimidated by the police and paramilitaries, and sometimes even legally persecuted by the domestic judicial system. The research participants live in highly vulnerable circumstances. I was cautious to protect the privacy of participants and confidentiality of our interactions, in addition to ensuring their free, informed and ongoing consent (TCPS 2014). I provided all interview participants with a form outlining my research objectives, methods for ensuring the safety of data, and their right to confidentiality. Oral consent was sought (see Appendix VII for the participant information letter and oral consent form). Interviews were digitally recorded (with informant permission), transcribed, and coded according to themes and issues

relevant to the research topic. Transcribers and interpreters were required to sign a confidentiality form (see Appendix VIII). I provided participants with a summary of the transcript via e-mail, highlighting the quotes I would like to use in my thesis, and gave them the option to edit or retract any information. For those interviews translated from Spanish to English, I asked participants to confirm that the Spanish quote was accurate. I recognize the limitations of translation in the data analysis phase, specifically the potential for meaning loss.

In interviewing NGO representatives, I was interested in learning about their own perspectives with regard to the perceived benefits and limitations of home state litigation in improving access to justice for individuals affected by Canadian mining operations and in enforcing corporate accountability. Interviews gave me better insights into the motivations of the lawyers and activists involved in the effort to bring the Tahoe case to trial in Canada and provided me with a fuller understanding of how they contributed to the legal process. Likewise, by analyzing the choices, expertise and influence of these actors, I was better able to articulate the discursive and material connections between Guatemala and Canada.

Coding and thematic analysis

I employ the constant comparison method to organize and analyze the data. In this systematic and iterative approach, “each interpretation and finding is compared with existing findings as it emerges from the data analysis” (Lewis-Beck et al. 2004, 180). Emergent themes from the secondary source analysis are compared with emergent themes from interviews to check their saliency and to identify commonalities, divergences or discrepancies. Meanings and relationships are continuously confirmed through triangulation. I developed analytical concepts and arguments once the data were categorized and coded. I

approached the data coding and analysis process in a critical and reflexive manner with attention to my positionality, examining not only the data produced but also the *way* in which the data was collected, synthesized and subsequently written (Mansvelt & Berg 2016).

Throughout the research process, I completed personal logs to reflect on my embodied responses to events and ideas, to question my assumptions and experiences, and to critically examine my research relationships (Dunn 2016; Cope 2016). These documents provide insight into my speaking position and serve as an audit trail. By providing a transparent account of data collection and analysis process, I enhance the trustworthiness of my findings (Baxter & Eyles 1997). Reflexivity is a key component to demonstrating how and why I have arrived at my conclusions using the evidence collected.

To ensure that my analytical constructs were consistent with the data and representative of people's opinions and lived experiences, I engaged in peer checking to verify the validity of my interpretations (Bailey, White & Pain 1999; Baxter & Eyles 1997). While thoughtful planning and careful design is key to ensuring rigour, I also adopted a flexible approach that allowed me to accommodate for unexpected changes in the actual practice of doing research (Cope 2016). By describing processes of data collection and analysis, however, I minimize idiosyncrasy, enhancing the credibility and dependability of my work (Baxter & Eyles 1997). As discussed throughout this section, I recognize I am responsible for my location as a researcher, which is why I make my agenda and assumptions explicit to the participants and readers to provide a more trustworthy account of my knowledge (Dunn 2016). The subsequent chapters analyze the impacts of global and national neoliberal policies and practices on local communities as well as everyday acts of resistance to these processes of dispossession.

CHAPTER 5: ANALYSIS: LAW, SPACE AND POWER IN THE POLITICAL ECONOMY OF RESOURCE EXTRACTION

Chapters two and three detailed the ideologies enabling the Canadian government and its auxiliaries (e.g. EDC, TCS, embassies, and so forth) to act in the interest of the neoliberal state system. The distinct *effects* of these networked relationships of power, however, depend on how space mediates the “successive and cross-cutting practices of government” (Allen 2003, 83). As Allen (2003,73) writes, a “typology of relations is in play in which the discursive and the spatial messages remain constant, yet the setting itself is in flux.” This section highlights how a certain configuration of power known as the ‘public-private convergence’ (Kamphuis 2012) enables direct violence towards mining-affected communities ‘on the ground’ within the setting of Guatemala and the Escobal Mine in particular.

The analysis uncovers how the Guatemalan and Canadian governments collude with Tahoe in executing strategies of corruption, criminalization, militarization, territorialisation and legalization to undermine peaceful resistance to the mine. I draw on Aguilar-Støen’s (2015) differentiation between strategies and tactics in dissecting power practices. Strategies – the “calculation and manipulation of power relationships to secure the position of powerful actors” – require locations of power at various scales e.g. chambers of commerce, business associations, companies, ministries, embassies, courts, municipalities and other institutions (Aguilar-Støen’s 2015, 140). Tactics, on the other hand, are improvised actions “that take advantage of certain opportunities, using cracks opened by particular conjunctions” (Aguilar-Støen’s 2015, 141). I employ this strategy-tactic framework to analyze how the state and company impose spaces of resource extraction, and, conversely, how communities use tactics of protest and legal action to re-gain control of place. In dissecting the practices targeting

collective life, I identify the sites and pathways of power involved in the re-arrangement of landscapes and livelihoods (Allen 2003).

Corruption, coercion and criminalization: Manufacturing consent

“Then the companies come to this country with a discourse to implement development, but they themselves know that it is not development. That is, if you are going to steal from someone, obviously you will not create development. When people begin to defend their rights, it is then that the state and the companies, together, will repress the population, imprison the leaders, regardless of the processes of the population.”

Isabel Solis of the GHRC (2018, May 25)

Like in the case of Goldcorp’s Marlin Mine in the highlands of northwest Guatemala (see Appendix I, Figure 1), Tahoe obtained its mining licenses through political corruption.

Becky Kaump (2018, May 24) of NISGUA explains:

Tahoe is an offshoot of Goldcorp and the work they did around the Marlin Mine was the first open-pit project in Guatemala after the Mining Law was signed in 1997 and after the Peace Accords, which opened up space for a lot of these neoliberal economic policies. The Board of Directors – the executives – had a lot of knowledge about who needed to be contacted; they had the relationships necessary to be able to get their permits moved through the government.

Conducting consultations and obtaining community consent was not a part of this high-level effort to have Tahoe’s exploitation licenses approved. The company simply informed 3000 people in San Rafael of their plans. Tahoe (2017a, ¶2) claims that “both the MEM and *Minera San Rafael* participated in and documented hundreds of public and private meetings and open consultations in and around the mine area dating back to 2010,” but these meetings “were not designed for two-way communication...there was no room to consider any kind of meaningful consultation or participation with the community” (Ilavsky 2013, 3). Ten minutes were reserved for questions and the company’s responses to community concerns are not recorded in the EIA (Ilavsky 2013, 4). This lack of transparency is compounded by the company’s deliberate strategy of deception. In its community meetings, Tahoe claimed that

household water supply would not be affected by the mining project, even though the EIA details the potential for contamination and mitigation measures (Ilavsky 2013, 3). In his review of Tahoe's EIA, mining engineer Rob Robinson (2013, 1) also cites a lack of guarantee that effluent treatment and water processing will be covered, and that there is neither a design analysis for the lining and covering of the tailings pond to ensure stability nor provisions for its monitoring after mine closure. Robinson (2013, 1) also writes that reclamation will take 15-20 years, not the three provided for in the EIA, and that it will cost more than the \$6 million provided for by Tahoe.

The communities affected by Tahoe's operations in Guatemala have little to no access to the corporate and technical information that have real consequences for their lives, negatively impacting the enjoyment of human rights (Amnesty International 2017). In the case of Tahoe's EIA, only 30 days are given for public comment, whereas several months are needed, compounding the already massive power imbalance between the company and communities (Robinson 2013, 1). Despite the existence of laws governing democratic decision-making processes at the departmental, municipal and local level, including the COCODES law, the *Código Municipal* (Municipal Code) and the *Ley de Participación Ciudadana* (Law of Citizen Participation), the ability of sub-national players to participate effectively is limited by a lack of financial resources and capacity (USAID 2017, xi).

Tahoe (2017a, ¶2) also claims to have “consulted with a number of indigenous peoples during its many meetings,” yet denies the very existence of the Indigenous Xinca people in or around the mine. As stated in the company's press release (2017c, ¶2) “the last official census shows the San Rafael community to be overwhelming non-Indigenous.” According to Rafael Maldonado (2018, May 24) of CALAS, the state and the company believed they would not

meet resistance in the case of the Escobal Mine compared to other projects in the country⁴¹ because the population is

...not indigenous, they have land tenure, they are farmers not of subsistence but of supplying other communities, and they are allies of the army and government. So, in Santa Rosa, mining will be developed.

What Tahoe and the MEM fail to acknowledge is their use of a 15-year-old census and a notoriously exclusionary national birth registry to make such a determination (NISGUA 2017b, ¶9). Isabel Solis (2018, May 25) of the GHRC emphasizes that “the state has a current interest to ignore the Xinca peoples, linked to the interests of the San Rafael mine.”

In claiming an absence of Indigenous peoples, the government and company do not have to respect national and international obligations related to the right to FPIC; instead, they can violate it with impunity. Indigenous Xinca women, for example, were evicted from agricultural land in Santa María Xalapán designated as property of the mine, even though this community supposedly fell outside the scope of the EIA (A201702036, 11).⁴² Tahoe and the government refer exclusively to the 29 km² on which the mine infrastructure is located (the Escobal exploitation license), whereas opponents to the mine argue that the area of affected rights should include all land covered by Tahoe’s multiple reconnaissance, exploration and exploitation licenses throughout the region (Aguilar-Støen 2015, 142; see Appendix I, Figures 8-10). This strategy of containment is designed to de-legitimize the involvement of the Xinca

⁴¹ For example, in the case of Goldcorp’s Marlin Mine, Maldonado (2018, May 24) explains that “when the project was first imposed in San Marcos, everyone was Indigenous, most were illiterate, they had no land tenure, and all their lives had been linked to leftist movements, to the EGP [*Ejército Guerrilleros de los Pobres*, Guerrilla Army of the Poor], in San Marcos more to the *ORPA* [*Organización Revolucionario del Pueblo en Armas*, Organization of People in Arms], or these types of movements. So, the government and companies said, ‘in Santa Rosa, there will not be these kinds of problems.’”

⁴² The area of influence stated in the area is 45km² and only includes neighbourhoods in the municipality of San Rafael Las Flores in the Department of Santa Rosa, including La Cuchilla, Los Planos, Las Nueces, El Fucio, Sabana Redonda, El Volcanito, San Juan Bosco, Estanzuelas, El Quequexque and urban San Rafael Las Flores (Ilavsky 2013, 1).

and surrounding municipalities in the resistance against the mine. The multitude of Tahoe's licenses also allows for the fragmentation of the required EIAs, invisibilizing the cumulative impacts of mining (Rey Rosa 2018, 99).

The state and company's deliberate erasure of the Xinca from the land Tahoe seeks to exploit via the EIA reproduces imperial and colonial forms of violence. As Enrique Arredondo (2018, May 7), the Mayor of Nueva Santa Rosa, exclaimed: "they told us that we don't exist, that we are ghosts." The state's pronouncement of the Xinca's 'extinction' results in the spatial closure of law and legal recourse to them as Indigenous peoples (Robinson & Graham 2017), allowing the Guatemalan government to ignore issues of discrimination and inequality. This racist denial of Xinca existence and identity negates their right to self-governance and excludes them from political decision-making processes affecting their land and livelihoods. Lorena Cabnal (2018, May 7), a Xinca woman and leader in the resistance against the Escobal Mine, declared:

Let us be very clear that this is an illegal mining operation. Tahoe illegally installed itself in this territory, violated every one of our rights – starting with FPIC – facilitated by a violent, racist, exploitative and centralized state.

Cabnal identifies the first problem as the government's denial of communities' right to self-determination. The high level of mistrust between government and communities cannot be understood as a simple conflict over one mineral project. Rather, the unwillingness of the Guatemalan government to consult communities prior to the issuance of mining licenses is reflective of an exclusionary national politics and a long history of land dispossession that can be traced back to the invasion of the Spanish conquistadors (Lovell 1988).

The systematic failure of the Guatemalan government to include Indigenous and *campesino* communities in natural resource governance has created conflict not only in the case of the Escobal Mine, but throughout the country. Communities face regional and inter-

oceanic development projects as part of the national government's strategy for economic growth (Nolin & Stephens 2010; Solano 2013; Weisbart 2012). Antonio (2018, May 17) of Chab'il Ch'och, Department of Izabal explains these exclusionary processes in more detail:

We know what our government does – they tell lies about what is going on in our country internationally, that they are bringing development to our country, and they seek international investment opportunities. But you are here, and you can see the realities. The reality is that they are not using any wealth of the country to support the needs of the population.

To Antonio's valid point, the transfer of wealth to North America cited in the Tahoe's EIA is a whopping 51% return: compare to average mining sector returns of 15-25% (Robinson 2013, 1). The extremely low royalty rates (in this case a 1% statutory rate and 4% voluntary rate)⁴³ means mining offers little benefit to communities other than a few unskilled labour positions⁴⁴ (Laplante & Nolin 2014, 4; see also Centro de Estudios Conservacionistas [CECON] & CODIDENA 2019). Jen Moore (2018, June 19) of MiningWatch Canada notes that Tahoe paid \$450,000 to three municipalities in 2017, "none of which are in the immediate vicinity of its project," in addition to the \$14,250,000 paid to the municipality of San Rafael Las Flores (ESTMA [Extractive Measures Transparency Act] 2017). Congressman Leocadio Juracán (2018, May 10) also shared how Tahoe negotiated a private deal with the Guatemalan government to exempt the company from paying taxes on imported goods. In this context, the refusal of five mayors (MiningWatch 2018b, ¶1) to accept royalty payments

⁴³ Under the Escobal Royalty Agreements, Tahoe commits to pay a 5% Net Smelter Return (NSR) royalty: 2% benefits communities in San Rafael Las Flores, 2% for the federal government and an additional voluntary 1% for outlying municipalities (Tahoe 2017d, 17). NSR is defined as "gross sales and proceeds from the sale of production, less the costs of insurance, smelting, refining (if applicable) and the cost of transportation of production from the mine or mill to the point of sale. For the purpose of taxes and royalties in Guatemala the cost of transportation is not deducted" (Tahoe 2017d, 4).

⁴⁴ In Tahoe's 2016 CSR Report (Tahoe 2016b, 35), 63% of staff are regarded as local, with 88.3% of employees being male. Of 1,297 employees, 461 are regarded as non-management/operations. There is no indication whether these jobs are permanent or unionized.

does not make us anti-development. It shows that this isn't about money. It is about protecting ourselves from projects that ransack our natural resources and threaten our sustainable economic activities and the health of our communities (Jiménez 2018, ¶11).

In her analysis of Tahoe's EIA, Ilavsky (2013, 9) notes that during the meetings held for local authorities, the municipalities felt they could not oppose the mine because it is authorized by the central government. Communities only learned of the granting of mineral rights after the fact. With the backing of the federal government, Tahoe sought to extort local mayors:

Leaders are offered a certain amount of money, and if the leader is one of those poor people who thinks that with what they offer they will be able to solve their poverty situation, then the leader will support them...(Solis 2018, May 25).

Three mayors⁴⁵ accepted royalties from the company at the outset, but the communities “created a social audit process, and incidentally, when they found out, they forced the mayors not to receive more money from the mine” (Maldonado 2018, May 24):

The mine, through processes of corruption, first generates large amounts of profit for themselves and then use the money to corrupt the will of the mayors; but fortunately, here, the population – on the basis of the consultations – forces them to not have any type of relationship [with the company] (Maldonado 2018, May 24).

Numerous community consultations were held during the construction phase of the mine, with 98% of voters from municipalities in the Departments of Santa Rosa and Jalapa voting against mining.⁴⁶ Maldonado (2018, May 24) explains how consultations sanctioned through the Municipal Code barred mayors from accepting royalty payments from Tahoe. These plebiscites, however, are not legally binding, since mineral rights fall under national

⁴⁵ In September 2015, the municipalities of Santa Rosa de Lima, Casillas and San Carlos Alzatate renounced the royalties signed by previous mayors (Imai 2017, ¶12).

⁴⁶ In July of 2011, 98% of voters in the municipalities of Casillas, Nueva Santa Rosa and Santa Rosa de Lima in the Department of Santa Rosa rejected mining (Melnik, Iwanick & Yinger 2016, 4; see Appendix I, Figure 7). The people of the Department of Jalapa also voiced their overwhelming opposition to mining, including 98% of voters in Mataquescuintla in November 2012 (NISGUA 2014, ¶1) and 98% of voters in Santa María Xalapán and other Xinca communities in November 2013 (NISGUA 2013b, ¶1; see Appendix I, Figure 8).

jurisdiction and thus cannot “be the subject of a municipal level consultation” (A201702036, 13).

In municipalities where mayors refused to sanction a plebiscite (for fear of harassment, loss of financial assistance, etc.), communities organized good-faith *consultas*, which are grassroots consultations rooted in the ancestral practices of Indigenous peoples (Laplante 2014, 88). The Canadian Embassy, however, stated that it only recognizes those consultations called for and conducted by the Government of Guatemala (Rankin 2018, May 25). Rankin (2018, May 25) opines that by imposing standards for consultation, the Canadian government delegitimizes “the really amazing, profound resiliency of communities in organizing and expressing their own will around projects and small ‘d’ development.” As argued by Laplante & Nolin (2014, 243) and further elaborated upon by Imai et al. (2007) and Sieder (2011), communities want “*consultas* to be respected and not ‘regulated,’” revealing a tension between Indigenous and state law under conditions of legal pluralism (Robinson & Graham 2017, 4).⁴⁷

Reflecting on the significance of community consultations, Maldonado (2018, May 24) highlights the futility of Tahoe’s efforts to generate local division:

We have unproven calculations that Tahoe, from June of last year to now, has invested at least approximately one million quetzales per day in media relations⁴⁸...Fortunately, their strategy is so bad that they do not generate any impact. Something that must be taken into account in the area – in all the municipalities where the Tahoe project operates – is that the population rejects them by 98%...

⁴⁷ Maldonado (2018, May 24) points out that the Constitutional Court of Guatemala ruled that citizens have the right to their views via community-organized *consultas* and municipal plebiscites, meaning they are still susceptible to enforcement, though non-binding.

⁴⁸ Solis (2018, May 25) describes how most of the national media companies, including Televista, Emisoras Unidas and Prensa Libre, are owned by powerful entrepreneurs who have vested economic interests in mining projects.

Community consultations affected how constituents related to their local governments and conversely how local governments responded to projects imposed by the federal government. This fragmented local-national-international dynamic illustrates how spaces of extraction are both promoted and contested within and across scales through law, based on competing interests and visions for the future (Berman quoted in Robinson & Graham 2017, 4). Notably, in the 2015 municipal elections, “there was a big turnover in four different municipalities,” including Santa Rosa de Lima, Casillas, San Carlos Alzatate and San Rafael, where those elected were “people who ran on platforms saying that they would not sign royalties, that they would reject royalties if they have already been signed in and that they would carry out the people’s will to not support the mine” (Kaump 2018, May 24). Communities effectively influenced the decisions of mayors and municipal councils in their struggle to have their own visions of development respected and their right to self-determination recognized (Rankin 2018, May 25).

Despite these successes, Maldonado (2018, May 24) still considers the tactic of corruption to be a very effective technique in political contestations over resource extraction. For example, Tahoe was able to successfully co-opt the mayor of San Rafael, Roberto Pivaral, one of the politicians who ran on anti-mining platform back in 2015 and who was originally a member of the resistance.⁴⁹ Maldonado (2018, May 24) describes the coercive strategies used against Pivaral to prevent him from holding a municipal plebiscite on mining, despite community demands:

The Mayor of San Rafael Las Flores was originally a member of the resistance movement and then he was coopted by [the government and company] saying things like, “if you keep on doing this, we’re not going to give you any financial aid,” on

⁴⁹ Jen Moore (2018, June 19) notes that the municipality of San Rafael Las Flores is now being paid over \$4 million in royalties as of 2017 (ESTMA 2017).

both sides, the mining project wasn't going to share the royalties and the government wasn't going to give him specific projects.

Like Solis (2018, May 25), Maldonado (2018, May 24) believes corruption is a mechanism used to divide the population, with the mining company threatening to cut financial assistance in the event of resistance. While Tahoe/MSR can operate in San Rafael since they prevented a consultation in the municipality, surrounding communities successfully stopped the project from expanding to other regions through municipal plebiscites. Although corruption can circumvent processes of democratic decision-making, communities can also leverage consultations to re-gain control over place. This spatio-legal expression of local will contributes to the socio-material realization of a non-hegemonic political project based on community self-determination (Delaney 2010).

Failing to obtain consent through corruption, Tahoe resorted to strategies of criminalization to silence opposition. Maldonado (2018, May 24) explains how

When this citizen movement came out in opposition, it was not something that was expected... they began this intense process of criminalization to provoke fear... Already in 2011, Tahoe presented the first complaint against at least six people who were leading the opposition movements at that time to the project.

While formal laws and regulations related to the protection of civil and political rights exist in Guatemala, private companies like Tahoe can “play with their legal restrictions, elude sanctions, flirt with the sublegal, take advantage of loopholes and operate in darkness” (Deneault & Sacher 2012, 27-28). Rankin (2018, May 25) notes that “it is not that the legal system isn't in place; it is that the way it works has this whole other parallel existence.” This parallel reality becomes clear when dissecting the issue of criminalization in Guatemala, where one is said to be “guilty until proven innocent” (Russell 2018, May 6). In Guatemala, someone can be detained, pre-trial, on three conditions: risk of flight, potential to obstruct

justice or evidence, and/or if the charge requires such detention (Kaump 2018, May 24).

Kaump (2018, May 24) explains that “there is a particular interest in who is held in pre-trial detention”:

...in the prosecution and criminalization of human rights and land defenders today, they use malicious litigation tactics to either keep people in prison so that they are not organizing in their communities, which is a huge financial cost, a cost on morale and developing leadership in communities. One of the ways they do that is filing charges that automatically require pre-trial detention.

“Legal processes,” writes Delaney (2015, 1010), “are, by design, constraining, and the field of possible alternative outcomes is restricted.” Maldonado (2018, May 24) believes resistance leaders were imprisoned on spurious charges without evidence through the processes of

systematic corruption that Tahoe was driving. That is, Tahoe had practically purchased the Ministry of the Interior through Mauricio López Bonilla and the local and National Civil Police, not only in San Rafael Las Flores but throughout the Department of Santa Rosa. And also, at that time they had bought off the *Ministerio Público* [Public Prosecutor’s Office] through the *Fiscalía Municipal* [Municipal Attorney General] in Casillas, Santa Rosa. So that’s why Tahoe could manufacture the types of cases it fabricated. And what interested Tahoe was only to instill fear, because these cases of criminalization were very crude, very baseless...they used the arrest only as a mechanism of fear and of terror towards the population.

The co-optation of domestic judicial institutions⁵⁰ allows the state and company to advance their mutual economic interests at the expense of the country’s citizens. To pursue mass arrests against those mobilizing in defense of their land, however, is detrimental to the development of a just rule of law. In using the law “as a punitive and efficient mechanism of social control in order to safeguard corporate interests,” the state undermines the foundations

⁵⁰ McVicar (2018, August 18) explains that local judges are often paid to rule in favour of the company and/or the state, which is why many lawyers try to get criminalization cases moved out of their local jurisdictions to high-risk courts in Guatemala City, which are set up for politically-charged cases. These courts are staffed with highly qualified judges. It is also “much easier to get support for a case when it’s in Guatemala City in terms of solidarity, in terms of media attention, in terms of the whole idea of strategic litigation...it’s a big strategy that involves advocacy and communications as part of the legal strategy” (McVicar 2018, August 18).

of its authority (Eduardo 2014 quoted in MiningWatch Canada 2015, 14). In Solis' (2018, May 25) opinion, the state represents a device to further imperial interests at the expense of local populations:

First, it must be determined that the Guatemalan state is an instrument that is installed in these territories. That state apparatus is to administer the dispossession, that is, the state character is not a state to benefit the inhabitants, but it is a state that extracts wealth...that's why I say that the state is a device, because here comes the United States, Canada and the countries of Europe. Guatemala is one of the countries that has riches that interest the developed countries. Then those developed countries keep the spoils that they take here and in other countries of Latin America. Then the state will always be at the service of those countries that come to take away what we have. Economic business interest prevails, whether national or foreign, because all national companies serve as a channel for foreign companies.

Jackie McVicar (2018, August 18) of UMJ elaborates on the role of foreign actors in conflicts over resource extraction, describing the level of pressure applied by the Canadian government “from all sides” and by key corporate players to Guatemala’s political and business sectors prior to the approval of Tahoe’s exploitation license. She cites the decision of four Canadian Members of Parliament to travel on Goldcorp’s aircraft to visit the Marlin Mine in August of 2012, during the same period of time that the country was facing uncertainty over its mining law:⁵¹

That political junket was paid for by Goldcorp but there is no doubt in my mind that they were advocating – at that point, Goldcorp was still the owner of 40% of [Tahoe’s] shares – and so they had very clear interests in ensuring the Tahoe mine got its approval.

Three months later, in December 2012, Canada’s Governor General David Johnston visited Guatemala to discuss the extractive sector’s importance to the country’s economic development plan, which involved meetings with high-level officials, members of the Canada-

⁵¹ On June 27, 2012, President Molina announced that the government was considering a 40% stake in the natural resource sector (A201501699, 57). Shortly after the visit of the Canadian parliamentarians, however, Guatemala’s new mining law was finalized without this provision for public ownership (Rey Rosa 2018, 2010).

Guatemala Chamber of Commerce and company representatives, including the Executive Director of Goldcorp in Guatemala and President of GREMIEXT, Mario Marroquin (A201301117, 125-145). During Johnston's visit, the communities affected by the Escobal Mine staged a peaceful protest outside the Canadian Embassy to make apparent Tahoe's lack of social license. Dr. Yuri Melini, founder and Executive Director of CALAS, presented a letter to Governor General Johnston detailing community resistance to the Escobal Mine, including the results of local plebiscites on mining, evidence of the prevention of municipal consultations, and details of the criminalization campaign against religious and environmental leaders (A201301117, 119-120). In response to this vocal opposition, Johnston insisted that "with all the information on the table, communities can understand that mining activities are good for the development of society" (NISGUA 2018c, 4).

In a similar effort to discredit democratic dissent, Trade Commissioner Nathalie Samson (A201301117, 63-64) characterized community protests as

easily organized by paying people and distributing breakfast and lunch to anyone ready to participate. Needless to say that with a majority of the population living in very poor conditions, you do need to have any opinion what so ever to walk, sit somewhere by bus and 'protest.'

This mischaracterization of local communities as poor and uneducated suggests they lack the capacity for self-determination and creates the impression that they could benefit economically from mining, if only 'outside interference' would diminish (Tahoe 2013, ¶8). Solis (2018, May 25) retorts:

We, the population, are looked at only as cheap labor as if we are in desperate need of work. From education, they put in our head that we can only work in companies and we cannot work our own land. They are creating these ideas and therefore they see us as workers and when we think, speak and defend, we no longer exist.

Elite actors continue to advance a particular discourse that situates mining as the key to security, prosperity and peace in Guatemala and the wider region. For example, in a June

2014 report that responds to the state of siege and increased levels of protest, the Embassy writes that “most stakeholders see a dire need for proactive education and information of the population in general as the base tool/strategy” (A201702036, 40). The Embassy purports there would be no opposition to mining if only communities were better educated about its benefits. This paternalistic and colonial attitude towards Indigenous and *campesino* communities is shared at the highest levels of diplomacy. During a roundtable discussion between Ambassador Rousseau and former military general President Otto Pérez Molina (2012-2015), the two “discussed topics of rule of law, justice and security, social equity and an educated and properly nourished workforce as pre-cursors to foreign investment” (A201301117, 263). The Embassy’s language prioritizes “an educated and properly nourished workforce” as integral to economic growth whilst negating the valid concerns of communities experiencing repression, criminalization and ongoing violations of human rights.

The understanding of communities as uneducated also justifies the problematic discourse that they are easily manipulated by local and international NGOs that come in to confuse the population (Mathieson 2010, 5). Tahoe (2012, ¶2) echoes the Embassy’s representation of public protest, characterizing resistance members as “not from the local area,” but as “individuals transported into the area from outside regions, organized and funded by local and international NGOs.”⁵² A letter written by U.S. Congressman Mark

⁵² During a breakfast hosted by Canadian Minister of State for Foreign Affairs Diane Alboney in June 2011 for the Canada-Guatemala Chamber of Commerce, “one of the main issues raised by company representatives was the negative role played by specific Canadian NGOs who they said seem to have their own agenda that was not aligned with those of the communities whose cause they purported to work for” (A201301117, 435).

Amodei to Commerce Secretary Wilbur Ross on behalf of Tahoe (2017d, ¶9)⁵³ provides political legitimacy to such fanciful assertions:

Anti-development NGOs funded from foreign sources have asserted similar challenges against other companies operating in Guatemala, discouraging foreign investment and disrupting businesses that contribute to Guatemala’s development and prosperity.

Congressmen Amodei asserts that the resistance to the Escobal Mine “threatens to destabilize a region in which the mine is one of few substantial sources of economic development” (Tahoe 2017c, ¶9). Solis (2018, May 25) believes this “false discourse of saying that there is development and that by exploiting the mine, people will come out of poverty” is easily dismissed by statistics showing increasing levels of inequality in the country. The 1996 Peace Accords may have “removed a major obstacle to foreign investment,” but 73% of the Indigenous population still live in poverty (A201702339, 45).

Tahoe and its political backers allege that the local resistance is colluding with foreign actors to sabotage much needed ‘development.’ In reality, Tahoe and supporting governments (i.e. the U.S. and Canada) use ‘development’ as a justification for their violent interference in the lives of Indigenous and *campesino* Guatemalans. Such discursive violence is justified by a systematic defamation campaign that works to invalidate local expressions of democratic agency. It is worth quoting Quelvin Jiménez (2018, ¶4), legal representative of the Xinca Parliament, at length:

Investors and shareholders, as well as Canadian and U.S. officials who the company has lobbied, should not be misled by statements that call us ‘anti-development’ or ‘outsiders.’ These misrepresent and obscure the broad opposition to the company’s operations as tens of thousands of people have democratically expressed opposition to mining activities in numerous local votes organized by municipal and village authorities, as well as during peaceful protests outside the U.S. and Canadian embassies and in front of the company’s office in Guatemala. Indigenous and non-Indigenous communities in the area of influence

⁵³ This letter was written on August 23, 2017 in response to the Constitutional Court of Guatemala’s decision to uphold the Supreme Court’s ruling to suspend two of Tahoe’s licenses in July 2017 (Tahoe 2017c).

of Tahoe's project are convinced that mining is not an appropriate activity for our territory – and that this should be our decision to make.

More than just being undemocratic, the fabrication of human rights and environmental defenders as either 'criminals,' 'outsiders,' or 'anti-development' has grave and violent consequences, including the murder of community leaders and activists (MiningWatch Canada 2014, 14).

Despite communities' clear refusal of mining and calls for more participatory forms of development, the discourse of neoliberal development persists. Rather than recognizing the rights of Indigenous and *campesino* communities and protecting their access to the commons, the Guatemalan and Canadian states have colluded with Tahoe to constrain their ability for self-governance. As Barrett (2018, ¶2) writes, discourses of development "are not neutral... they produce power structures that inform epistemological understandings of the world and normalize particular practices."

Localizing the security-development nexus

"The Canadian government was playing a role opening spaces and ensuring that Canadian investment through mining could happen in Guatemala, and that happened pretty violently."

Jackie McVicar of UMJ (2018, August 18)

When Tahoe and the Guatemalan government realized that "not even criminalization could scare the population," "they went beyond criminalization; they started with attacks and assassination attempts of community leaders" (Maldonado 2018, May 24). The company adopted a militarized security strategy designed to quell community opposition through targeted violence (Solano 2015; Solis 2018, May 25). In January 2013, for example, Tahoe and Guatemala's National Security Commission (*El Consejo Nacional de Seguridad*, CNS) accused the resistance of "private property damage" as well as "attacks and kidnapping of

members of the police, and robbery of explosive material and munitions belonging to the mining company and the police respectively” (Solano 2015, 18).⁵⁴ The Peaceful Resistance alleges these acts were orchestrated by private and public security forces to silence social protest:

It is clear that the ultimate goal has been to discredit this resistance. There have been criminal acts attributed to the resistance by the media that have sought to confuse the population and damage the credibility of the protest (MiningWatch Canada 2017a, ¶11).⁵⁵

A statement issued by activists at the blockade in Casillas – where protestors have been repeatedly attacked by police with tear gas – further illuminates Tahoe’s effort to criminalize community resistance:

Since the resistance camps began in Casillas and in front of the Constitutional Court, there have been actions taken to provoke community members in order to create the conditions for their criminalization (NISGUA 2018d, ¶11).⁵⁶

⁵⁴ The Specialized Division for Criminal Investigation (DEIC), a section of Guatemala’s National Civil Police, named anti-mining resistance leaders as responsible for an armed attack on January 12, 2013 and characterized the alleged suspects as ‘terrorists.’ This information, found in the DEIC’s report, is believed to have come from the head of MSR’s security, Alberto Rotondo, now indicted for charges of assault and obstruction of justice related to the April 27, 2013 shooting incident (Solano 2015, 15) and a fugitive from justice. Lisa Rankin (2018, May 25) of BTS explains how the DEIC kept appearing in the municipalities surrounding the Escobal Mine, stopping people and asking questions as a means of provoking fear and intimidation.

⁵⁵ Evidence from a 2014 Canadian Embassy report lends credence to the concerns of the Peaceful Resistance regarding this public-private campaign of criminalization and militarization, noting that since the January 2013 attack, “the Guatemalan government has been quick to respond to protests and roadblocks. This has in turn, raised the level of activities of Human Rights groups and other NGOs in general as they accuse the government to use [*sic*] unnecessary force to remove people from roadblocks, depriving them of their right to protest” (A201702036, 40-41).

⁵⁶ For example, in July 2012, Tahoe sent a team of MSR employees to El Durazno, Mataquescuintla to deliver CSR programming. After being turned away by the community, a group of protestors stopped the MSR team in San José de la Sierra and demanded that the company cease their CSR initiatives as well as their exploration activities in the area (García 2018, ¶1). Prensa Libre reported this confrontation as a ‘hostage situation’ (Melnik et al. 2016, 13). Alberto Rotondo, Tahoe’s head of security, wrote in a company incident report that armed individuals detained and threatened MSR employees, suggesting that Tahoe implement “in the quickest manner possible a legal and publicity strategy in the media that demonstrates the involvement of leaders of the groups in these acts, especially the role of the Catholic Church, such that authorities are forced to take legal action against them” (Solano 2015, 15). This demonization of the Catholic Church echoes discourses during Guatemala’s genocide.

Tahoe (2012) characterizes civil disobedience as undermining the ‘rule of law’ (i.e. putting its private property at risk), but this discourse does not consider how protest is pursued only after the legal and political institutions fail to respond to democratic demands in a context of asymmetrical power relations (MiningWatch Canada 2015, 16-18). The company creates an image of unlawfulness to deny citizens of their constitutional right to assembly and peaceful protest (Blomley & Bakan 1992). These ‘dividing practices’ dichotomize between opposites, e.g. legality vs. illegality, and help to consolidate state and corporate power over communities (Foucault 1982). MiningWatch Canada (2015, 17) asks: “why is one considered lawful and peaceful when the other is not? Why should actions such as the destruction of water supplies, sacred areas, forests and productive land – jeopardizing the peoples that rely on them – not be considered criminal and violent and duly prosecuted?” These questions problematize the legitimacy of relevant laws: who designed them, for what purpose and for whom?

Discourses of criminality not only validated the state and company’s strategy of counter-insurgency, but also legitimated secrecy surrounding the very policies decided upon in response to community dissent. For instance, the Guatemalan government secretly installed the Inter-Institutional Office for Integrated Development in San Rafael in March 2013 after designating the Escobal Mine a ‘strategic natural resource’ and thus a national security concern (MiningWatch Canada 2014, ¶9). Managed by the Technical Secretary of Intelligence, the office’s stated purpose is to develop “policies, strategies, projects and recommendations that would enable the Committee to holistically address security and development issues toward the betterment of the quality of life of the population and ensure environmental protection” (Solano 2015, 17). Whereas Tahoe Resources refers to the

Interinstitutional Office as a “High Level Commission [...] to address community issues and oversee security matters,” members of the anti-mining resistance call it a “counterinsurgency” and “a military intelligence operation,” opened for the purposes of surveillance and control (MiningWatch Canada 2014, ¶9).

A national-level body, the Inter-Institutional Group on Mining Affairs, was responsible for the establishment of this local office in San Rafael.⁵⁷ According to Solano (2015), the Inter-Institutional Group was the leading force behind the decision to implement a state of siege in May 2013. Commenting on the initiative, Guatemala’s Minister of Interior Mauricio López Bonilla remarked “its role is to figure out what has failed” and that “we believe a state, when we attract foreign investment, it is important to provide accompaniment from start to finish” (MiningWatch Canada 2015, 34). Tahoe helped the Inter-Institutional Group locate office space in San Rafael and met twice with its members to discuss the Escobal project (A201702036, 19).

The level of coordination between the state and Tahoe is indicative of what Kamphuis (2012, 247) calls ‘public-private convergence,’ a particular arrangement of power defined by the interpenetration between the state’s coercive power and the company’s economic power. Solano (2015, 19) describes how “company pressure on the government, its military and police-like actions, and the relationship between private and public security forces diminished the intensity and viability of mining resistance,” creating an environment favourable to corporate interests. As explained by the Unit for the Protection of Human Rights Defenders in

⁵⁷ On March 26, 2013, the Inter-Institutional Group on Mining Affairs was established by Minister Bonilla via Executive Order to assist in resolving mining conflicts and to “formulate recommendations on this case for the CNS, starting in the municipality of San Rafael Las Flores, where the El Escobal mine is operating” (Solano 2015, 18). This group is overseen by Colonel Ricardo Bustamante Figueroa, Technical Secretary for the CNS, and consists of: MEM Minister Erick Archila, Minister Bonilla, Secretary of Strategic Intelligence of the State José María Argueta, Minister of Environment and Natural Resources Roxana Sobenes, Attorney General Vladimir Aguirre, and Conflict Commissioner Miguel Ángel Balcárcel (A201402328, 34).

Guatemala (*Unidad de Protección a Defensoras y Defensores de Derechos Humanos*

Guatemala, UDEFEGUA) (2013 quoted in MiningWatch Canada 2015, 25):

...the interests of a minority, albeit politically and economic powerful, are being imposed against the interest of thousands of impoverished Guatemalans who do not enjoy the benefits of the business taking place between the state and national and foreign corporations. The model of pillaging national territory is left intact and the state, incapable of guaranteeing security for the citizenry with regard to matters related to the defence of economic interests, nonetheless demonstrates an operational capacity together with the use of security forces to impose these ‘development projects’ by force.

Despite Tahoe’s clear lack of a social license, the Canadian and U.S. governments responded to growing conflict by mobilizing their state power to facilitate Tahoe’s predatory activities, all in the name of ‘development.’ As Power (2003, 7) explains, it is “under the guide of ‘attacking poverty’” that powerful countries and their global institutions are “actually attacking the poor.” An email written by Canadian Ambassador Hugues Rousseau on April 3, 2013 reveals the political effort behind the approval of Tahoe’s exploitation license and its ultimate significance:

Just came back from a working and signature session followed by a press conference where Guatemalan Minister of Mines Erik Archilla [sic] officially announced the delivery of exploitation licenses to Tahoe Resources and Russian company CGN. For Tahoe, this has been a long and protracted battle which has lasted over a year [redaction...]. Tahoe resisted, through all these transactions, payments of [redaction...] and respected the letter of the law. Everyone's perseverance finally paid off today. This is a very important step for the Government of Guatemala prior to their Investment Summit which will be held at the end of May as other potential investors were watching carefully. This also sets an excellent precedent that business can be conducted above board. We understand that President Perez Molina played a crucial role in advancing the file once he was told that some elements in the bureaucracy were trying to take advantage, especially in his years of “Government Transparency.” [Redaction...]. We are expecting quite a backlash from the opposition groups that were probably taken by surprise. However, this time, both the Gov and the companies are ready to defend themselves with an aggressive campaign on the benefits of responsible extractive industry activities. Will keep you posted (A201501699, 55).

This passage reveals the Canadian government's level of complicity in abetting conflict. The Embassy's role in the violent re-organization of local space for Canadian mining interests is problematic for several reasons. First, the Embassy was actively monitoring issues of consultation and consent surrounding the Escobal Mine prior to license approval and was aware of the high level of community opposition.⁵⁸ Second, the irony of the Ambassador's statements become clear when contrasted against the backdrop of the *La Linea* corruption scandal wherein both President Molina and MEM Minister Erick Archila were found to be implicated in the establishment of a corruption ring.⁵⁹ Third, if Tahoe was facing pressure to pay bribes, this is an indication that both the company and the Embassy were aware that the individuals they were doing business with were corrupt.⁶⁰ The Canadian government and Embassy claim that domestic corruption undermines their efforts to ensure transparency in processes of natural resource governance, yet they choose to promote the expansion of the mining industry into jurisdictions well-known for their repressive and undemocratic practices (Russell 2018, May 6; Weisbart 2018a).

⁵⁸ For example, the Embassy produced a report entitled, 'July 2012 – Opposition to mining in Guatemala,' which would later form the basis of a joint letter on behalf of the Canadian and U.S. embassies to Tahoe Resources and President Molina dated July 26th, 2012 (A201301117, 80-86). The Embassy also records the "good faith consultation" held by CALAS in the neighbourhood of La Cuchilla on March 23, 2013 – just a week before Tahoe's license approval (A201702036, 11).

⁵⁹ News of the scandal broke April 16, 2015 (see NISGUA 2015). Archila faces allegations of money laundering and anomalies in the granting of government contracts (NISGUA 2015, ¶5). CALAS filed criminal charges against Archila and then MEM Mines Director Fernando Castellanos in July 2015 for their alleged violation of the constitution when they granted Tahoe its exploitation license without adequate consideration of 250 citizen complaints against the Escobal project. Now a fugitive from justice, with a capture order out for his arrest, Archila also faces criminal charges related to the illegal transport of gold from the El Tambor Mine in La Puya, San José del Golfo where residents have maintained a peaceful, 24-hour blockade since 2012 (Solano 2016, ¶22).

⁶⁰ The Embassy reports on allegations of corruption in the Guatemalan government as early as January 21, 2014 – almost a year and two months before news of the *La Linea* corruption scandal breaks in April 2015. The Embassy notes that although allegations of corruption died down in the first 18 months of Molina's new government, they are "now hearing more rumors of it across sectors and all levels of institutions, including allegations of the [redaction]" (A201702339, 157-159).

The approval of Tahoe's exploitation license likely represents "that strong signal that would show Guatemala is ready for international investment," which Canadian companies and the Embassy were calling on Guatemala to send back in July of 2012, after President Molina announced a potential 40% government stake in extractive projects (A201301117, 93).⁶¹ Trade Commissioner Samson describes the importance of the Escobal Mine as a "flagship project in Guatemala," one that is "being watched by investors and investment funds, analysts and managers," to determine whether Guatemala is open for business after recent political and legal uncertainties (A201702339, 161). The Embassy even tracked President Molina's statements underlining that natural resources will be developed as part of the country's economic plan, potentially justifying their aggressive advocacy approach on behalf of Tahoe (A201702036, 11-12). This *de facto* policy of political interference, together with the Embassy's contempt for democratic rights to consultation, explains its support for Tahoe despite ongoing violence.

The Canadian Embassy asserts that their companies are following the 'rule of law.' In practice, this means "taking advantage of a weak judicial system and weak environmental laws to impose these projects on communities that do not want them...They take advantage of corruption, they manipulate local communities and they squash resistance" (Rankin 2018, May 25). Jen Moore of MiningWatch Canada (2018, June 19) agrees with Rankin's (2018, May 25) assessment, and adds that Canada has found an open partner in Guatemala in terms of promoting its hegemonic development model:

⁶¹ On July 13, 2012, Trade Commissioner Samson wrote to her colleagues to report on the worrying status of Canadian mining investments after the proposed constitutional amendment was announced, noting that many companies "need very short term concrete actions to be able to maintain their activities as investors are firm and will not support many more delays. Many if not all, might be facing serious difficulties, with the local/regional communities and possible increase of violence if the situation deteriorates as jobs and local revenues are lost" (A201702339, 160).

The Canadian Embassy role has played a strategic role in trying to push back the community resistance and undermine it in different ways in order to facilitate the interests of Canadian corporations investing in the mining sector. ...I think there's an unquestioned assumption on Canada's part as to what is good, what constitutes progressive development and what is good for the rest of the world. There hasn't been much fundamental questioning on mining-as-development or the neoliberal model of development, and because that's the principal sector in which Canadian foreign direct investment is concentrated, it provides a foothold of sorts for that expansion of this model in other parts of the world.

To Jen Moore's (2018, June 19) point, the unquestioned assumption that Canada is a benevolent global player and that its development model is universally desired perhaps explains Ambassador Rousseau's decision to lobby for the approval of Tahoe's license just two weeks after the kidnapping of four Indigenous Xinca leaders, including the President of the Xinca Parliament, Robert Gonzales Ucelo, and the murder of one – Exaltación Marcos Ucelo (Imai 2017, 15).

Violence only escalated after the approval of Tahoe's exploitation license. On April 27, 2013, Tahoe's private security shot seven men peacefully protesting outside the Escobal Mine. Commenting on the incident, Maldonado (2018, May 24) shares that when Tahoe "saw that criminalization did not diminish the opposition of the people, they started with attacks that were merely criminal." Adamant that the Escobal project would not become another La Puya,⁶² security manager Alberto Rotondo authorized an attack using shotguns, pepper spray and rubber bullets against protestors outside the mine's gate. In wiretap transcripts related to the incident (see Appendix IX),⁶³ he says, "they can go to hell. They come here fuckin'

⁶² Since 2012, residents from around the proposed El Tambor Mine in San José del Golfo (see Appendix I, Figure 1) – originally owned by Canadian company Radius Gold and then sold to Reno-based Kappes, Cassidy & Associates – have maintained a peaceful, 24-hour blockade in La Puya, on the way to the mine (Field notes 2018, May 12).

⁶³ Rotondo was wiretapped by the Public Prosecutor's office roughly two weeks before the April 27, 2013 shooting incident, "in apparent connection with suspicions over earlier violence at the mine site" (A201702339, 269). It is unknown what suspicions or incident(s) justified Rotondo's wiretapping, however, the concerns vocalized by the resistance regarding frameups in this context are noteworthy.

starving to death! They should go somewhere else, get a job” and that “they’d better find some Indians so they can defend themselves, I tell them, faggots” – “it’s with bullets that they will learn.” Tahoe (2013, ¶10) claims that the protestors were “armed with large sticks, clubs and machetes” and were “engaged in impeding traffic to and from the mine.” What Tahoe fails to mention in its press release is Rotondo’s instruction to security personnel to “recover the bullet castings,” “clean the guns,” and erase any video recordings. He also coordinated with a local police officer to falsify accounts of the shooting:

We’re saying ‘nothing happened here.’ There are no recordings. The version is: they entered and attacked us. And we repelled them, right?... that they come everyday to attack us, with machetes and rocks; and so the people have defended themselves. There are, there are the broken shields there. But break another two, so that they see that they attacked us.

Rankin (2018, May 25) explains that Rotondo “was a mercenary. He came in to do a very specific job and he did it for the most part.” Just two days after the shooting incident and five days before the state of siege, Canadian Ambassador Hughes Rosseau acted as an honorary signatory to the royalty agreements between Tahoe and the Guatemalan state (NISGUA 2018c, 4; see Appendix II for a timeline of events related to the Escobal Mine conflict).⁶⁴ Jen Moore (2018, June 19) characterizes Canadian participation in this event as a “very symbolic act at the height of violence and criminalization to legitimize the company’s operations.” Despite credible allegations of human rights violations, the Canadian government continuously deployed its political influence in support of Tahoe.

⁶⁴ In the 13 files received by JCAP from Global Affairs, no evidence regarding the Canadian Ambassador’s participation in the royalty signing ceremony was found. After numerous requests for additional information, and a corresponding lack of disclosure regarding the royalty ceremony, JCAP (2017) submitted a complaint to the Office of the Information Commissioner, which remains under investigation. The Information Commissioner does not have the power to compel disclosures. Likewise, exemptions are highly discretionary and even in the case of a possible judicial review, the Supreme Court can choose to reinforce the executive’s prerogative.

On May 3, 2013, President Molina imposed a state of siege in the municipalities surrounding the mine to quell threats to the “constitutional order, governability and state security” (Solano 2015, 17). According to the Canadian Embassy, “the escalation in the number and severity of violent incidents lead to the government implementing a state of siege in the region, enforcing curfews and employing both army and police to patrol the area” (A201702036, 13). More than one hundred activists were subject to arbitrary detention (Imai et al. 2016, 15). Community members believe the siege was imposed to prevent community consultations (Cabnal 2018, May 7):

The general narrative is that the state of siege happened when simultaneously *consultas* were being organized. Particularly in the case of San Rafael Las Flores, the mayor of the time was highly supportive of the company and he did not allow for a municipal-wide consultation, so communities opted for community-level consultations – and that happened in eight different communities or *aldeas* in San Rafael Las Flores – to the point up until the siege and then that stopped any other from going forward or any organizing in that regard (Kaump 2018, May 24).

The state of siege created a climate of fear and halted community organizing: with the establishment of a “much-needed permanent police force in San Rafael Las Flores,” writes Tahoe (2013, ¶8), “the residents of the San Rafael communities have seen significant decreased tension since that time, as outside interference has diminished.” Strategies of militarization highlight the level of impunity enjoyed by Tahoe and the Guatemalan Armed Forces and National Civil Police.

The Canadian Embassy confirms the Guatemalan government’s official rationale for the state of siege, citing the need to suppress organized crime rather than anti-mining protests. In particular, the Embassy positions the January 2013 “organized armed attack” against MSR as key factor in the Guatemalan Government’s decision to suspend constitutional rights, and supports allegations made by Interior Minister López Bonilla that “there are well armed illegal groups in the area who are responsible for this incident and other acts of violence, in which

vehicles were set on fire, in November [redaction...]" (A201702036, 11-15). The Embassy writes that "such an action had hoped to stop the government from authorising the exploitation license" (A201702339, 158), and that criminal organizations "do not want to see additional state presence (e.g. police) and the development of local economies in the region" (A201702036, 14). In response to a media request regarding the state of siege,⁶⁵ Ambassador Rousseau emails his colleagues indicating that he, Political Counsellor Colleen Pigeon and Trade Commissioner Nathalie Samson

met with Tahoe people today to get their version of the facts. This is a far more complex problem than just anti mining. We also met with [redacted] who has offered his good services for mediation if need be. We had also been working to involve the church and new nuncio picked up ball on the rebound from predecessor and a meeting was held last Wednesday with different parties. We will report (A201702036., 7).

Kaump (2018, May 24) believes the discourse of organized crime is a deceptive strategy; it delegitimizes resistance movements by suggesting that they have "ulterior motives." The characterization of community protest as criminal allows the state to justify the exclusion of its citizens from legal protection. Law becomes a highly effective form of social and spatial control (von Benda-Beckmann et al. 2009): it is in this state of exception that the law "is in force without significance" (Agamben 1998, 115). Existing outside the law, the sovereign power coerces its subjects to abide by the very laws it ignores. The state has the power to negate life and can choose to exercise its absolute, extra-juridical power to bring bare life under its purview (Agamben 1998). Ideological representations of 'development' are thereby materialized through the spatial practices of law (Tyner 2012a).

⁶⁵ The iPolitics media request asks the following questions: what has the Canadian embassy in Guatemala done with respect to making sure Tahoe Resources Escobal mine is safe from protests over the mine during the last week and in the past? Who in the Guatemalan government is the embassy in communication with over these issues, the mining department, the president? (A201702036, 243-245).

There is no evidence that Ambassador Rousseau and his colleagues met with local communities or NGOs opposed to the Escobal Mine to get their version of the facts. Rather than taking seriously the voices of people in resistance, the Embassy expresses

...concern for the safety of all actors in conflict situations and the critical importance of re-establishing calm and security; the importance of finding a pacific way to resolve conflicts and to avoid further violence, injuries and deaths; the responsibility of the Government of Guatemala to restore calm and security, to ensure rule of law and respect for both human rights and property rights (A201702339, 271).

The above statement seems made to absolve the Canadian Embassy of its responsibility in aiding conflict around issues of mining. For one, the Canadian Embassy helped to secure Tahoe's license without community consent. It failed to denounce the violent actions of the company, including the April 27, 2013 shooting incident. Nor did the Embassy address the repressive acts of the Guatemalan government, including during the state of siege. The Embassy's "concern for the safety of all actors" fails to recognize and appreciate the real power imbalances that have resulted in actual violations of human rights. The Embassy wants to "resolve" conflict to ensure "calm and security," but not to seriously address fundamental issues of individual and collective rights.⁶⁶ In a context of militarization, human rights and property rights are not compatible, as one is predicated on the violation of the other (Granovsky-Larsen 2013; Weisbart 2018a).

Tahoe, hand in hand with the Guatemalan and Canadian governments, have clearly undermined Indigenous and *campesino* communities' right to consultation in natural resource governance, engaging instead in a smear campaign against the Peaceful Resistance to

⁶⁶ In its May 2013 report regarding state of siege, the Embassy also wrote that "the complex web of actors and interests in this case highlights just how politicized and complicated the security situation in Guatemala is. Canadian interventions in the security sector to date, via DFAIT [Department of Foreign Affairs & International Trade] and CIDA [Canadian International Development Agency] programming, especially those related to special methods of investigation and capacity of the Attorney General's office should contribute to the release of a reliable account of what happened in violent incidents to date and fair legal proceedings for those involved" (A201702036, 271).

delegitimize accounts of repression. These actors continue to respond to calls for greater democracy with violence and law to re-assert their domination of space, to restrict and close down possibilities in terms of what can and cannot occur within particular spaces (Allen 2003). Members of the public are entitled to participate in decisions affecting them, with consultation being codified in Guatemala's constitution, yet those opposed to mining are condemned for standing in the way of development. Elites justify their actions as being in the interest of the 'rule of law,' but these discourses mask their vested economic interests. In its practical implementation, the security-development nexus produces unequal power relations at the local, national and international levels, reinforcing a global neoliberal order premised on exploitation.

Legalizing dispossession: the rule of law as plunder

“Guatemala's riches and its territory will be handed over by legal means to be exploited by local and foreign mining, hydroelectric, logging, sugar, and palm-oil companies. The assault on the natural world affects thousands of Guatemalans who need these lands for their survival.”

Magali Rey Rosa (2018, 96)

Tahoe has relied on state and private security forces to 'protect' the mine, namely by criminalizing land defenders and destroying the social fabric of communities. This violence is justified by a defamation strategy that characterizes civil protest as a threat to national security and 'development.' It is within this context of militarization that Tahoe has been granted concessions spanning the Departments of Santa Rosa, Jalapa and Jutiapa (see Appendix I, figures 7-10). Process of territorialisation through privatization – carried out by the state in collusion with foreign commercial interests – are a key element in processes of accumulation by dispossession (Andrews 2019, 673). Although property is viewed as “natural, necessary,” it is “deeply social and political” (Blomley & Bakan 1992); the state

uses ideologies of property and ownership to restrict community access to land (Gillespie 2014, Braverman et al. 2014).

In the community of La Cuchilla, for example, families were coerced to sell their land after Tahoe's use of explosives in underground tunnels caused damage to their homes, making them uninhabitable (NISGUA 2016). Tahoe (2016a, ¶1) characterizes this home purchase program as a voluntary "humanitarian act," even though it is the company itself that caused the issue. As curiously stated in Tahoe's (2016a, ¶3) press release, "the company does not need the acquired land for any reason other than providing economic relief to at-risk residents." This dishonest rhetoric invalidates the legitimate concerns of communities, who are portrayed as ungrateful beneficiaries of such a 'benevolent' corporation. Tahoe leverages purported development benefits to justify violent practices that deny people of their right to safety and security. These investments, however, must be understood against a backdrop of land dispossession, human rights abuses and environmental degradation. As stated by the Xinca Parliament and the Peaceful Resistance:

MSR is more concerned with its billion-dollar investment in the project than with the impacts they are causing through the region of Santa Rosa, Jutiapa and Jalapa, including the destruction of our social fabric, as well as pollution, criminalization, forced migration and the violation of the rights to water and housing (NISGUA 2018d, ¶6).

By manipulating public discourse, the company creates the image that it is interested in the well-being of communities. These deceptive strategies represent a means by which the company can obscure the contradictions of 'development,' that is, the violence of neoliberal capitalism.

Land previously used for coffee production in La Cuchilla is now mine-owned, forcing residents to travel farther to rent agricultural land (Ilavksy 2013, 7). Llan Carlos

Dávila Arévalo (2018, May 7), Mayor of Santa Rosa de Lima, exclaimed: “the evictions in La Cuchilla violates our collective rights to ownership of our lands. If the mine goes forward, there will also be possible forced evictions in Jutiapa.” During the public gathering in Casillas, Xinca leaders described how the government manipulated the land titling system to deny them of their territorial rights (Field notes 2018, May 7). The President of the Xinca Parliament, Aleisar Arana, elaborated on the threat posed by the project to Xinca self-identity and ways of life:

As Xinca people, we still have our own ways of life and our own communal lands that we want them to respect. We know that we have a long journey to overcome the stigmatization with which they treat us. Just as we heard today, they say we don’t exist (MiningWatch Canada 2017b, ¶10).

Land rights are integral to the Xinca’s rights as Indigenous peoples, without which they would not be able to practice subsistence and their cultural traditions. Gillespie (2014) explains how Western notions of property tenure and their emphasis on private, titled land rights are incongruous for Indigenous settings. The Xinca organized themselves “around the use, access, administration and defense of their land and territories,” that is, “around the collective control and administration of the Xinca territory by the Xinca people” (Aguilar-Støen 2015, 139).

Peluso & Lund (2011 quoted in Andrews 2019, 674) write that the foreignization of communal lands “dispossesses commoners or individual claimants without ‘legal titles,’ and powerful, legitimized, or draconian enforcement turns ordinary people into ‘poachers and squatters.’” Land is regarded as a commodity to be bought and sold, rather than as an ancestral home that provides the ‘honey of our lives’ (Miguel Ángel Bámaca 2018, May 9). Whereas Indigenous-*campesino* communities in Guatemala carry an ancestral, historical and cultural connection to their lands, the company and the state claim a narrow legalistic claim

to land, justified by the ‘national interest.’ Mining might attract short-term investment and create some short term jobs, but “it is a process that destroy entire mountains and permanently contaminate the vast quantities of water that it uses, and the soil that peasants and Indigenous people need for agricultural activity” (Rey Rosa 2018, 87).

The modernization of land policies in the interest of private capital at the national and international level undermines Indigenous ways of knowing and being in their local settings (Gillespie 2014). As Simatei (2005, 85) writes, “colonial representations of land and its inhabitants become a form of epistemic violence to the extent that it involves immeasurable disruption and erasure of local cultural systems.” The state’s sovereign power over land and minerals, including its ability to “decide when and how to grant such land and minerals to others and under what conditions and restrictions,” creates a struggle as “who has a legitimate claim to lands and the minerals below them” (MiningWatch Canada 2015, 16). The positioning of resource extraction as key to Guatemala’s economic development thereby creates conflict between national-level imperatives and local-level demands. The compulsory acquisition of communal land contributes to the further marginalization of Indigenous communities. The Mayor of Mataquescuintla, Hugo Manredo Loy (2018, May 7), describes the

damage to our families, neighbourhoods, communities, and to our land and water which has been contaminated. They have sowed divisions, which has led to the migration and the tearing apart of families. In Cuchilla, there are only 17 out of 90 homes left, and there are cracks and fissures in the middle of town due to explosions. The mining company says it has a short, medium and long-term plan, but it has only delivered a massive amount of destruction in the short-term. And the government enables all of this...

This destruction mirrors the state’s counter-insurgency strategies during the genocide, wherein the army violently razed and displaced villages, tearing apart communal networks and instilling fear and uncertainty into social life, which Copeland (2017) argues weakened

postwar movements and ‘cleared the ground’ for a neoliberal peace. Indigenous peoples had their “connection to the land irrevocably severed in favour of big businesses’ ability to exploit that land” (Perrigo 2016, ¶29).

The state employed its intelligence and security institutions to harass, intimidate and weaken resistance to mining, thus cementing processes of accumulation by dispossession. Peluso & Lund 2011 (quoted in Andres 2019, 676) explain how violence is “important in establishing and upholding territorialisation or enclosure processes.” The state and the company use violence to reinforce the territorial boundaries of mining concessions, as a means of claiming legal ownership. Here, violence is understood to include a variety of tactics, such as targeted assassinations and criminalization against local leaders in peaceful opposition to the mine, but also attempts to undermine democratic rights and Indigenous rights, including the company government’s refusal to recognize the validity of local consultations and the denial of Xinca identity. As Victoria Tauli-Corpuz (2018a, ¶9) wrote following her May 2018 visit to Guatemala: “at the root of this violence is institutionalized racism and discrimination against Guatemala’s Indigenous population. Their inherent rights to their traditional lands, territories and resources are not recognized.”

Even though 98% of the population has said no to mining, the Guatemalan government and Tahoe refuse to respect community decisions, “using the legal system [instead] to erode the anti-mining movement” (Aguilar-Støen 2015, 143). Tahoe, for one, submitted lawsuits to stop and/or invalidate *consultas* on mining in the communities surrounding the Escobal project, while the Industrial Chamber of Guatemala and CACIF appealed the legality of municipal plebiscites in the Constitutional Court (Imai 2017). The Canadian Embassy, too, carries a similar contempt for democratic rights. Following the original suspension of Tahoe’s

exploitation license in July 2013 by the *Sala Primera de la Corte de Apelaciones del Ramo Civil y Mercantil* (Guatemala's Court of Appeals) for the MEM's failure to resolve citizen complaints prior to license approval,⁶⁷ the Embassy characterized the ruling as "an administrative issue that should not be moved to the Constitutional Court" and thus "the license should not be affected" (A201501699, 66). The Embassy wrote that this "erroneous information" (i.e. that Tahoe's license is "illegal, void and nil") originated in a press conference given by CALAS who is "using public pressure to say the mine should stop operations, using the same strategy they used when the CIDH [*Comisión Interamericana de Derechos Humanos*, Inter-American Human Rights Commission] had issued its resolution in the case of Goldcorp's Marlin Mine project 2 years ago" (A201501699, 66). Whereas opponents of the mine assert that license cannot be exercised until the legal issues are resolved, Tahoe — backed by MEM and the Canadian Embassy — claim that the legal resolution is "against an administrative process of MEM and the license is not affected."⁶⁸

Canadian interference to ensure Tahoe maintained legal 'ownership' of the mine continued. After the Guatemalan Supreme Court's provisional suspension of two of MSR's mining licenses in July 2017⁶⁹ and the Constitutional Court's decision to uphold the lower court's ruling in August 2017, former Liberal Member of Parliament and Cabinet Minister

⁶⁷ Quelvin Jiménez submitted a lawsuit against former MEM Minister Erick Archila for the illegal approval of Tahoe's license in April 2013 after he dismissed 250 citizen complaints about the project (NISGUA 2015, ¶1).

⁶⁸ Tahoe even "confirmed to post that they will move on with activities as previously planned." The Embassy wrote in July 2013 that "it has been confirmed that the MEM is the only party that can revoke the license, be it on its own accord, being ordered by a court judgement or following presidential orders. At this point in time, GTMLA has learned that the MEM would be appealing this decision in what would become a lengthy legal process" (A201501699, 66).

⁶⁹ In May 2017, CALAS filed a claim against the MEM on behalf of the Xinca Parliament for the Ministry's violation of the Xinca's right to consultation in advance of granting the Escobal mining license to MSR (MiningWatch Canada 2017b, ¶1).

Don Boudria – now working as Tahoe’s lobbyist – met with Canadian public officials⁷⁰ with the hope that they would use their influence to pressure the court to rule in the company’s favour. Tahoe also sent a public letter to the U.S. Embassy in Guatemala accusing the Constitutional Court of “potential judicial impropriety” and representing the protest in Casillas as an “illegal road blockage,” writing that the “government has not been successful in enforcing rule of law in the area and today the blockade continues” (MiningWatch Canada 2017b, ¶2 & 7). The U.S. Embassy chose to echo the company’s rhetoric regarding the rule of law in a public statement:

A stable climate of investment depends on a clear legal framework, respect for the rule of law and transparency in the application of law. These components are essential to develop Guatemala’s abundant natural resources, which boosts economic growth, the creation of jobs and the betterment of Guatemalans. In this context, it is important that the Constitutional Court rules without delay on cases such as the *Minera San Rafael* case (NISGUA 2018c, 6).

The U.S is effectively manipulating the political climate in the country and compromising due process and judicial independence by asking for an expedition of the court case.⁷¹ Lawyers representing MSR also filed a brief through the Washington-based International Law Institute to the Constitutional Court threatening international arbitration against the Guatemalan government should it not permit Tahoe to continue operating (NISGUA 2018c, 2). Private rights trump the public interest in neoliberal democracies: corporations are not allowed to directly bribe public officials, yet they are legally protected even when exerting undue influence on judicial decision-making processes and government

⁷⁰ Including the Director General of the Trade Commission Services, policy advisors to the Minister of International Trade, the chairs of the Standing Committee on Foreign Affairs & International Development, the Standing Committee on Natural Resources, the Parliamentary Secretary to the Minister of Foreign Affairs, and the CSR Counsellor office (NISGUA 2017b).

⁷¹ CALAS saw this letter as a win politically, because “despite all the pressure exercised by the media, the court did not give in immediately” to solve the case as Tahoe and the Guatemalan, American and Canadian governments wanted; instead, the company resorted to making the “Government of the United States publicly manipulate the justice system...” (Maldonado 2018, May 24).

policy (Blomley & Bakan 1992; van Aartsen 2016 ¶13). The Constitutional Court quickly reversed its original ruling in September 2017. The temporary reinstatement of MSR's licenses might make the country 'safer for investment,' but it puts communities and human rights and land defenders at greater risk of repression.

The privatization and subsequent territorialisation of communal land – though executed by the Guatemalan state and Tahoe – is enabled by the political support provided by the Canadian and U.S governments. This intersection of place and scale (both global and local) is key to processes of 'accumulation by dispossession' (Harvey 2006). The case of the Escobal Mine further demonstrates how discourses of 'development' legitimate and reproduce relations of power. The material manifestations of such 'development' discourses include military repression, arbitrary detention, land appropriation and kidnappings and murder. Governments intervene to control this supposed disorder and instability to allow for 'development,' but this obscures the fact that development itself is responsible for such chaos in the first place (Nolin & Russell 2019). For the communities affected the Escobal Mine, Tahoe symbolizes a certain 'logic of rule' (Allen 2003, 87), one where state and corporate actors collude to advance the interests of the powerful, rather than meeting the needs of the general population. The usurpation of communal land through the constitution of property rights, together with the manufacturing of consent and the 'privatization of coercive force,' creates a landscape of repression that silences opposition to mining and denies people say over their land and livelihoods (Kamphuis 2012, 217). These factors constitute the mutually-reinforcing practices of support between public-private actors that not only "constitute power," but also "legitimate its formation and exercise" (Kamphuis 2012, 253).

Contesting hegemonic sovereignties through law

Alongside the penetration of Canadian capital into Guatemala's mining sector is an increasing popular resistance to the politics of neoliberalism at the local, national and global levels. As Gordon & Webber (2008, 63) argue, the "creation of new spaces of capital accumulation is not an innocuous process; it inevitably involves the forceful and violent reorganization of people's lives as they are subordinated to the whims of capital." The communities in resistance to the Escobal Mine struggle for greater local autonomy against imperial and neo-colonial forces. Despite attempts by the Guatemalan government and Tahoe to control the population through coercive means, communities refuse to relinquish their freedom, resisting efforts to incorporate them into an exploitative system of market capitalism.

The consultations, road blockades, marches, protests, and lawsuits organized and led by the Xinca Parliament and Peaceful Resistance demonstrate that capital does not penetrate locations unfettered, with private rights contested and overturned at the local and national levels (Delaney 2010). The Xinca are steadfast in their resistance against the Escobal Mine: "we resist 24/7, 365 days a year, at the blockade and in the courts; we have suffered attacks and criminalization as a result," exclaimed Aleisar Arana, President of the Xinca Parliament (2018, May 7). Kaump (2018, May 24) posits that the

tactics that small farming and indigenous movements use are not unrelated to their position of power: massive marches or what we see in this specific case, peaceful encampments or occupations. They are using the resources they have and their relative power. And it's not something unusual that the government focuses on their relative position of power and tries to criminalize it. There are these laws about blocking main roads; the resistance camp is on private property that they have an agreement with the owner and they selectively turn back mining-related traffic...they have been in active resistance since 2010 and organized a number of ways of expressing their discontent in legal frameworks such as the consultations and getting permits for massive marches... They don't have the resources to do massive media coverage like Tahoe and their supporters are doing; this is something they can do with their resources, to get attention

to what they are saying with their voices, because they are in opposition and Tahoe is negating that.

Tahoe's spatially dispersed network of financial, managerial and political control may create challenges for the resistance against the mine, as those with decision-making authority are removed from local communities in terms of both physical and social 'distance; yet, people actively reclaim space through everyday acts of resistance and protest. The Xinca resist on their land, in their rightful 'place,' but also in spaces of contested and imagined national unity like at the Constitutional Court, against a discriminatory state that seeks to erase them. As read on their protest banners, "*Estamos Presente*," and heard in their speeches, Indigenous peoples are not extinct: "We are people of flesh and blood. We exist!" (Arévalo 2018, May 7). In occupying *representational* spaces (Tyner 2012b) and demanding a say over whether resource projects will occur on their territory, Indigenous peoples assert their right to political participation. "More than a resurgence or a revival," opines Maldonado (2018, May 24), the resistance of the Xinca "is a matter of re-visibilizing a culture that the state of Guatemala has ignored or hidden":

The Xincas have existed in the area for millennia, and their particularity is that they have legitimate/legal possession of collective land. There is a lot of Xinca collective land in the area. The only thing that happened after 1996 is that they became more visible with the Peace Agreements, and that was the core point of CALAS' legal action: to make a legal claim process but also to support the political resistance of the Xinca people, since the government – with the granting of the license to Tahoe – repeated past processes, discriminatory processes of invisibilization of the population in the area. It is a visibilization because they have always been there and now they are in a process of legal and political re-vindication of their rights (Maldonado 2018, May 24).

The Xinca's re-visibilization through their resistance and the legal case in particular provided an opportunity for the group to contest state law and the company's coercive power (Berman quoted in Robinson & Graham 2017, 4). In response, Tahoe (2018c) announced its intention to develop an Indigenous Peoples Policy (despite its contention that there are no Indigenous

Xinca living in the area of the mine). This exercise in doublethink undermines community opposition and limits external intervention by silencing the Xinca people's vocal 'no' (Laplante & Nolin 2011). "Only now, after losing millions of dollars,"⁷² opines Quelvin Jiménez (2018, ¶7), "has Tahoe indicated that it will develop an Indigenous Peoples Policy. But, even if this policy were in line with international law and fully binding, it is too little, too late."

Indigenous-*campesino* communities exercise law and accessed justice – both within Guatemala and outside of the country – as a means of asserting their right to collective self-governance (Sieder 2011; Crystal et al. 2014; Kamphuis 2012, 2017). Law, specifically the right to consultation and consent, is a key tool in the Xinca's struggle for self-determination (Kaump 2018, May 24). The Xinca leveraged Indigenous, municipal and international law to organize *consultas*, which is both an ancestral practice and a modern articulation of the right to FPIC (Kaump 2018, May 24; see also CPO 2018). The Xinca practice a productive 'interlegality' (Robinson & Graham 2017),⁷³ which provides them with 'power over' (Allen 2003) Tahoe by putting its investment at risk. Through *consultas*, the Xinca disrupt the formal coding of their territories as private property and spaces of resource extraction by the federally-imposed licensing regime (Aguilar-Støen 2015, 142). As an expression of local agency, *consultas* are "a form of resistance to the granting of mineral rights to corporate interest" that "affirm the autonomy and self-determination of communities over their ancestral lands" (Laplante & Nolin 2014, 231-233).

⁷² Since the suspension of the mine, Tahoe's shares have dropped 40% (Breaking the Silence 2017, ¶3).

⁷³ Robinson & Graham (2017, 4) define interlegality as the ways in which "Indigenous and customary laws interact with and/or are subordinated by state laws"

Solis (2018, May 25) reinforces how the Xinca's historic title and rights to their land provides a basis by which the Indigenous community can "prevail before the interference of the San Rafael company." The violation of the Xinca's right to FPIC as outlined in ILO Convention 169 informed their decision to take constitutional action to protect their ancestral territory, as a means of denying Tahoe the power to control the land which it seeks to exploit. International human rights norms can problematize the sovereign power's authority over 'bare life,' as Indigenous groups use this modern tool to resist the state and its violent practices (Agamben 1998; Robinson & Graham 2017). This type of legal action seeks to not only address and remedy specific violations, but also to '*refundar*' or 'refound' the country itself (Morán 2018). Quelvín Jiménez (quoted in MiningWatch Canada 2017b, ¶11) asked the Supreme Court to consider the lawsuit not just as a case concerning the right to consultation, but also the right to Indigenous self-identification:

It is a shame that the Ministry of Energy and Mines, in order to protect the interests of a multi-national mining company, says that the Xinca people don't exist... it is also true that the most important element of our ethnic identity is our territory... Today, there is more at play than the simple right of the Xinca people to consultation. This is about the right to self-determination recognized by the Declaration of the United Nations on Indigenous Peoples... You have the obligation to uphold the values and principles of the Constitution which recognizes and guarantees the right to life which is intimately tied to the right to consultation, a daily practice that we carry out as Xinca people.

The localization of human rights law by the Xinca also reveals how state and international law compete for validity at various scales, "highlighting the contradictory ways in which space may be configured and involved in social interaction under conditions of plural legal orders" (von Benda-Beckmann et al. 2009, 5). Law, in this way, can be a tool of both repression and resistance in the exercise of power (Kamphuis 2012).

The legality of the Escobal Mine remains highly contested. The Xinca Parliament appealed the Constitutional Court's September 2017 ruling to reinstate MSR's licenses (after Tahoe engaged in extensive lobbying of the U.S., Canadian and Guatemalan governments). A year later, on September 3, 2018, the court confirmed the suspension of Tahoe's licenses until the defendants completed a formal consultation process according to the principles of ILO 169 (E. Moore 2018). The court also nullified Tahoe's Juan Bosco license, thus requiring a new environmental assessment and consultation process with the Xinca in the four municipalities of Mataquescuintla, Nueva Santa Rosa, Casillas and San Rafael Las Flores, a material fact that Tahoe failed to disclose to investors (Imai 2019). Despite this ruling, Tahoe alongside the MEM and MARN, determined the area of influence or the area of affected rights to be the exact same as in the original EIA (E. Moore 2018, ¶ 6). Xinca leaders held a press conference in front of the Supreme Court to express their concerns over their continued exclusion, calling the consultation process a 'mockery' and a mere formality rather than a good-faith effort (E. Moore 2018, ¶13).

Indigenous and *campesino* communities live under a post-authoritarian state that exerts control over the 'bare life' of the population (Agamben 1998); the sovereign's status, however, must also be recognized as contested and negotiated in place (Robinson & Graham 2017). The collusion of public and private actors in processes of dispossession weakens the Guatemalan government's authority by encouraging the development of various forms of popular sovereignty. Communities are actively re-making their reality, "reaffirming themselves in their own spaces" and challenging the "very nature and foundations of modern power, both its intellectual underpinnings and its apparatuses" (Esteva & Prakash 2014, 1 & 5). As Sieder (2011, 177) writes, "not only are multiple challenges to state sovereignty

emerging, but also demands that sovereignty itself be exercised by the civilian population.” By asserting their identity as Indigenous peoples and leveraging their collective rights codified in customary, municipal, national and international law, the Xinca are challenging a status quo defined by erasure.

The Xinca’s struggle involves “a constant negotiation of what the state is or isn’t, what it should or should not be, and what is a legitimate and ethical exercise of authority” (Sieder 2011, 178). The resistance against the Escobal Mine is not a movement solely concerned with stopping mining; but debating Guatemala’s development model (NISGUA 2018d, ¶13). It is a struggle against hegemonic versions of development that commodify natural and social life (Wilson 2007, 2696). Activists at the Casillas blockade called on the

Guatemalan government to responsibly analyze the fact that the company does not have the social license to operate in the region and that it is time to consider other types of development for our communities. Resistance is a constitutional right: Without a social license, there can be no mining. We are a region that fights for the common good and the environment. We confirm our conviction that we want what is best for our future generations, which must be FREE FROM CHEMICAL MINERAL MINING (MiningWatch Canada 2017a, ¶19 & 20).

In a context where the state has consistently failed to provide the social goods enjoyed by the ruling Ladino minority, the resistance against the Escobal Mine is better understood as a struggle against historical and contemporary inequality, manifest in the appropriation and degradation of communal land and resources for personal and corporate profit (Wilson 2007). As Lorena Cabnal spoke, “our struggle is not against one but several systems. Against colonialism. Against neo-liberalism. Against Western and patriarchal systems” (FLD 2011, 13). This local-global struggle also requires those of us in the Global North “to question [mining] as the definitive model of progress and development” (J. Moore 2018, June 19).

Guatemalans are “not looking for better mining,” shares Jen Moore (2018, June 19), “they’re looking for a different economic model in their country and are fighting for alternatives.”

To ‘*refundar*’ Guatemala is to re-organize society towards just and equitable ways of being in the world, towards new possibilities and a hopeful future (Morán 2018, May 6). In seeking to preserve their land and territory for their families and future generations, the Xinka work towards a more inclusive country – a genuinely ‘pluri-national’ state – beyond a limited neoliberal version of democracy. Such counter-discourses to colonial ideologies of conquest fuel a revolutionary nationalism (Simatei 2005). This collective struggle ‘from below’ is not just a struggle for a different Guatemala, but also for a different world.

In building an associational politics, Indigenous-*campesino* movements in Guatemala challenge an immanent neoliberal order, an apparatus of rule that silences alternative conceptions of democracy and development (Allen 2003). Community and Indigenous organizing goes beyond demands related to particular extractive projects towards a broader understanding of human rights, Indigenous rights and social justice in the context of an imperial/colonial nation-state system. These popular movements against neoliberal capitalism threaten the legitimacy of such a system that works to dispossess people from their land, water and livelihoods, for the benefit of the powerful. As Allen (2003) writes, “in challenging the diffuse politics of globalization, the emergence of an alternative, more inclusive order comes about not through any number of local struggles at the margins, but through people, the dispersed multitude, pitting one form of global sovereignty against another.”

CHAPTER 6: CLOSING THE GOVERNANCE GAP

The state-corporate nexus and global impunity

It is the policies and practices of imperial powers that facilitate the systems of structural inequality described in Chapter 5, which reproduce themselves at various scales in varying ways. The Canadian Embassy creates the physical and social spaces needed for extraction by providing political support to mining companies. The ideological materialization of neoliberal development also requires legal mechanisms to control populations and thereby enable Guatemala's 'pact of corruption' (Morán 2018) to operate with impunity. This section describes how Canadian policies produce a governance gap experienced by mining-affected communities on the ground.

During the Organization for American States Assembly that took place in Antigua, Guatemala in June 2013, Ambassador Rousseau met with Guatemalan Minister of Interior López Bonilla to engage in a discussion surrounding "the need for a strong, effective police force for citizen security and to attract investment and discuss how Canadian cooperation – government and commercial sector – could have a positive and important impact in this area" (A201301117, 262). Canada intervenes to enforce the 'rule of law' to ensure a stable business climate, but not when human rights are at risk (McVicar 2018, August 18). The Canadian Embassy is pre-occupied with economic and trade diplomacy intended to make Guatemala safe for foreign investment, which, in its view, will lead to greater economic growth and thus enhanced citizen security. Opposition to mining is delegitimized as contrary to the national interest and economic development of both Guatemala and Canada. Instead of taking seriously the concerns of communities fighting in defense of their land and livelihoods, the Canadian government prioritizes the resolution of those "challenges for

Canadian business in the region” and seeks to understand “how governments could cooperate to create conditions that would benefit greater business relations” (A201301117, 262).

Despite ongoing and credible allegations of human rights violations associated with Tahoe’s Escobal Mine, the Canadian Embassy seems only to respond to “request[s] for advocacy and troubleshooting” (A201702339,158) from the company, and not from communities at risk of repression. While the Embassy claims to “engage proactively in CSR initiatives, in collaboration with all stakeholders with the objective of maintaining an open discussion space for parties to express themselves and mitigate extreme positioning of some groups,” the close relationship between Tahoe and the Embassy puts into question the latter’s self-proclaimed “reputation as a credible third party” (A201702339, 158 & 271). There is no evidence in the ATIP disclosures that the Embassy met with human rights defenders to address their concerns, despite the publication of Global Affairs Canada’s guidelines on the protection of defenders in 2016 (Canada 2017).⁷⁴ The Embassy’s pre-occupation with facilitating dialogue spaces represents a containment strategy designed to manage community opposition to resource extraction. Rankin (2018, May 25) remarks how

You are using the word dialogue to disguise forcing someone to accept something they don’t want to accept or trying to force them. The point of dialogue is to say, “we meet in the middle” – but there is no middle. You have the mine, or you don’t have the mine. And if you are on the side that does not want the mine, there is no give and take – you can’t give because everything you give, that’s your life!

⁷⁴ Dwyer (2018, June 19) notes that while the guidelines include a section on those who might face human rights violations associated with the operations of Canadian companies, they do not speak to tension between the diplomatic service’s overarching objective to support Canadian economic interests and its alleged commitment to supporting human rights defenders. The guidelines are also not prescriptive, meaning there is a lack of measurable outcomes and no provisions for monitoring and enforcement.

Dialogue spaces are not neutral but coded in a specific way: they assume that corporations are inherently good and that any ‘misbehaviour’ is unintentional, which justifies a non-punitive approach to conflict resolution (Weisbart 2018a, 2). Mattei & Nader (2008, 18) add that “powerful actors often attempt to tackle counter-hegemony by incorporating harmonious ‘soft’ aspects aimed at disempowering potential resistance from the oppressed by limiting their use of adversary courts,” justified by the need to “remedy the ‘excesses’ of litigation, or of promoting the desirability of a more ‘harmonious society.’” The boundaries between public and private international law also prevent Canada from intervening to guarantee human rights on the basis of non-intervention (Blandy & Sibley 2010; Sibley 2001). Instead of monitoring and enforcing human rights, the Canadian government manages risks for companies (Dwyer 2018, June 19). This *de facto* policy of dialogue advances the interests of capital while wasting the time and resources of resistance movements. The state becomes a public relations agent for mining companies, focused on mediation rather than the protection of democratic rights (Rey Rose 2018, 95).

Dialogue is also undermined by coercion and violence: “the communities surrounding the Escobal Mine say the time to dialogue was 2012...after you have killed people, intimidated them and criminalized them, there is no dialogue anymore” (Rankin 2018, May 25). Mining conflicts are not simple ‘disputes’ between two contracting parties; they can involve serious instances of corporate criminality wherein a mining company violently imposes a project upon a community without their consent (Dwyer 2018, June 19). Communities are not ‘stakeholders,’ but rights holders. To call them otherwise is to obscure the massive power imbalance between a multi-national

corporation, a discriminatory state, influential foreign governments working to protect their economic interests, on the one hand, and local populations fighting for their lives, on the other.

Canada's reliance on a voluntary CSR strategy is explained by its prioritization of an economic diplomacy mandate at the expense of human rights. The Canadian government promotes, finances and protects Canadian mining companies in their business operations abroad, but does not monitor or enforce human rights and environmental standards in any meaningful way (Dwyer 2018, June 19). The Canadian government's most recent response to growing pressures from activist groups for greater corporate accountability,⁷⁵ the creation of a Canadian Ombudsperson for Responsible Enterprise (CORE),⁷⁶ represents a continuation of containment politics. This office is not independent and does not have the power to investigate complaints; it is a non-judicial remedy that still 'lacks teeth' (Laplante & Nolin 2010).⁷⁷ The CORE office can only make *non-binding recommendations* regarding the sanctioning of companies found to be in violation of human rights. As McVicar (2018, August 18) and Jen Moore (2018, June 19) point out, the Ombudsperson is not regulation nor accountability; it is a problematic dispute resolution tool to administer conflicts after a mine has already been developed.

Jen Moore (2018, June 19), McVicar (2018, August 18) and Weisbart (2018b, June 29) all suggest that the Ombudsperson represented a strategic decision on the part of the

⁷⁵ See, for example, the 'Open for Justice Campaign' led by the CNCA (2018).

⁷⁶ The CORE office was supposed to fulfill earlier promises of an independent ombudsman as recommended by the bi-partisan Standing Committee on Foreign Affairs & International Trade in 2005 and later endorsed by the Advisory Group of the National Roundtables between government, industry and civil society in 2007 (Advisory Group 2007). The Liberal Government, however, failed to provide the office with the power to compel documents and testimony, making the mechanism ineffective.

⁷⁷ Like the previous CSR Counsellor, the Ombudsperson will be politically-appointed under the Minister of International Trade Diversification and cannot investigate without the consent of involved parties.

Liberal Government to weaken pressures for civil and criminal law reform, which could deal with corporate impunity in a more substantive way. Jen Moore (2018, June 19) believes the Ombudsperson could serve as a whitewashing tool, allowing Canada “to paint a better face for itself as opposed to actually putting a real dent in the level of destruction and harm that has been taking place in so many ways, in so many parts of the world.” Despite multiple attempts to pass legislation in Canada (e.g. Bills C-300⁷⁸, C-323⁷⁹ and C-584⁸⁰) addressing the accountability of Canadian mining companies operating abroad,⁸¹ there is a strong reluctance on the part of the House of Commons to formally regulate corporate activities for fear it would adversely affect Canada’s economic interests. Rather than taking on a mandating or endorsing role, the Government has sought to facilitate ‘dialogue’ among ‘stakeholders,’ failing to take seriously the well-documented human rights and environmental harms of Canadian mining companies. The government’s CSR Strategy works to reinforce a regime of voluntary self-regulation that prioritizes a company’s bottom line and the market over the rights of victims seeking redress for mining-related abuses (Laplane & Nolin 2011).

A major obstacle to achieving binding legislation designed to better facilitate access to justice for victims of Canadian mining harms is industry lobbying and the extensive

⁷⁸ While short of legal reform, Bill C-300, *An Act Respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries*, would have created eligibility standards (i.e. respect for international environmental and human rights standards) for Canadian extractive companies seeking support from Export Development Canada (EDC), the Canada Pension Plan Investment Board and Canadian embassies (CNCA 2014).

⁷⁹ Bill C-323, *An Act to Amend the Federal Courts Act (International Promotion & Protection of Human Rights)* would have allowed citizens of other countries to bring claims to the Federal Court of Canada (CNCA 2014).

⁸⁰ Bill C-584, *An Act Respecting the Corporate Social Responsibility Inherent in the Activities of Canadian Extractive Corporations in Developing Countries*, would have created the Office of the Ombudsman and required corporations to report on their activities to ensure compliance with CSR guidelines (Roth 2017, 45).

⁸¹ Only two pieces of regulation directly apply to companies operating overseas: The *Corruption of Foreign Public Officials Act*, which deals with the bribing of government officials in other countries; and the *Extractive Sector Transparency Measures Act*, which requires companies to publicly report their payments to foreign governments, whether that be taxes, royalties or other forms of payment. There is no legislation that deals with human rights abuses (Dwyer 2018, June 19).

political access afforded to mining companies when compared to activist groups and the actual victims of harms from mining operations (J. Moore 2018, June 19). Communities affected by mining have limited access to the sites of power or the cultural-material environs where laws are drafted, contested and adopted (Delaney 2010). Seck (2011), for example, describes how the participation of industry in the development of international norms for the extractive sector, like the *UN Guiding Principles on Business & Human Rights* (UNHCHR 2011), undermined victims' access to legal remedy. For example, the only civil right not protected under the *UN Guiding Principles* is that of freedom of assembly, for the mining industry was fearful that such a provision would impede their operations (Jägers 2018). Although these normative regimes emphasize the state's 'duty to protect' against the human rights violations of businesses, the application to home states is contested (Seck 2011). In limiting the jurisdictional scope of these regimes, the Canadian government effectively evades accountability by hiding behind doctrines of sovereignty and non-interference, resulting in the spatial closure of law and justice for the citizens of foreign countries negatively impacted by Canadian mining operations (Blandy & Sibley 2001; Seck 2012).

Meanwhile, many state institutional structures within Canada enable corporate conduct, including stock exchanges, financial institutions and permissive legal regimes that create territorial links between the home state and multi-national mining companies, in theory providing a basis for jurisdiction. As Seck (2006, 189) explains, "all of these institutional structures are created to some degree through an exercise in legislative jurisdiction that provides the institution created with the power that allow it – or even mandate it – to participate in the global economic order for the benefit of the home state." The paradox wherein we perform the boundaries of sovereignty to limit the extraterritorial

obligation of home states and their corporations makes it so human rights are unable to ‘cross borders’ so to speak (Seck 2013, 194). The principle of non-intervention is irrelevant in a globalized economy, evinced by the way we speak about corporations not as ‘extraterritorial’ but as multi- or trans- national (Seck 2006).

This last point is demonstrated most clearly by the Canadian government’s own obfuscation surrounding Tahoe’s corporate nationality. In a 2012 report prepared for Trade Commissioner Nathalie Samson, Kim Stirling, Senior Policy Advisor at Natural Resources Canada writes that Tahoe was not included in the Canadian Mining Assets for Guatemala because

They do not meet the definition of a Canadian company for these purposes, which is defined as: “Canadian companies are defined as companies with their Head Office (HO) or principal office located in Canada and that are not controlled by a foreign entity. Control is generally recognized where another company holds majority of voting shares or the company reports the existence of a parent-subsidiary relationship” (A201501699, 44).

Even though Tahoe is incorporated in Canada, is listed on the TSX and identifies itself as Canadian (A201702036, 72), the fact that its company offices are in Reno, Nevada is enough to absolve it of its ties to the Canadian state, our stock exchanges and investment funds. The majority of Tahoe’s Board of Directors are Canadian, including former Canadian Ambassador John P. Bell, and the company sits on the on the Canada-Guatemala Chamber of Commerce (ATIP704017839, 12). Yet, the Canadian government effectively evade accountability by asserting Tahoe’s status as an American company, all whilst providing political, economic and diplomatic support to it.⁸² In response to a September 2012 letter raising concerns about the

⁸² There is evidence that the Embassy provided support to Tahoe as late as 2016, as Political Counsellor Laura Dalby met with Tahoe representatives and the CSR Counsellor on August 12, 2016, a day after JCAP released its request asking the U.S. Securities and Exchange Commission to investigate Tahoe’s failure to disclose secret lawsuits (A201702036, 140).

criminalization of human right defenders in the case of the Escobal Mine, Anil Anora, former NRCan Assistant Deputy Minister, writes that Tahoe's "executive head office is located in Nevada USA and the company has stated that it has no Canadian offices or employees. Based on this information, it is not feasible to hold an American company accountable to policies of the Government of Canada" (A201702036, 111).

A fundamental question remains: why does the Canadian government support multinational mining corporations and their activities around the world? Jen Moore (2018, June 19), McVicar (2018, August 18), Weisbart (2018b, June 29) reject the purported economic benefits to the Canadians (Canada 2018b), beyond a small group of elites that profit from the mining industry.⁸³ Policies of economic diplomacy, in Jen Moore's (2018, June 19) opinion, are rooted in the "logic of the neoliberal capitalist state with colonial roots," a positioning which dictates the policies and practices of the Canadian Government both at home and abroad: "The Canadian government's brand is really mining," adds Weisbart (2018b, June 29); "people have been promoting Canada's expertise in mining for a long time. It's not about the taxes coming back for Canadians, it's about getting into international markets, and what that means in terms of the political and economic relationships that can be built in the global financial sector." While it is not a falsehood to recognize Canada's technical expertise in resource extraction, "what's more of a falsehood is that it necessarily leads to long-term economic development; that there are not problems, environmental or otherwise, in the ways Canada has done its extractive activity in the past" (Dwyer 2018, June 19).

⁸³ McVicar (2018, August 18) elaborates: "when I say there's economic interest, I mean it's for Canadian business people. For Canadian lawyers. For Canadian exploration companies that are registered here. Even if Tahoe was not paying taxes, there are people making hand-over-foot on business, whether it's universities, our pension funds (which are heavily invested across the board on mining), our banks, the TSX itself – those are the economic interests."

This colonial extractive mindset is deeply-entrenched in the foundations of modern Canadian state, including in our ‘rule of law’ (McVicar 2018, August 18). Jen Moore (2018, June 19) explains Canada’s use of unjust laws to enact plunder both within and beyond its borders:

In terms of the legal system, we are still in a colonial settler state. The laws are still set up to privilege the Crown and its ownership over the land and the resources underneath it, and that limit and try to contain the Indigenous peoples’ exercise of their rights and their jurisdictions over their traditional lands.

Canada also leverages free trade and investment protection agreements to make it difficult for countries in the Global South to stray from the neoliberal model (J. Moore 2018, June 19). Canadian mining companies can sue foreign governments for incurred costs and lost profits, even when projects are suspended for reasons related to community consent, like in the Tahoe case. This “geopolitical imposition of laws from ‘above,’” results in a spatial conflict between the local and international spheres, reinforcing global hierarchies (Robinson & Graham 2017, 4).

Jen Moore (2018, June 19) alludes to a critical point regarding the collusion between public and private interests in both national and international law. The politically-constructed boundaries between private rights and obligations (e.g. corporate and contract law) in one space, and state power and its limitations in another, fail to capture the historical symbiosis between the concept of property and liberal states (Blomley & Bakan 1992). The so-called ‘public-private divide’ defines a mutually-beneficial relationship between the state and the corporation, helping to cement a balance of power in society in favour of elite actors at the expense of the majority. As van Aartsen (2016, ¶3) writes: “on the one hand the purpose of liberal democratic government would be to promote equality and democracy, on the other the government must prevent the appropriation of the wealth of a minority by a majority.”

Doctrines of free markets, private property and free trade augmented the capacity of corporations, investors and financial institutions to invest in projects throughout world, while governments fail to implement stricter regulations protecting labor, the environment and human rights (Sibley 2001). The dwindling of public regulation and responsibility, together with the absence of democratic decision-making processes, produces a governance gap whereby multi-national corporations and wealthy individuals can impress upon states the ‘need’ for ‘growth-oriented’ policies that allow capital to travel easily across borders, no matter how violently. Policies of deregulation, privatization and liberalization have entrenched the dominance of the private sphere on a global level (Delaney 2010), “as the public sphere remains national and fractured” (van Aartsen 2016, ¶12). The state has become a “mere instrument for the private sphere to gorge itself” (van Aartsen 2016, ¶14).

The privileging of private interest over the public good is clearly demonstrated by Canadian extractive sector policy. Global Affairs and its embassies take a proactive and interventionist approach to promoting Canadian mining investments and international trade throughout the world but take an informal and reactive approach when it comes to protecting human rights. When faced with demands for greater corporate and government accountability, political and economic elites ask: what can we reasonably be expected to do?⁸⁴ To that, I ask: is it conscionable for the Canadian government to engage in economic diplomacy without having the tools or capacity to monitor CSR compliance, let alone enforce sanctions in the event of violations? Enforcement is left to host governments so that Canada

⁸⁴ For example, at the “Piercing the Corporate Veil: Multinational Corporate Accountability” conference hosted by Osgoode Hall Law School in Toronto, Ontario (November 15-16, 2018), Alan Lenczner (2018), lawyer and board member of HudBay Minerals shared that while in theory it is great to hold directors accountable for the actions of corporations, they do not have the tools to ensure environmentally and socially responsible conduct: “I have a difficult time knowing what my responsibility is, knowing what I can do as a director on a ten-man board, even if everybody else is in agreement with me.” This is a curious statement given the legal duty of every director to take reasonable care to prevent the corporation from causing or permitting human rights violations.

may respect the ‘sovereignty’ of foreign nations, all whilst they intervene politically in the mining legislation and tax regimes of other countries to protect the bottom line of Canadian corporations.⁸⁵ Rather than conducting due diligence to ensure Canadian companies are respecting human rights, our embassies ask companies to self-report on their CSR obligations. The governance gap lies not in the discrepancy between CSR policies and their implementation in local contexts, but in the Canadian government’s own failure to fulfill its international human rights obligations. The lack of political will to implement and actualize human rights safeguards rests in the Canadian government’s prioritization of an economic diplomacy mandate at the expense of local communities. Canada’s promotion of mining investments and corporate interest, alongside the complete lack of formal processes to ensure companies respect their national and international human rights obligations, makes the government complicit in environmentally and socially destructive projects around the world – all in the name of profit.

The benefits and limitations of home state litigation

While Tahoe, as a multi-national mining corporation, can travel and operate across state borders with relative ease thanks to political, economic and legal support from the Canadian and Guatemalan governments, human rights norms and laws do not travel so easily, meeting resistance in both the home and host state. While human rights norms are touted as universal – that is, existing in the space of the ‘global’ – the national and local settings problematize this perception, as human rights are immaterial without proper enforcement in their particular contexts. On the global stage, the power of the multi-national corporation is not

⁸⁵ In Guatemala, the Canadian Embassy sought to prevent the adoption of: (1) a proposed constitutional amendment announced June 2012 that would allow for 40% state participation in extractive projects; (2) a temporary moratorium on mining licenses in July 2013; and (3) a royalty increase in November 2014 (A201702339, 157).

held to account. Canadian extractive sector policy perpetuates a climate of impunity, negatively impacting human rights in Guatemala. Seck (2013, 182) summarizes how unjust law and policy produces a governance gap:

...the complexity surrounding corporate nationality and home state jurisdiction facilitates a situation in which business enterprises may benefit from ‘home’ state support for operations abroad (including from export credit agencies, trade missions abroad, development agency support for CSR initiatives, tax rules). Yet at the same time, the same business enterprise may argue in transnational corporate accountability litigation brought in home state courts by foreign plaintiffs that either the litigation should be dismissed to a jurisdiction with a closer connection (that of the local subsidiary or affiliate) under private international law doctrines (most notably in non-EU common law jurisdictions *forum non conveniens* (FNC), or, if FNC is not argued, that the litigation should be dismissed as disclosing no reasonable cause of action because the allegations against the subsidiary or those it contracts with cannot legally be conceptualized as the responsibility of the parent company, not being captured by traditional “veil-piercing” exceptions or doctrines of vicarious liability.

To date, parent companies like Tahoe have been able to engage in foreign investment through local subsidiaries like MSR whilst denying responsibility and thus legal liability for the latter’s violations. The recent lawsuits proceeding against Tahoe and Nevsun in B.C. and HudBay Minerals in Ontario – in the companies’ legal home – may prove successful in establishing direct liability for parent companies found negligent in preventing human rights violations associated with their operations. While the legal tests for direct liability are still being developed and defined in Canadian case law, what has been argued thus far is that parent companies owe a standard or duty of care to communities, based on company statements regarding the voluntary CSR codes and international standards they have ratified (Eisenbrant 2018, September 4). In Tahoe’s case, this includes the *Voluntary Principles on Security and Human Rights* (2000) and the *Guiding Principles on Business and Human Rights* (UNHCHR 2011).⁸⁶

⁸⁶ The *Voluntary Principles* (2000) require Tahoe to ensure that private security personnel engaged by the company act in a lawful manner and exercise restraint and caution in the local use of force. The *Guiding*

Matt Eisenbrandt⁸⁷ (2018, September 4) clarifies that the civil suit against Tahoe “is not an attempt to pierce the corporate veil”; such a claim may require proof that the subsidiary was set up solely for fraudulent or other nefarious purposes. Likewise, “we are not saying that parent companies are liable simply because it’s a shareholder. We are saying that they had power and control over what is going on, that they were intimately involved” (Eisenbrandt 2018, September 4). That is, the parent company has a controlling role in the operations and oversight of its subsidiaries, including with regard to its security policies and practices ‘on the ground.’ The socio-spatial expression of Tahoe’s CSR principles, as a form of ‘soft law,’ depends on the company’s interaction with place (Bennett & Layard 2015). Eisenbrandt (2018, September 4) poses: “how can you, as a parent company, claim that you’re following all of these standards if you don’t have any control over what’s going on?”

The civil suit submitted against Tahoe in B.C. courts for the alleged shooting of seven protesters by the company’s private security in April 2013 has already set an important precedent regarding the *forum non conveniens* doctrine, one of the most significant barriers to accessing Canadian courts (Dwyer 2018, June 19; Eisenbrandt 2018, September 4). The *forum non conveniens* doctrine requires the court to determine what is the most appropriate (i.e. most fair and efficient) forum for the claim to be heard. The defendant must show the existence of a real and substantial connection with the local forum, which can include factors such as where the tort was committed and the domicile of the defendant and victims (Reasons for Judgment

Principles (2011) require that Tahoe adopt a policy of respect for human rights that is approved at the most senior level of the company and that it is communicated to Tahoe’s personnel, business partners and private security providers to ensure such policies, procedures and practices are embedded in its business enterprise. Tahoe’s Health, Safety, Environment and Community Committee is responsible for the implementation of these CSR policies and must report its monitoring and evaluation activities to Tahoe’s Board of Directors (Notice of Civil Claim 2014, 6-9).

⁸⁷ Matt Eisenbrandt is Director of Transnational Investigations at Camp Fiorante Matthews Mogerman LLP. He is a member of the legal team for the Garcia v. Tahoe Resources Inc. case.

2015, 9-11). Even though B.C. courts possess *jurisdiction simpliciter* (whether a court can adjudicate a claim) based on the incorporation of Tahoe in B.C., the defense counsel argued that this is the weakest form of jurisdiction given the company's alleged lack of connections to Canada. Tahoe's defence lawyer, Karen Carteri, asserts that "events in Guatemala, injuries suffered in Guatemala, have nothing to do with activities undertaken in the province of British Columbia," adding that "there are no business activities undertaken by Tahoe in British Columbia, except in respect of its listing on the TSX" (Burgmann 2015, ¶3 & 4) and that such ties "are financial and not operational" (Submissions of the Defendant 2015, 25). If the court were to accept jurisdiction, Carteri argues, it would "raises the prospect that innumerable plaintiffs from around the world will litigate in British Columbia simply because an indirect parent corporation of a local company obtains its financing in Canada" (Submissions of the Defendant 2015, 25-26).

Tahoe is removed from the local community context and redefined as an 'indirect' parent company. Likewise, the materiality of the site and physical location where the harms occurred (in this case Guatemala) makes it difficult for the Canadian judicial system to think of the violation as abstracted from the locality, as any attempt to "decontextualize" the battery incident is "intuitively impossible" (Blomley & Bakan 1992, 682). Locating Tahoe spatially within a simultaneously global-local context, however, allows us to re-think the place where the activity causing harm occurred. This exercise in legal thinking can help us better meet the challenge posed by multi-national corporations increasingly unbounded to the rule of law. Tahoe may just be an 'indirect parent' company to a foreign subsidiary in terms of the law but its connections to Canada are more than financial. "It's not an accident," Dwyer (2018, June 19) explains, "that so many companies are listed and registered here, and that's not because

they're all originally from Canada – it's because they are getting something out of it.” In the *Garcia v. Tahoe Resources* case, the plaintiffs argue that the company's Board of Directors conduct their activities in Canada, and it is this body which possesses ultimate authority and oversight responsibility of Tahoe's security operations (Eisenbrandt 2018, September 4). Yet, the corporate veil principle effectively territorializes multi-national mining corporations between home and host states, allowing the parent company to evade accountability for the actions of its subsidiaries, even when the former plays a significant role in the latter's operations. An appreciation of this complex global-local milieu reveals the ways in which corporations are able to operate with impunity across borders.

Despite law's fragmentation of the corporate form across national borders, Jen Moore (2018, June 19) argues that there are

responsible actors at every level. There are people who are responsible in Guatemala. There are people who have fled investigations, like the head of security, who's in Peru, and then there are individuals who are responsible within that corporation. So, I think the lawsuit here is about holding them responsible too, for the decisions that they're making that are ultimately playing out on the ground as they make these huge profits...

Accountability must be localized to where the actions resulting in harm are planned and executed, whether that be in Guatemala or Canadian boardrooms. Maldonado (2018, May 24) explains that the case advanced by the CCIJ and CALAS in B.C. is meant to achieve the responsibility of the Canadian parent company and to tackle what Maldonado calls “globalized criminalization,” whereby MNC's like Tahoe adopt militarized security strategies at the local level. While Guatemala possesses adequate laws to guarantee justice, this case presents a heightened risk that the “justice system would be co-opted” (Maldonado 2018, May 24). Thus, in bringing the case to Canada, CALAS and the CCIJ were seeking to overcome problems of access to justice (i.e. Rotondo's fleeing to Peru) and second, “to set a precedent in Canada

legislation to prove that Canadian parent companies possess responsibility” (Maldonado 2018, May 24).

Madame Justice Gerow of the B.C. Supreme Court ruled in favour of the defendant in November 2015, citing the following factors as favouring Guatemala as the more appropriate forum: comparative convenience and expense of litigation for the parties and their witnesses, the choice of law to be applied, the desirability of avoiding multiplicity of legal proceedings and conflicting decisions,⁸⁸ the ability to enforce an eventual judgment, and the fair and efficient working of the Canadian legal system as a whole (Reasons for Judgment 2015). A review of each of these legal factors is beyond the scope of this thesis, but a few points are noteworthy. The last reason provided by Justice Gerow deals with the concept of comity in conflicts of law theory, whereby states are expected to respect and show deference to the sovereign ability of foreign courts to apply their own laws within their territorial jurisdiction (Reasons for Judgment 2015, 21). Maheandiran (2016, 251) argues that while “Canadian courts try to guard against accusations of imperialism by declining to adjudicate a case which arose in another legal jurisdiction,” “the courts fail to address the repercussions of imperialism that permit corporate exploitation of host country resources.” In ignoring host and home state complicity in global processes of resource extraction for reasons of comity (and the fact that corporations often choose to operate in areas with weak regulations), Canadian courts can effectively deny victims access to remedy (Maheandiran 2016, 260).

⁸⁸ When the civil lawsuit was originally filed in June 2014, Rotondo had not yet fled to Peru, creating the potential for a ‘multiplicity of judgments,’ a factor in the *forum non conveniens* analysis. However, Eisenbrandt (2018, September 4) points out that the criminal case proceeding in Guatemala rests on Rotondo’s *personal* responsibility, not Tahoe as the Canadian parent company. Tahoe is not a defendant in the Guatemalan criminal case, and it would be difficult to add them as a party due to Guatemala’s limited discovery procedures (Plaintiffs’ Submission 2015, 24).

Related to the principle of comity, Justice Gerow agreed with the defense that Guatemalan law applies (choice of law). The plaintiffs and their counsel contest this argument, seeing a strong argument for applying B.C. law to the oversight actions of Tahoe's Board of Directors (Plaintiffs' Submission 2015, 65). In the HudBay case, domestic tort law is being leveraged, which Murray Klippenstein, lawyer for the Guatemalan plaintiffs, describes as significant since it will be the first time a Canadian judge and jury will be asked to determine whether injuries suffered in Guatemala are a result of actions planned and executed in Canada, on the part of a Canadian company (CBC 2018). Such an argument redefines Tahoe's responsibilities and locates the company and the plaintiffs within the same locality, potentially enabling the actualization of the latter's rights.

Regarding the comparative convenience of litigation, Justice Gerow argues that the majority of Tahoe's management and staff live and work in Reno, Nevada and that "most, if not all of the witness will have to travel to Vancouver from Guatemala and Reno, and many will only speak Spanish. Obtaining and translating evidence will be a significant challenge. This will be inconvenient and will undoubtedly considerably lengthen the trial" (Reasons for Judgment 2015, 13). The inconvenience of travel and language barriers resulted in the spatial closure of Canada as a place to access to justice and remedy (Blomley & Bakan 1992; Robinson & Graham 2017).

Eisenbrandt (2018, September 4) describes the difficulties that the plaintiffs' counsel had in convincing the court that it was a human rights case as opposed to a mere tort lawsuit between two private parties. Upon appeal, Amnesty International as the intervenor framed the case as an access to justice issue, arguing that the lack of independence in the Guatemalan judiciary, together with the power imbalance between the parties, posed a significant risk that

the plaintiffs could not receive a fair trial in Guatemala.⁸⁹ While Madame Justice Garson of the B.C. Court of Appeal (BCCA 2017, 31) agreed with the lower court judge's opinion that the expert evidence submitted by the plaintiffs regarding corruption in the Guatemalan judiciary was insufficient to establish the specific risks of corruption in a personal injury case (as opposed to criminal prosecutions against state officials or organized crime), she recognized the collusion between the public and private actors as a key factor inhibiting the likelihood that justice would be done in Guatemala. In assessing whether Canada is the more appropriate jurisdiction to hear the case, Justice Garson pronounced (BCCA 2017, 38):

There is some measurable risk that the appellants will encounter difficulty in receiving a fair trial against a powerful international company whose mining interests in Guatemala align with the political interests of the Guatemalan state.

The civil lawsuit against Tahoe represents an attempt to enforce a degree of corporate accountability for parent companies in the violation of human rights abroad. This transnational pursuit of justice not only challenges corporate power, but also problematizes our traditional conceptions of state sovereignty and absolute legal authority. Justice Garson (BCCA 2017, 31) emphasized the need to examine the broader context within which alleged violations arose:

In characterizing the appellants' claim as a personal injury case, the judge was insufficiently attentive to the context in which the conflict arose. This claim is not akin to a traffic accident. Rather, it arose in a highly politicized environment surrounding the government's permitting of a large foreign-owned mining operation in rural Guatemala.

⁸⁹ Amnesty International submitted in its Intervenor's Factum (2016, 3) that "in applying the doctrine of *forum non conveniens* as codified in s.11 of the *Court Jurisdiction and Proceedings Transfer Act* (CJPTA), the Courts can and must consider as a contextual factor international law and norms that emphasize the importance of access to an effective remedy for transnational tort and human rights claims. AI accordingly submits that, when jurisdiction is properly asserted, this Court should require corporate defendants to show that BC is 'clearly an inappropriate forum.' This approach is consistent with international practice and precedent and appropriately responds to the distinct features of this type of claim, including in particular the power imbalances inherent to cases involving marginalised plaintiffs and financially and politically powerful transnational companies."

The protest that led to the battery at issue was not an isolated occurrence. Jen Moore (2018, June 19) reflects that the Appeal Court's decision was "really important in terms of acknowledging the asymmetry and the great likelihood of injustice, in addition to the structural issues that mean the case could never have been brought against Tahoe in Guatemala." The lower court's conception of comity "ignores the state as a site of contestation, where social movements disagree with the dominant development narrative of the state" (Maheandiran 2016, 262).

In a context where state and corporate actors collude to impose a hegemonic development model, "any claim that third-world sovereignty will be infringed by first-world home state regulation is suspect to the extent that it denies the ongoing history of infringement that dates from the colonial encounter to the neo-colonialism of today's economic order" (Seck 2008 quoted in Maheandiran 2016, 260). As a transnational corporation, Tahoe is not bound to sovereign borders but rather enabled by international legal devices crafted by home and host states, including bilateral investment treaties. These devices restrict 'sovereign' nations from adopting policies of state ownership, royalty increases, mining moratoriums, and so forth, regardless of whether it is in the public interest to do so. To deny home state jurisdiction, thus, is to "ignore the role of international law and international institutions in creating power imbalance in extractive industries between home and host states and also between host states and transnational corporations" (Maheandiran 2016, 261).

It took approximately two and a half years for the plaintiffs to overcome the legal hurdle of *forum non conveniens* before the discovery process could begin and before the merits of the case could be heard in court. The fact that a Canadian court accepted

jurisdiction, however, signals to companies that they must exercise restraint in their security operations due to the possibility of accountability in the home state (Dwyer 2018, June 19). Companies must also exercise caution in the level of care they promise to care to communities: “you now have three cases moving forward to trial and there’s commentary where corporate counsel is saying, ‘companies, if you’re signing on to your CSR statements, you’ve got to be careful’” (Eisenbrandt 2018, September 4). While there are powerful structural constraints within Guatemala negatively affecting the ability of victims impacted by mining operations to access justice, the power imbalance between the plaintiffs and the defendant reproduce themselves in different ways within the context of the Canadian legal system. One cannot discount the personal and emotional toll of the litigation on the plaintiffs, as well as the individual, familial and community resources needed to sustain their participation in the legal case over many years (J. Moore 2018, June 19; Weisbart 2018b, June 29).

Eisenbrandt (2018, September 4) believes that the burden of litigation does not outweigh the access to justice issue. While lengthy and expensive, home state litigation is the only way to enforce a binding judgment on mining companies. The novel legal suits brought against parent companies in Canada can enforce a measure of accountability even if not won, as the discovery process will bring to light evidence regarding the role of these corporations in issues of security and human rights, information previously held confidential by companies and the Canadian government. Eisenbrandt (2018, September 4), Dwyer (2018, June 19) and Jen Moore (2018, June 19) all agree that the battle itself is just as important: the government, the mining industry, investors and corporate lawyers across the country are

closely monitoring the case,⁹⁰ since it has the potential to raise both the risks and expectations for mining companies by setting certain parameters for liability. Certainly, the risk of civil litigation in the home country of the corporation is more impactful than voluntary non-judicial grievance mechanisms, as corporations possess responsibilities to their shareholders to avoid costly legal suits. Jen Moore (2018, June 19) comments, “hopefully there will be a favorable sentence that will be important to the men and their families who suffered as a result of that day, and hopefully it will also be enough of a deterrent in terms of what could be awarded to the men to hopefully dissuade some other companies from similar actions.”

Kaump (2018, May 24) brings up a salient point regarding the potential limitations of the civil suit; namely, that sometimes what communities consider as justice does not easily translate to a legal system. She makes this point by referencing those cases which seek to hold accountable those responsible for atrocities during the Guatemalan genocide, remarking that different forms of reparation, including land repatriation, are not always possible (Kaump 2018, May 24). Legal justice is narrowly defined; it cannot account for the myriad of socio-spatial relations involved in place-specific rights violations (Delaney 2010). Tahoe violated communities’ rights to water, housing and a healthy environment – wrongs that cannot be righted by a civil lawsuit for battery and negligence. The legal case in Canada cannot solve the broader problem of an exploitative development model; the case is meant to achieve a measure of justice for the plaintiffs, including remedy for the harms committed

⁹⁰ For example, Peter Egyed, Deputy Director of Trade for Central America and the Caribbean, closely monitors the Tahoe lawsuit, forwarding himself articles published in law magazines. This includes a Law Times article written by Sarah Molyneux and Shin Imai that argues that the lawsuit shows the need for international law reform as well as the high cost of a lack of consent, and a Davies Publications article which describes the lawsuit as part of a ‘dangerous’ new trend wherein plaintiffs seek to hold parent companies liable for negligence in relation to the actions of their foreign subsidiaries (A201702339, 86-87).

against them. That said, the case does ‘chip away’ at a system of corporate impunity which permits a large multi-national company to implant itself in local communities without respect for people’s land, lives or ways of life (J. Moore 2018, June 19).

While the transnational legal case against Tahoe is meant to provide access to justice for the victims, it is also connected to community resistance at the local level as well as international campaigns for greater corporate and government accountability. Local movements challenge hegemonic conceptions of the state and development, forcing us to rethink the role of law in the search for global justice. Seck (2008 quoted in Maheandiran 2016, 262) writes that “if first-world engagement in third-world development is acknowledged as the real starting point, home state concern to avoid infringement in host state sovereignty is revealed as an excuse – or worse, a denial of responsibility.” Accountability can only be achieved if we connect the ‘developed’ and ‘developing’ worlds in our analyses of rights violations.

Eisenbrandt (2018, September 4) opines that litigation has a very important role to play in terms of changing corporate behaviour, but that it is just one piece of a much bigger puzzle. The civil suit against Tahoe helps to raise public awareness as to the harms committed by the Canadian extractive sector abroad and the human rights obligations of our companies. The case forms part of a broader strategy, of which communications and political advocacy work is a part.⁹¹ Jen Moore (2018, June 19) believes this advocacy campaign has contributed to increased pressures for political reform:

⁹¹ Jen Moore (2018, June 19) explains that the “Canadian media is shy about reporting on these crimes and when there are filings in the courts they feel somewhat more emboldened to start reporting. One of our aims has been really to take advantage of, ‘ok, if they are going to be reporting on the case, we’re going to at least make it impossible for them to deny everything else that’s going on around this project.’ Every opportunity to talk about the case should be an opportunity to talk about the mass resistance to the project and the whole strategy of militarization and criminalization and violence deployed in order to get that mine running in the first place...try to use it as an opportunity to look at that bigger picture – to look at the broader harms that we know the lawsuit

In many ways, the lawsuits have done a good job at putting the issue in the public eye in a different way that has been substantial and that has been felt in the industry and in the government, so that it can't be denied as an issue anymore.

Weisbart (2018b, June 29) also highlights the importance of the civil suit in terms of “pushing forward Canadian courts and the Canadian judiciary in seeing the limitations of how the law has treated very grave rights violations abroad by Canadian companies,” particularly regarding the barriers posed by the *forum non conveniens* doctrine which until now has barred transnational corporate accountability cases from proceeding in Canadian courts. A positive ruling in any of the Tahoe, Nevsun or HudBay cases could impact civil law reform in Canada by establishing a duty of care for Canadian parent companies, enabling overseas victims to submit more claims in Canadian courts; this would also mean “acknowledging the complicity of the home state in creating the development and international law framework which has forced the plaintiffs to search for justice abroad” (Maheandiran 2016, 262).

Ascertaining the relationship between Tahoe and its security contractors is an important issue in this case (Eisenbrandt 2018, September 4). For one, why did Tahoe contract the International Security & Defense Management (ISDM) and Grupo Golan, a Guatemalan section of an Israeli security company to oversee its security operations (Eisenbrandt 2018, September 4)? Why was Rotondo, a Peruvian, selected as the Guatemala security manager and by whom (Eisenbrandt 2018, September 4)?⁹² Was Rotondo ordered to only use defensive force in the event of an ‘invasion of the lands,’ to secure the property?

is not getting anywhere close to actually addressing, but that it is in some ways an opportunity in Canada to really lift that up in a different way.”

⁹² “Rotondo is a retired Captain in the Peruvian Navy with training and experience in special warfare, mining security and risk management. Rotondo received U.S military training in Political Theory, Psychological Operations, Counter-Terrorism, Naval Special Warfare and Underwater Demolition as well as U.S. Navy Seal training” (Notice of Civil Claim 2014, 10).

Tahoe's intent and the intent of Rotondo is critically important: "it's either that Tahoe knew what Rotondo believed or what he was up to and either explicitly or implicitly approved it, or they were negligent in not controlling him" (Eisenbrandt 2018, September 4).⁹³ The Notice of Civil Claim (2014, 11) alleges that Rotondo designed a campaign to suppress local opposition to the mine, planning a show of force to intimidate communities and to avoid a long-standing peaceful protest like at La Puya.⁹⁴

Corporate defendants can argue about the benefits of the corporate veil principle, which is largely intended to ease investment, but when used in this context to evade accountability, we must ask: "Why can the money flow up the chain when the responsibility can't flow up the chain?" (Eisenbrandt 2018, September 4). Eisenbrandt (2018, September 4) opines that

The 19th century notion of piercing the corporate veil simply does not apply to the transnational nature of businesses. It simply doesn't. We believe that in these cases, in these very serious human rights cases, that parent companies shouldn't be able to avoid liability based on this extremely old notion of how the world may once upon a time worked. It's just not the reality anymore.

The spatial representations of law, including its distinction between parent companies and their foreign subsidiaries, the so-called public-private 'divide,' and the principle of comity, prevent the fulfillment of justice and human rights. "Law's power as a discourse," however,

⁹³ These claims are based on the wiretap transcripts (Appendix IX) wherein Rotondo demonstrates a hostile attitude towards the local community. As described earlier, Rotondo also urged legal action against members of the Catholic Church back in July 2012 and threatened members of the resistance just a few weeks before the shooting incident by stating that he would run a truck over them (Notice of Civil Claim 2014, 11).

⁹⁴ Even if Tahoe did not authorize the excessive use of force against protestors (explicitly or implicitly), the plaintiffs argue vicarious liability as a 'back up position,' which posits that Tahoe's lack of control over their security personnel makes them responsible for MSR and/or Rotondo's action; the plaintiffs and their legal counsel allege that Tahoe had a significant level of control over the mine and its operations, including its security policies and practices, placing direct liability at the core of their case (Eisenbrandt 2018, September 4). In Eisenbrandt's (2018, September 4) view, "that reflects the reality" since at the time the civil claim was filed in June 2014, the Escobal Mine was Tahoe's sole asset. In this context, Tahoe would need to assure its investors that they "have sufficient input into what is going on in Guatemala" (Eisenbrandt 2018, September 4).

“is challenged by internal contradictions at the international scale, when human rights arguments confront state territorial jurisdiction” (Blandy & Sibley 2010, 275). Blandy & Sibley (2010, 275) explain that although these boundaries “are legally established and enforced,” they “prove in fact to be remarkably permeable.”

Perhaps Canadian courts are finally willing to tackle the reified categories and boundaries established by corporate law, whereby private rights and responsibilities are unable to cross borders. To achieve transnational justice, we must test public-private abstractions “against the lived world of the [global-] locality of which they are a part” (Blomley & Bakan 1992, 682). Corporate executives and local communities impacted by mining “are not entirely enclosed by the private domain, but live, die and are injured in the same public space” (Blomley & Bakan 1992, 682). Cory Wanless (IHRP 2018), legal counsel for the plaintiffs in the Huidbay cases, cites the corporate structure as a key area for law reform:

All companies operate through layers of subsidiaries and the whole point of those subsidiaries is to avoid legal liability. This is a bedrock principle of corporate law. In our last intervention, we did a deep dive to see if there was any sort of law/economic/public policy reason why a wholly-owned subsidiary that is owned and controlled by the parent company should benefit from limited liability? Why should those be considered separate organizations? And we thought someone out there would say, ‘oh, well there’s actually a good reason for that,’ but no, all the research on limited liability is between individual shareholders and corporations, not where a company owns all of the shares in another company and uses that separation to avoid liability. That is going to be a tough nut to crack, just because in law schools, in law firms, in court rooms, everyone just sort of assumes that that is a super important principle, but I think it needs to be rethought.

In Canada, the law continues to uphold an unjust status quo within and between borders. Yet, Russell (IHRP 2018) argues that the law also contains within it a “set of rules and tools that can be used – with great difficulty – to try and shift the playing field.” The development of a novel duty of care for Canadian parent companies has the potential to

‘remap’ corporate accountability to the space of the home state (Laliberté 2015). Russell (IHRP 2018) elaborates that until the Tahoe, Nevsun and HudBay cases, Canada “was providing our companies with immunity from liability, immunity from accountability. They have been acting with outright impunity, thus the importance of these cases.”

We need better laws to hold Canadian companies to account for their human rights violations abroad and also mechanisms to ensure that the Canadian government and by association the Canadian public are not “funding, supporting and promoting companies that are involved with human rights violations because that would lead us to be complicit in that” (Dwyer 2018, June 19). As Russell (IHRP 2018) notes, Canadian mining is a systematic problem affecting communities throughout the world and necessitates both policy and legal reform with respect to what kind of global economic model Canada is promoting. The civil lawsuit against Tahoe is just a small piece of a broader and multi-faceted struggle. Russell (IHRP 2018) argues that it is one struggle that fits within

a broader battle that’s going on across the planet as to what kind of planet are we living in – how are we living together as human beings on this one planet that we have. It has to go to consumer and investor awareness and investor responsibility – who are the consumers of these products? Who are we who invest in these pensions, trust funds, endowments; and private investment – make a profit from it and yet there’s little to no checks and balances on what you can make a profit from your investments, and there are no screens – there is no screen related to human rights, environment, repression⁹⁵ – this is all room for activism.

⁹⁵ Eisenbrandt (2018, September 4) adds to this point on investor responsibility: “you get ten things on your daily Google alert and they’re all from investment websites and about this stock is up and this stock is down, should you invest, should you not invest. If human rights issues or the civil litigation for the human rights cases is mentioned at all, which is rare, it’s mentioned as an annoyance or, “oh they’re facing some troubles here.” It’s just never central to anyone’s analysis about should you be investing at all. Now I know there are lots of people who do a lot of work in ethical investing and all those things, but I mean just as a general matter, you do not see the human issues as being central issues. They talk about being in a ‘challenging’ environment.” Lawyer Alan Lenczner (2018) further illuminates the issue, commenting that shareholders rarely read CSR reports and that if “you’re going to change behaviour, you got to do it at the level where it counts, which is the pension plans which control tons of the money in this country, maybe private equity funds. Basically, pensions funds, state-owned and employee-owned.”

The lawsuits proceeding against Tahoe, Nevsun and HudBay are “historical, landmark, enormous and tiny at the same time” (Grahame Russell, IHRP 2018). In this complex struggle against corporate, investor and government impunity, I detailed the critical role played by Global Affairs Canada and the Canadian Embassy in the violent expansion of extractive spaces in the ‘Global South,’ for the benefit of mining companies and in the name of ‘development.’ The civil lawsuit proceeding against Tahoe plays an important role in addressing corporate immunity from regulation; however, the goal of the analysis thus far has been to convince Canadians that “we can and should be holding our government to account,” which means calling on our politicians to uphold their national and international human rights obligations (Dwyer 2018, June 19).

CHAPTER 7: FINAL REFLECTIONS

Closing the governance gap: Beyond legal justice

“A narrative history of the imperial adventure rendered in historical and contemporary legal terms opens up a possibility for a radical rethinking of a model of development defined by Western ideas of progress, development, and efficiency. A vision of a just society necessitates that we eschew an idea of freedom that allows for massive inequality because the rule of law is invariably used to protect the bottom line. Liberation is a better word than freedom. Liberation cannot exist without authentic democracy, and no democracy exists without just distribution of resources.”

Mattei & Nader (2008, 6-7)

Laliberté (2015) suggests mapping relations of responsibility – rather than rights claims – to understand the geographies of power behind rights violations. I detailed the conflicting claims of responsibility on the part of the Canadian government regarding its economic diplomacy mandate and its commitment to protect human rights. In investigating these discursive “claims and denials of responsibility,” I revealed the “(dis)connections between people and places perpetuated by institutional as well as individual agendas,” which produce an uneven landscape of political, economic and legal relations (Laliberté 2015, 60). This place-based, multi-scalar assessment of responsibility contributes to a better understanding of how governmental policies and practices hinder the realization of human rights in their local, national and international contexts. Corporate and government accountability is tied to various spatial representations about the limits and possibilities of the law in the search for justice. Contestations regarding legal responsibilities “cross scales, traverse space and shape place” as well as social relations between actors (Laliberté 2015, 57). As Connolly Carmalt (2007, 68) writes, “space is built by human actions, and the way in which it is created plays a role in how human rights violations occur.”

In a context of neoliberal globalization and transnational resource extraction, the argument that human rights violations can be prevented so long as the home state of the

MNC recognizes their extraterritorial obligations to guarantee human rights beyond the domestic sphere is unfounded. Home states themselves are complicit in the perpetration of human rights abuses for economic benefit. The idea that “systems of accountability that operate predominantly within state borders have not kept pace with the global nature of corporate operations” (Amnesty International 2017, 37) is misguided, in that the cause of corporate human rights abuses is the deep collusion between the home and host states and the corporation in advancing extractive projects even when there is resistance by local populations. The larger issue is not the corporate structure, or the precise legal instruments used to circumvent accountability, but rather the ‘state-corporate nexus’ whereby corporations employ their power to “influence policies, legislation and court decisions, creating unequal access to justice for affected communities” (Aba & Thorgeirsson 2017, 51). Discerning the nature of structural violence is necessary “if we are to protect and promote human rights” (Farmer 2004, 7).

In this context of global impunity, wherein the political, economic and legal structures of neoliberalism sustain unequal relations both between Global North and South and within Guatemala, what does access to legal justice mean for overseas victims of Canadian mining harms? What does meaningful and effective transnational remedy look like? How can we effectively close the governance gap created by globalization? Whether Canadian courts will accept novel legal doctrines based on parent company liability intended to address those global economic systems that “facilitate corporate exploitation without promoting corporate accountability” is uncertain (Maheandiran 2016, 265). Genuine and transparent consultation processes that provide for and respect communities’ right to say ‘no’ to mineral extractive projects could go a long way in preventing the rights violations associated with Canadian

mining operations abroad. It is unclear, however, whether communities in resistance to mining can achieve greater decision-making authority in natural resource governance. Likewise, as a voluntary regime of self-regulation that prioritizes the interests of capital, CSR strategies are “bound to fail in the pursuit of justice” (Laplanche & Nolin 2011, 27). As it stands, civil litigation in the home state is the most promising avenue for remedy and for enforcing a measure of corporate accountability, but it still does not address the complicity of both home and host governments in perpetuating violent processes of political, economic and legal imperialism.

In evaluating the causes and implications of the current governance gap in the context of Canadian mining abuses abroad, this thesis concludes that mandatory, not voluntary, compliance with human rights norms is needed to change corporate and government practices and protect communities from harm. The Canadian government possesses a clear responsibility in the oversight of Canadian investment activities abroad and in the provision of access to remedy and justice for overseas victims of Canadian mining operations (ETO 2001). Even with criminal and civil law reform, however, the possibility of ongoing impunity remains. As Daloz & Chabal (1999 quoted in Deneault & Sacher 2012, 28) write, “what is at issue is not the inadequacy of rules and regulations, but the fact that they are systematically disregarded; from this point of view old and new regulations share the same fate. In other words, rule and regulations are designed as obstacles, points of reference around which procedures are invested to develop new relations.” For this reason, struggles against human rights abuses at Canadian mine sites require a broad and differentiated approach, one that includes grassroots organizing, public advocacy, policy reform as well as lawsuits: “all pieces of that struggle are important, and they work together” (Weisbart 2018b, June 29).

More than anything, however, tackling issues of mining injustice requires Canadian citizens to recognize their personal responsibility to contest historical and deeply entrenched systems and structures of inequality within and between the ‘Global North’ and ‘Global South.’ As noted by Jen Moore (2018, June 19), in different ways, we

can play a role in working through solidarity, with information, in different areas – whatever people’s specialties are. I think we’ve got a lot of sites of struggle in Canada, whether you are an environmental scientist or a lawyer or a writer, we all can fight to support or get the word out on these struggles.

Indigenous and *campesino* communities in Guatemala will continue to organize *consultas* and launch lawsuits against a neo-colonial nation-state that has failed to safeguard their land and livelihoods. They will strive towards an alternative conception of democracy, one that challenges the violent foundations of the neoliberal order. They will also continue to seek justice overseas, against those systems of imperialism that legitimate the plunder of their resources. As Gordon & Webber (2008, 64) write, “It is only the mass struggle of the poor, workers and Indigenous peoples of Latin America, that will stop the predatory practices of Canadian mining companies.”

Thesis summary

On the one hand, there are broad, universal declarations recognizing human rights which are rhetorical and absolute in nature. On the other, there are the ‘on the ground’ realities, wherein states and multi-national corporations leverage their political, economic and legal power to take advantage of high levels of insecurity, corruption and impunity. Contemporary transnational mining endeavors in Guatemala, like in other places in the ‘Global South,’ are historically rooted in the “violent imposition of free market reforms on a poor, unequal, and war-torn country” (Perrigo 2017). The signing of the 1996 Peace Accords is regarded a key moment in the Guatemala’s history, the purpose of which was to “open up

the markets and allow free market capitalism to flow in Guatemala” after the armed conflict and genocide (McVicar 2018, August 18). Far from bringing peace, however, the Accords sanctioned neoliberal economic policies that created fertile grounds for the continued violation of human rights, cementing a status quo of corruption and impunity. They were signed “not so the population will live in peace, but because there was an international interest in investment” (Solis 2018, May 25). The root cause of the country’s 36-year long conflict, namely the usurpation and exploitation of Indigenous and *campesino* communal land, remains unresolved (Tauli-Corpuz 2018b). In fact, economic violence is intensifying under the auspices of neoliberalism, with ideologies of development being used to legitimate imperial and neo-colonial interventions.

This thesis details a local-national-international dynamic whereby a network of corporations, investors, lobbyists and colluding governments make the global economy ‘work’ in favour a tiny elite at the expense of many. The international apparatus behind the global political economy of resource extraction – supported by the Canadian government – sustains the corrupt and violent practices of the Guatemalan government and Tahoe by legitimizing those processes that dispossess people of their land and livelihoods. By examining the policies and practices of the Canadian and Guatemalan governments used to advance capitalist modes of production in a specific place (e.g. the Escobal Mine), this thesis reveals the transnational political, economic and legal relationships underpinning spaces of violence and injustice. I have unpacked how state and corporate actors on the one hand, and Indigenous and *campesino* communities on the other, struggle to control, organize and reproduce space for different purposes (Allen 2003). State and corporate actors use strategies of criminalization, militarization, legalization and violence to actualize their neoliberal

visions of development in specific places, Indigenous and *campesino* communities use direct action, local consultations, lawsuits and grassroots and transnational organizing to protect their land and territory, offering us new ways of being in the world.

In this simultaneously local-national-transnational power struggle, the law is used to construct specific spaces of political and economic authority within and outside Guatemala. On the one hand, the law is a source of power for historically repressed Indigenous and *campesino* communities, who use it as a means of asserting their right to collective self-determination. On the other, the Guatemalan and Canadian state and Tahoe use the law to enforce neoliberal visions of development, by protecting the sanctity of private property, the primacy of the free market and by promoting foreign direct investment through trade agreements, among many other interventions (Gordon & Webber 2016; Sibley 2001). In this context of ongoing corporate immunity, government complicity and community resistance, I reflected on the significance of the civil suit proceeding against Tahoe in B.C. courts in terms of its potential to improve access to justice for victims of Canadian mining and to enforce a measure of corporate accountability.

In analyzing the interrelations between social processes and space, I revealed how law creates specific power relations and material arrangements in place. This geographically grounded approach is useful in demonstrating how the seemingly abstract processes of capitalism – as a form of ‘structural violence’ (Farmer 2003; Tyner 2012b) – impact peoples’ everyday life to reproduce and sustain unequal power relations. In the case of the Escobal Mine, the re-organization of space by processes of capitalist accumulation highlights the ways in which development discourses and their material manifestations combine to reconfigure political, economic, legal and environmental relations in place. The

interconnections between Guatemalan and Canadian policies and practices exposes how spaces of violence, injustice and impunity are materialized in the case of the Escobal Mine. In adopting a ‘geographically wide’ and ‘historically deep’ approach (Farmer 2004, 42), this thesis highlights power’s inherent *relationality* (Allen 2003), as well as the *spatiality* of imperialism and neoliberal capitalism in an era of globalization. Likewise, by analyzing the relationships between places and scales, discourses and practices, and actors and institutions, I illuminate how different visions of development are both promoted and challenged in the global economy. Finally, by elaborating on the fluid transnational political and legal relationships between states, corporations and local communities, this thesis uncovers how power relations produce and are produced by law.

As a critical researcher interested in transnational activism and solidarity, my goal in writing this thesis was to examine power and how it operates through political, economic and legal institutions. I reported on how the Canadian government, specifically Global Affairs and the Canadian Embassy to Guatemala, intervened and undermined human rights processes. My hope is that this analysis allows us to think about avenues for potential reform, including increased independent oversight of these agencies to ensure transparency and accountability. I also sought to amplify the voices of communities in resistance to the Escobal Mine by presenting their counter-narratives to discourses of development. This methodological approach enabled me to encourage activism in my everyday life beyond academia, to better support Indigenous and *campesino* communities seeking justice for the human rights violations enabled by the Canadian Government and its companies and investors.

I illuminated the broader political, economic and legal structures that produce and are produced by very specific processes of displacement and dispossession as well as individual and community resistance to these forms of violence, as played out in a particular place in a particular time. I balanced an examination of structures and processes on the one hand, and individual and community experiences on the other. As Winchester and Rofo (2016) discuss, an overemphasis on structures can lead to a dehumanized geography wherein individual agency and resilience is negated. Structural forces such as capitalism may constrain individuals, however, there are specific ways in which individuals can resist the construction and reproduction of these structures through their own actions, to create spaces of resistance. I choose to dissect the “interplay between subjective experiences of everyday life and the broader historical and structural relations” (Bailey et al. 1999, 174), an objective in line with anti-colonial research (Tuhiwai Smith 1999). While my findings cannot be transferred to other contexts given their spatial and temporal specificity, I hope that the theoretical concepts and explanations developed may be meaningful to other groups afflicted by similar political, economic and legal conditions.

Concluding thoughts

This thesis has been a story of power, exploitation and abuse; but it is also one of resistance, hope and continual struggle in the search for a better world. I am struck by the fact that those who are denied their humanity, those who are treated as disposable through direct and indirect violence – from targeted assassinations to general impoverishment – are those who are most cognizant of our common humanity. The words delivered by the Mayor Arévalo (2018, May 7) of Santa Rosa de Lima are most poignant: “look out at these faces – it is the poor who are resisting this development model.” With few resources and limited

national and international support, communities fight for a more just and equitable society. They see so clearly the destructive impacts of the imported neoliberal economic development model because they are the ones negatively affected by it. Meanwhile, many of us in the ‘Global North’, as the beneficiaries, are easily complacent and ignorant. I am incredibly humbled by their determination to create a better world in a context of ongoing repression and impunity. Now I understand what it means to embody different ways of being and living in the world outside of neoliberal capitalism. The struggle of Indigenous and *campesino* communities is for humanity, for positive change in the ways we think and live. They are exposed to incomprehensible violence for their vision, but they choose to be in resistance with their bodies and with their communities against the forces of imperialism, colonialism, racism and discrimination. As Mayor Arredondo (2018, May 7) of Nueva Santa Rosa exclaimed,

These ghosts are doing a favour for humanity – they are growing trees, taking care of the water. We are not working for ourselves; we are working for the planet. And how do they pay us? They say we don’t exist... We are not asking for favours or handouts. All we are asking for is to have our rights respected and we are doing this for our land and our future generations. Please do us this favour: tell them we exist, that we are flesh and blood, that we drink water, that we eat beans and corns that we produce ourselves. We are capable, we can manage our own lives – we have been doing it and we will continue to. We have our own voice, our own ideas. Tell them to respect our rights!”

Social movements in Guatemala, in this case against mining, are not anti-development struggles; they are pro-community defense struggles in favour of a different type of development that prioritizes local ownership, the environment and human rights (Russell 2018, May 6).

We need not look beyond the borders of this country called Canada, however, to understand the forces of imperialism and neocolonialism: for hundreds of years, First Nations

peoples have defended the environment, demanding that the land, water and air be respected. From the recent land evictions over the Trans Mountain pipeline to the approval of the Site C dam, Indigenous peoples in Canada, too, are viewed as obstacles to be removed to allow for capitalist development (LaFortune 2018). The ‘Crown’s land’ and the corporation’s ‘private property’ operate as inviolable principles. But they are constructs in service of a world that commodifies the land and natural resources. With this perspective, we can begin to understand how Canadian policy represents an attempt to impose a neoliberal development model, one that denies Indigenous peoples control over their land and a say over their lives. While we may speak of the rule of law and democracy, both at home and abroad, it is power and wealth that dominates the policy decisions of nation-states. In this context, ‘development’ is a lie; it is a justification for violence and wealth accumulation on the part of political and economic elites (Russell 2018, May 6). While Guatemalans endure incomprehensible violence for their resistance to the dominant development model, they also serve as an example of the best of humanity, determined to create a new reality based on love, respect for one another, and for the earth.

Indigenous and *campesino* communities continue to resist violent political, economic and legal ideologies which deny us of our common humanity by retrenching inequalities. The neoliberal economic model not only dispossesses communities of their land and livelihoods in the Global South, but also compels those of us living in the Global North to value individual success and materialism above all else. This is the critical dynamism which reinforces asymmetrical relations. This thesis argues that neoliberalism, imperialism and colonialism are the destructive ideologies at the root of our problems as a global society. Given the inter-connected nature of these issues, we must build North-South alliances that go

beyond solidarity, towards recognizing our common humanity. As Ramiro Choc (2018 May 16) asserts:

We are all humans on this planet, and we have one planet to live on. We humans are treating ourselves in very unjust and unequal ways in many parts of the planet, including here in Guatemala. We are leaving for future generations a deteriorated planet.

Despite the existence of the nation-state system, we are not separate entities. The global economy creates winners and losers, but we can choose to work towards a just and fair society. We can fight ideologies of imperialism, racism, and the like by speaking of new political visions, ones that identify the structural causes of poverty and challenge corporate and government dominance. Knowing how the global economy works, in systematically exploitative and repressive ways, I must also embody a different type of politics, one based on empathy and justice. My travels in both Guatemala and Northern B.C during my graduate career opened my eyes to how Indigenous peoples hold a deep connection with the land and thus seek to live in harmony with it, to ensure its health for future generations. I must take the power and privilege I hold and choose to become an activist. As Ruth Behar (1996) tells us, to witness is a call to action. If our governments, both Canadian and Guatemalan, show a disregard for land and life, it is our responsibility to speak out together, to make each other's voice stronger. Solidarity and mutual aid, in and of itself, represents an affront to a world driven by power and wealth. This thesis represents an attempt to 'take their stories out' (Antonio 2018, May 17). I will tell the Canadian government to stop supporting a corrupt Guatemalan state that brutalizes its population, while also holding it accountable for its own violent policies and practices towards Indigenous peoples.

Even in the face of massive government, military and corporate repression, the people of Guatemala continue to stand up for their individual and collective rights, holding national

and international actors legally and politically accountable for their policies and actions. By establishing themselves in place, in defense of territory, Indigenous and *campesino* communities contest violent colonial practices seeking to dispossess them of their land and livelihoods. Slowly, struggles and peoples across Guatemala are connecting and drawing inspiration from one another. In growing stronger, so too does their collective vision for a different Guatemala, one founded on the principles of equity, fairness and justice. While perhaps a Utopian vision, it is a necessary one, at least in terms of maintaining hope and the will to keep fighting for a better world; a world where governments represent the interests of the people, and not of big business; a world where countries are democratic in both name and substance. Greater government and corporate accountability, however, can only be achieved if we bring people and places together on a *global* scale. As Canadians, we must “*fold in* claims for justice and fairness by lifting out and re-embedding remote harms” while also “*stretching* the indirect ties of responsibility to exploitative practices elsewhere” (Allen 2016, 105). Only by “equating distant harms with the benefits enjoyed by others far removed from them” (Allen 2003, 13), can we better understand our collective responsibility for the harms of the Canadian extractive sector. If rights violations are not an accident, but a result of direct or indirect human agency, we need to ask whose interests are served, by which mechanisms, and at whose expense?

REFERENCES

- A201301117_2014-12-23_08-19-27.pdf. Access to Information and Privacy (ATIP) Request. Global Affairs Canada. Government of Canada. Copy of document in possession of author.
- A201402328_2015-09-29_12-34-33.pdf. ATIP Request. Global Affairs Canada. Government of Canada. Copy of document in possession of author.
- A201501699_2016-08-31_10-40-41.pdf. ATIP Request. Global Affairs Canada. Government of Canada. Copy of document in possession of author.
- A201702036_2018-03-28_15-59-43.pdf. ATIP Request. Global Affairs Canada. Government of Canada. Copy of document in possession of author.
- A201702339_2018-11-05_14-21-39.pdf. ATIP Request. Global Affairs Canada. Government of Canada. Copy of document in possession of author.
- A201701581_2018-03-28_15-49-13.pdf. ATIP Request. Global Affairs Canada. Government of Canada. Copy of document in possession of author.
- A7040-17-839.pdf. ATIP Request. Global Affairs Canada. Government of Canada. Copy of document in possession of author.
- Aba, E. & Thorgeirsson, S. (2017). Corporate-State Nexus: The Political Element Hindering Victims' Access to Justice. In *Amnesty International. Creating a Paradigm Shift: Legal Solutions to Improve Access to Remedy for Corporate Human Rights Abuse* (51-57). Retrieved from: https://business-humanrights.org/sites/default/files/documents/AI_BHRRC_Elaborating_Solutions_Report_Template_1%20Sep%202017.pdf.
- Abell, J. (1999) The Neoliberal World Order: The View from the Highlands of Guatemala, *NACLA Report on the Americas, Special Issue: Report on Global Finance*, 33 (1): 37-41.
- Advisory Group. (2007). National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries. *Government of Canada*. Retrieved from: https://miningwatch.ca/sites/default/files/RT_Advisory_Group_Report.pdf.
- Agamben, G. (1998). *Homo Sacer: Sovereign Power and Bare Life*. Stanford: Stanford University Press.
- Agnew, J. & Coleman, M. (Eds.) (2019). *Handbook on the Geographies of Power*. Cheltenham & Northampton: Edward Elgar.
- Aguilar-Støen, M. (2015). Staying the Same: Transnational Elites, Mining and Environmental Governance in Guatemala. In Bull, B. & Aguilar-Støen, M., *Environmental Politics in Latin America* (131-149). Oxon: Routledge.
- Allen, J. (2003). *Lost Geographies of Power*. Oxford: Blackwell Publishing. Routledge.
- Allen, J. (2016). *Typologies of Power: Beyond Territory & Networks*. London and New York: Routledge.
- Amnesty International. (2014). *Mining in Guatemala: Rights at Risk*. London: Peter Benenson House.
- Amnesty International. (2017). *Creating a Paradigm Shift: Legal Solutions to Improve Access to Remedy for Corporate Human Rights Abuse. Business and Human Rights Resource Centre*. Retrieved from: https://www.business-humanrights.org/sites/default/files/documents/AI_BHRRC_Elaborating_Solutions_Report_Template_1%20Sep%202017.pdf.

- Andrews, N. (2019). *Gold Mining and the Discourses of Corporate Social Responsibility in Ghana*. Basingstoke: Palgrave MacMillan.
- Antonio. (2018, May 17). Community member of Chab'il Ch'och. Site Visit to Rio Dulce, Izabal Department, Guatemala. *UNBC Geography & Rights Action Field School to Guatemala, May 2018*.
- Arana Morales, Aleisar. (2018, May 7). President of the Xinca Parliament. Public Gathering in Casillas, Santa Rosa, Guatemala for the visit of the UN Special Rapporteur on the Rights of Indigenous Peoples. *UNBC Geography & Rights Action Field School to Guatemala, May 2018*.
- Arévalo, Llan Carlos Dávila. (2018, May 7). Mayor of Santa Rosa de Lima. Public gathering in Casillas, Santa Rosa, Guatemala for the visit of the UN Special Rapporteur on the Rights of Indigenous Peoples. *UNBC Geography & Rights Action Field School to Guatemala, May 2018*.
- Arredondo, Enrique. (2018, May 7). Mayor of Nueva Santa Rosa. Public Gathering in Casillas, Santa Rosa, Guatemala for the visit of the UN Special Rapporteur on the Rights of Indigenous Peoples. *UNBC Geography & Rights Action Field School to Guatemala, May 2018*.
- Ayers, A. (2008). We All Know a Democracy When We See One: Neoliberal Orthodoxy in Democratization in Good Governance Projects. *Policy and Society*, 27 (1): 1-13.
- Ayers, A. (2012). Beyond the Ideology of 'Civil War': The Global-Historical Constitution of Political Violence in Sudan. *The Journal of Pan African Studies*, 4 (10): 261-288.
- Bailey, C., White, C. & Pain, R. (1999). Evaluating Qualitative Research: Dealing with the Tension between 'Science' and 'Creativity'. *Area* 31 (2): 169-178.
- Bámaca, Miguel Ángel. (2018, May 9). Meeting with leader of FREDEMI (San Miguel Ixtahuacán Defense Front). Site Visit to the Marlin Mine, Sipacapa, Department of San Marcos, Guatemala.
- Barrett, R. (2018). The Development-Security Nexus: An Exploitative Past & Present. *E-International Relations Students*. Retrieved from: <https://www.e-ir.info/2018/07/24/the-development-security-nexus-an-exploitative-past-and-present/>.
- Baxter, J. (2016). Case Studies in Qualitative Research. In Hay, I. (4th ed.), *Qualitative Research Methods in Human Geography* (29-44). Canada: Oxford University Press.
- Baxter, J. & Eyles, J. (1997). Evaluating Qualitative Research in Social Geography: Establishing 'Rigour' in Interview Analysis. *Transaction of the Institute of British Geographers* 22 (4): 505-525.
- BCCA (British Columbia Court of Appeal). (2017). Garcia v. Tahoe Resources Inc., No. CA43295. Copy of Document in Possession of Author.
- Behar, R. (1996). *The Vulnerable Observer*. Boston: Beacon Press.
- Bennett, N. (2016, April 19). Wave of Foreign Lawsuits Against Local Miners Hits Canadian Courts. *Business in Vancouver*. Accessed February 19, 2019. Retrieved from: <https://biv.com/article/2016/04/wave-foreign-lawsuits-against-local-miners-hits-ca>.
- Bennett, L. & Layard, A. (2015). Legal Geography: Becoming Spatial Detectives. *Geography Compass*, 9 (7): 406-422.
- Benson, P., Fischer E.F., & Thomas, K. (2008). 'Resocializing Suffering: Neoliberalism, Accusation, and the Sociopolitical Context of Guatemala's New Violence.' *Latin American Perspectives* 35(5): 38-58.

- Blandy, S. & Sibley, S. (2010). Law, Boundaries and the Production of Space. *Social and Legal Studies*, 19 (3): 275-284.
- Blomley, N. (1994). *Law, Space and the Geographies of Power*. New York: Guilford Press.
- Blomley, N. & Bakan, J. (1992). Spacing Out: Towards a Critical Geography of Law. *Osgoode Hall Law Journal*, 30 (2): 661-690.
- Braverman, I. (2014). Who's Afraid of Methodology? Advocating a Reflexive Turn in Legal Geography in Braverman, I., Blomley, N., Delaney, D. & Kedar, S. *Expanding the Spaces of Law: A Timely Legal Geography* (120-141). Stanford: Stanford University Press.
- Braverman, I., Blomley, N., Delaney, D. & Kedar, A. (Eds.). (2014). *The Expanding Spaces of Law: A Timely Legal Geography*. Stanford: Stanford University Press.
- Breaking the Silence (BTS). (2017, December 21). Update on Community Resistances to Canadian Tahoe Resources' Escobal Mine. Accessed July 15, 2018. Retrieved from: <http://www.breakingthesilenceblog.com/general/update-on-community-resistances-to-canadian-tahoe-resources-escobal-mine/>.
- Brown, J. (2015). B.C. Mining Company Latest to Be Challenged in Canada for Alleged Actions Abroad. *Canadian Lawyer*. Accessed December 4, 2018. Retrieved from: <https://www.canadianlawyermag.com/author/jennifer-brown/bc-mining-company-latest-to-be-challenged-in-canada-for-alleged-actions-abroad-2915/>.
- Brown, L. & Strega, S. (2005). *Research as Resistance: Critical, Indigenous & Anti-Oppressive Approaches*. Toronto: Canadian Scholars' Press.
- Bryant, D., Romano, Z. & O'Callaghan, K. (2015, November 20). "BC Court Declines Jurisdiction in Garcia v. Tahoe Resources Inc." *Fasken Corporate Social Responsibility & Mining Bulletin*. Retrieved from: <https://www.fasken.com/en/knowledgehub/2015/11/corporatesocialresponsibilityampmining-20151120>.
- Burgmann, T. (2015, April 8). B.C. Mining Company Wants Lawsuit by Guatemalan Shooting Victims Dismissed. *Globe and Mail*. Accessed February 12, 2019. Retrieved from: <https://www.theglobeandmail.com/news/british-columbia/bc-mining-company-wants-lawsuit-by-guatemalan-shooting-victims-dismissed/article23840619/>.
- Butler, P. (2015). *Colonial Extractions: Race and Canadian Mining in Contemporary Africa*. Toronto: University of Toronto Press.
- Cabnal, Lorena. (2018, May 7). Indigenous Xinca Woman and Activist. Public Gathering in Casillas, Santa Rosa, Guatemala for the Visit of the UN Special Rapporteur on the Rights of Indigenous Peoples. *UNBC Geography & Rights Action Field School to Guatemala, May 2018*.
- Canada (Government of Canada). (2013). Global Markets Action Plan: The Blueprint for Creating Jobs and Opportunities for Canadians Through Trade. Retrieved from Global Affairs Canada website: <https://international.gc.ca/global-markets-marches-mondiaux/assets/pdfs/plan-eng.pdf>.
- Canada. (2017). Voices at Risk: Canada's Guidelines on Supporting Human Rights Defenders. Accessed January 20, 2018. Retrieved from Global Affairs Canada website: https://international.gc.ca/world-monde/issues_developpement-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng.

- Canada. (2018a). Canadian International Assistance in Guatemala. Accessed July 15, 2018. Retrieved from Global Affairs Canada website: http://international.gc.ca/world-monde/issues_development-enjeux_developpement/priorities-priorites/where-ou/guatemala.aspx?lang=eng.
- Canada. (2018b). Canada's Enhanced Corporate Social Responsibility Strategy to Strengthen Canada's Extractive Sector Abroad. Accessed July 15, 2018. Retrieved from Global Affairs Canada website: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng/>.
- Canada. (2018c). Global Affairs Canada: Priorities. Accessed July 15, 2018. Retrieved from Global Affairs Canada website: <http://www.international.gc.ca/gac-amc/priorities-priorites.aspx?lang=eng>.
- CCSRC (Canadian Centre for the Study of Resource Conflict). (2009). Corporate Social Responsibility: Movements and Footprints of Canadian Mining and Exploration Firms in the Developing World. *Prospectors and Developers Association of Canada*. Copy of document in possession of author.
- CNCA (Canadian Network on Corporate Accountability). (2014). Human Rights, Indigenous Rights and Canada's Extraterritorial Obligations. *Thematic Hearing for 153rd Period of Sessions Inter-American Commission on Human Rights*. Retrieved from: cnca-rcrce.ca/wp-content/uploads/.../canada_mining_cidh_oct_28_2014_final.pdf.
- Cannella, G. & Lincoln, Y. (2009). Deploying Qualitative Methods for Critical Social Purposes. In Denzin, N. & Giardina, M., *Qualitative Inquiry and Social Justice* (53-72). Walnut Creek: Left Coast Press.
- Cannella, G. & Lincoln, Y. (2011). Ethics, Research Regulations and Critical Social Science. In Denzin, N. & Lincoln, Y. (4th ed.), *The Sage Handbook of Qualitative Research* (81-89). New York: Sage.
- Cannella, G. & Manuelito, K. (2008). Feminisms from Unthought Locations: Indigenous Worldviews, Marginalized Feminisms and Revisioning an Anticolonial Social Science. In Denzin, N., Lincoln, Y. & Smith, L. *Handbook of Critical and Indigenous Methodologies* (45-60). London: Sage.
- Carmack, R. (1988). *Harvest of Violence: The Maya Indians and the Guatemalan Crisis*. Norman: University of Oklahoma Press.
- CBC (Canadian Broadcasting Corporation). (2018). *In Search of a Perfect World*. [Film, 44 min.]. Toronto, ON. Retrieved from: <https://www.cbc.ca/documentaries/in-search-of-a-perfect-world>.
- CECON (Centro de Estudios Conservacionistas) & CODIDENA (Comisión Diocesana de la Defensa de la Naturaleza). (2019). Desigualdad, Extractivismo y Desarrollo en Santa Rosa y Jalapa. Retrieved from: <https://desigualdadextractivismoydesarrollo.files.wordpress.com/2019/03/estudio-de-caso-desigualdad-extractivismo-y-desarrollo.pdf>.
- Charmaz, K. (2011). Grounded Theory Methods in Social Justice Research. In Denzin, N. & Lincoln, Y. (4th ed.), *The Sage Handbook of Qualitative Research* (359-380). London: Sage.
- Chase, S. (2011). Narrative Inquiry: Still a Field in the Making. In Denzin, N. & Lincoln, Y. (4th ed.), *The Sage Handbook of Qualitative Research* (421-434). London: Sage.
- Chevron Corp. v. Yaiguaje. Supreme Court of Canada. (2014). Factum of the Joint Intervener. Retrieved from :

https://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/KLIPPENSTEINSChevronFactum%20-OTT_LAW-4722211-v1.pdf.

- Choc, Angelica. (2018, May 16). Indigenous Maya Q'eqchi' Leader. Visit to Choc & Ich family home. La Unión, Izabal Department, Guatemala. *UNBC Geography & Rights Action Field School to Guatemala, May 2018*.
- Choc, Maria. (2018, May 16). Indigenous Maya Q'eqchi' Leader. Visit to Choc & Ich family home. La Unión, Izabal Department, Guatemala. *UNBC Geography & Rights Action Field School to Guatemala, May 2018*.
- Choc, Ramiro. (2018, May 16). Indigenous Maya Q'eqchi' Leader. Visit to Choc & Ich family home. La Unión, Izabal Department, Guatemala. *UNBC Geography & Rights Action Field School to Guatemala, May 2018*.
- CNCA (Canadian Network on Corporate Accountability). (2018). Open for Justice Campaign. Accessed February 12, 2018. Retrieved from: <http://cnca-rcrce.ca/campaigns-justice/>.
- Connolly Carmalt, J. (2007). Rights and Place: Using Geography in Human Rights Work. *Human Rights Quarterly* 29: 68-85.
- Cope, M. (2016). Organizing and Analyzing Qualitative Data. In Hay, I. (4th ed.), *Qualitative Research Methods in Human Geography* (373-393). Toronto: Oxford University Press.
- Copeland, N. (2017, November 28). Guatemala is the Future: Neoliberal Democracy and Authoritarian Populism. *Counter Punch*. Accessed July 15, 2018. Retrieved from: <https://www.counterpunch.org/2017/11/28/guatemala-is-the-future-neoliberal-democracy-and-authoritarian-populism/>.
- Cowen, M. & Shenton, R. (1995). The Invention of Development. In Crush, J. *Power of Development* (27-43). London and New York: Routledge.
- CPO (Western People's Council). (2018, April 4). ¡Sin Derechos No Hay Consulta! Accessed July 15, 2018. Retrieved from: <http://www.cpo.org.gt/index.php/articulos/210-ley-de-consulta-a-los-pueblos-indigenas-conforme-al-convenio-169>.
- Crush, J. (1995). *Power of Development*. London and New York: Routledge.
- Crystal, V., Imai, S., & Maheandiran, B. (2014). Access to Justice and Corporate Accountability: A Legal Case Study of Hudbay in Guatemala. *Canadian Journal of Development Studies*, 35 (2): 286-303.
- De Ferrari, R. (2018, January 8). Israel's Close Relationship with Guatemala has Roots in Country's Civil War. *Panoramas*. Accessed December 20, 2018. Retrieved from: <https://www.panoramas.pitt.edu/news-and-politics/israels-close-relationship-guatemala-has-roots-countrys-civil-war>.
- Delaney, D. (2001). Introduction: Globalization and Law. In Blomley, N., Delaney, D. & Ford, R. *The Legal Geographies Reader* (251-255). Oxford: Blackwell Publishers.
- Delaney, D. (2010). *The Spatial, the Legal and the Pragmatics of World-Making: Nomospheric Investigations*. Abingdon: Routledge/Glasshouse Press.
- Delaney, D. (2015). Legal Geography I: Constitutivities, Complexities, and Contingencies. *Profresss in Human Geography*, 39 (1): 96-102.
- Deneault, A. & Sacher, W. (2012). *Imperial Canada: Legal Haven of Choice for the World's Mining Industries*. Vancouver: Talon Books.

- Denzin, N. & Lincoln, Y. (2008). Introduction: Critical Methodologies and Indigenous Inquiry. In Denzin, N., Lincoln, Y. & Smith, L. *Handbook of Critical and Indigenous Methodologies* (1-20). London: Sage.
- Deonandan, K. & Dougherty, M. (2016). *Mining in Latin America: Critical Approaches to the New Extraction*. Oxon: Routledge.
- Dowling, R. (2016). Power, Subjectivity, and Ethics in Qualitative Research. In Hay, I. (4th ed.), *Qualitative Research Methods in Human Geography* (29-44). Canada: Oxford University Press.
- Duffield, M. (2003). *Development, Security and Unending War: Governing the World of Peoples*. Hoboken: Wiley.
- Dwyer, E. (2018, June 19). CNCA Coordinator. Personal Interview. Ottawa, Ontario.
- Dunn, K. (2016). Interviewing. In Hay, I. (4th ed.), *Qualitative Research Methods in Human Geography* (149-188). Toronto: Oxford University Press.
- EarthWorks. (2018, November 19). Statement from the Xinka Parliament Denouncing Caritá Política's "Mediation Service" on behalf of Tahoe Resources. Retrieved from: <https://earthworks.org/publications/statement-from-the-xinka-parliament-denouncing-carita-politicas-mediation-service-on-behalf-of-tahoe-resources/>.
- Einbinder, N. (2017). *Dams, Development and Displacement Perspectives from Río Negro, Guatemala*. Springer Briefs in Latin American Studies. New York: Springer.
- Eisenbrandt, M. (2018, September 4). Director of Transnational Investigations at Camp, Fiorante, Matthews & Mogerman LLP. Personal Interview. Victoria, British Columbia.
- England, K. (1994). Getting Personal: Reflexivity, Positionality, and Feminist Research. *The Professional Geographer* 46 (1): 80-89.
- Escobar, A. (1995). Imagining a Post-Development Era. In Crush, J. *Power of Development* (211-227). London and New York: Routledge.
- Estévez, A. (2016, November 23). Fracking, Mining, Murder: The Killer Agenda Driving Migration in Mexico and Central America. *The Conversation*. Accessed November 30. Retrieved from: <http://theconversation.com/fracking-mining-murder-the-killer-agenda-driving-migration-in-mexico-and-central-america-67822>.
- Esteva, G. & Prakash, E. (2014). *Grassroots Post-Modernism: Remaking the Soil of Cultures*. London: Zed Books.
- ESTMA (Extractive Measures Transparency Act). (2017). ESTMA Report: Tahoe Resources Inc. Retrieved from: https://s22.q4cdn.com/803885423/files/doc_downloads/sustainability_reports/ESTMA-Report-Year-End-2017.pdf.
- ETO (Extra-territorial Obligations Consortium). (2001). *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*. Retrieved from: https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23.
- ETO. (2017). *For Human Rights Beyond Borders: How to Hold States Accountable for Extraterritorial Violations*. Retrieved from: https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=205.

- FAO (Food and Agriculture Organization). (2017). Chronology of the Dry Corridor: The Impetus for Resilience in Central America. Retrieved from: www.fao.org/in-action/agronoticias/detail/en/c/1024539/
- Falcon, S. (2016). Transnational Feminism as a Paradigm for Decolonizing the Practice of Research. *Frontiers* 37 (1): 174-194.
- Fanon, F. (1961). *The Wretched of the Earth*. New York: Grove Press.
- Farmer, P. (2004). *Pathologies of Power: Health, Human Rights, and the New War on the Poor*. Oakland: University of California Press.
- Field Notes. (2018, May 5-18). *UNBC Geography & Rights Action Field School to Guatemala, May 2018*. Originals in possession of author.
- Finchett-Maddock, L. (2014). *Protest, Property and the Commons*. New York: Routledge.
- Foucault, M. (1982). The Subject and Power. *Critical Inquiry*, 8 (4): 777-795.
- Friedman, G. (2018, November 15). Pan-American to Purchase Tahoe Resources. *Timmins Daily Press*. Accessed December 11, 2018. Retrieved from: <https://www.timminspress.com/news/local-news/pan-american-silver-to-purchase-tahoe-resources>.
- FLD (Front Line Defenders). (2011). Sixth Dublin Platform for Human Rights Defenders, 14-16 September, 2011. Retrieved from: <https://www.frontlinedefenders.org/en/6th-dublin-platform>.
- FLD. (2018, June 21). Seven Human Rights Defenders Killed in Guatemala in One Month. Accessed July 25, 2018. Retrieved from: <https://www.frontlinedefenders.org/en/statement-report/seven-human-rights-defenders-killed-guatemala-one-month>.
- Galeano, E. (1974). *Open Veins of Latin America: Five Centuries of the Pillage of a Continent*. New York: Monthly Review Press.
- Garcia v. Tahoe Resources Inc. British Columbia Court of Appeal 39 (2017). Retrieved from: <https://www.ccij.ca/content/uploads/2017/01/2017-BCCA-39-Garcia-v.-Tahoe-Resources-Inc.pdf>.
- García, J. (2018). La Mina San Rafael Tiene Demandas en Canadá y EEUU (Por Agresiones y Engañar a Sus Accionistas. *Nómada*. Retrieved from: <https://nomada.gt/pais/la-corrupcion-no-es-normal/la-mina-san-rafael-tiene-demandas-en-canada-y-eeuu-por-agresiones-y-enganar-a-sus-accionistas/>
- Geertz, C. (1973). *The Interpretation of Cultures: Selected Essays*. New York: Basic Books.
- Gillespie, J. (2014). A Legal Geography of Property, Tenure, Exclusion, and Rights in Cambodia: Exposing an Incongruous Property Narrative for non-Western Settings. *Geographical Research*, 54 (3): 256-266.
- Goldex Resources Corp. (2019). El Plato: Why Guatemala. Accessed January 24, 2019. Retrieved from: <http://goldex.ca/properties/why-guatemala/>
- Gordon, T. & Webber, J. (2008). Imperialism and Resistance: Canadian Mining Companies in Latin America. *Third World Quarterly*. 29 (1): 63-87.
- Gordon, T. & Webber, J. (2016). *Blood of Extraction: Canadian Imperialism in Latin America*. Halifax: Fernwood Publishing.
- Grandin, G. (2004). *The Last Colonial Massacre: Latin America in the Cold War*. Chicago: University of Chicago Press.

- Granovsky-Larsen, S. (2013). Between the Bullet and the Bank: Agrarian Conflict and Access to Land in Neoliberal Guatemala. *The Journal of Peasant Studies*, 40 (2): 325-350.
- Granovsky-Larsen, S. (2018, June 21). Terror in Guatemala. *NACLA Report on the Americas*. Accessed July 15, 2018. Retrieved from: <https://nacla.org/news/2018/06/21/terror-guatemala>.
- Green, L. (2011). The Nobodies: Neoliberalism, Violence, and Migration. *Medical Anthropology*, 30 (4): 366-385.
- Gregory, D. (2004). *The Colonial Present: Afghanistan, Palestine, Iraq*. Maiden and Oxford: Wiley-Blackwell.
- Gregory, D. & Pred, A. (2017). Introduction. In Gregory, D. & Pred, A., *Violent Geographies: Fear, Terror, and Political Violence* (1-6). London and New York: Routledge.
- GHRC (Guatemalan Human Rights Commission). (2014). The Myth of Development: Why Guatemalans Oppose Transnational Mines and Dams. *The Guatemala Human Rights Commission – El Quetzal Human Rights News & Updates*, Issue #17. Retrieved from: <http://www.ghrc-usa.org/wp-content/uploads/2014/09/GHRC-Quetzal-August2014-web.pdf>.
- GRHC. (2018). Indigenous Woman Leaders Tortured and Assassinated in Guatemala: Latest in Alarming Trend of Targeted Killings. Accessed December 4, 2018. Retrieved from: http://www.ghrc-usa.org/wp-content/uploads/2011/10/180802_JuanaRaimundoCodeca.pdf.
- Hale, C. (2006). Activist Research v. Cultural Critique: Indigenous Land Rights and the Contradictions of Politically Engaged Anthropology. *Cultural Anthropology* 21 (1): 92-120.
- Handy, J. (1984). *Gift of the Devil: A History of Guatemala*. Toronto: Between the Lines.
- Harvey, D. (2004). 'The New Imperialism': Accumulation by Dispossession. *Socialist Register* 40 (1): 63-87.
- Harvey, D. (2006). *Spaces of Global Capitalism: Towards a Theory of Uneven Geographical Development*. London and New York: Verso.
- Harvey, D. (2016). *The Ways of the World*. Oxford: Oxford University Press.
- Hernández, O. (2014, September 16). La Oposición a la Minería, la Nueva Amenaza a la Seguridad Nacional. *Plaza Pública*. Accessed February 19, 2019. Retrieved from: <http://www.plazapublica.com.gt/La%20oposici%C3%B3n%20a%20la%20miner%C3%ADa,%20la%20nueva%20amenaza%20a%20la%20seguridad%20nacional>.
- Herod, A., Tuathail, G. & Roberts, S. (1998). *An Unruly World?: Globalization, Governance and Geography*. London: Routledge.
- Holstein, J. & Gubrium, J. (2011). The Constructionist Analytics of Interpretative Practice. In Denzin, N. & Lincoln, Y. (4th ed.), *The Sage Handbook of Qualitative Research* (341-358). London: Sage.
- Howitt, R. & Stevens, S. (2016). Cross-Cultural Research: Ethics, Methods and Relationships. In Hay, I. (4th ed.), *Qualitative Research Methods in Human Geography* (45-75). Canada: Oxford University Press.
- IHRP (International Human Rights Program). (2018, October 22). Cory Wanless, Grahame Russell and Murray Klippenstein, 'Bringing Canadian Mining to Justice' Event. University of Toronto Law School. Toronto, ON.

- Ilavsky, S. (2013). Memo to Shin Imai: Analysis of Tahoe Resource's EIA, Section 10 (public consultations), with commentary. Copy of document in possession of author.
- Imai, S. (2017, May 8). Request to Investigate Tahoe Resources for Failure to Disclose Material Information. *Justice and Corporate Accountability Project*, Osgoode Law School. Retrieved from: http://nisgua.org/wp-content/uploads/2016/08/SEC_DisclosureAug2016.pdf.
- Imai, S. (2018, June 15). Director of the Justice and Corporate Accountability Project. Personal Communication. Osgoode Law School. Toronto, Ontario.
- Imai, S. (2019, January 3). Tahoe Resources Inc.: Request to Investigate Failure to Disclose Material Information. *Justice and Corporate Accountability Project*, Osgoode Law School. Retrieved from: <https://justice-project.org/wp-content/uploads/2019/01/2.-Report-SEC-Tahoe-submitted.pdf>.
- Imai, S., Gardner, L. & Weinberger, S. (2016). The 'Canada Brand': Violence and Canadian Mining Companies in Latin America. *Osgoode Legal Studies Research Paper*, No. 17/2017.
- Imai, S., Ladan, M., & Sander, J. (2007). Breaching Indigenous Law: Canadian Mining in Guatemala." *Indigenous Journal* 6 (1): 101-139. Retrieved from: Retrieved from: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2886584.
- Institute for Human Rights and Business. (2017). How Home Government Can Incentivise Responsible Business Conduct of Extractive Companies Operating Abroad: 1. Overview of the Key International Standards. Retrieved from: https://www.ihrb.org/uploads/reports/IHRB%2C_Home_Governments_Series_-_1_Overview_of_the_Key_International_Standards%2C_March_2017.pdf.
- Intervenor's Factum. (2016). Garcia v. Tahoe Resources Inc. Court of Appeal for British Columbia, No. CA 43295. Copy of Document in Possession of Author.
- Jägers, N. (2018). Professor, Department of European and International Public Law, Tilburg Law School. Presentation at the *Piercing the Corporate Veil: Multinational Corporate Accountability Conference* (November 15-16, 2018). Osgoode Hall Law School, Toronto, Ontario.
- JCAP (Justice & Corporate Accountability Project). (2017, September 22). Access to Information Complaint Form. Copy of Document in Possession of Author.
- Jessop, B. (2015). Territory, Politics, Governance and Multi-Spatial Governance. *Territory, Politics, Governance*, 4 (1): 8-32.
- Jiménez, Q. (2018, June 4). Why Guatemalan Indigenous Communities Are Fighting a Canadian Mining Giant". *The Tyee*. Accessed July 25, 2018. Retrieved from: <https://thetyee.ca/Opinion/2018/06/04/Guatemalans-Fighting-Canadian-Mining-Giant/>.
- Johnson, C. (2018). Introduction: Transitional, Transnational, and Distributive Justice in Post-War Guatemala. In Henighan, S. & Johnson, C. (Eds.), *Human and Environmental Justice in Guatemala* (3-33). Toronto: University of Toronto Press.
- Juracán, Leocadio. (2018, May 10). Guatemalan Congressman. Headquarters of the *Campesino Committee of the Highlands*. Quixaya, Sololá, Guatemala. *UNBC Geography & Rights Action Field School to Guatemala, May 2018*.
- Kalman, S. (2010). Introduction: Colonial Violence. *Historical Reflections*, 36 (2): 1-6.
- Kamphuis, C. (2012). Foreign Mining, Law and the Privatization of Property: A Case Study from Peru. *Journal of Human Rights & Environment*, 3 (2): 217-253.

- Kamphuis, C. (2017). Litigating Indigenous Dispossession in the Global Economy: Law's Promises and Pitfalls. *Brazilian Journal of International Law*, 14 (1): 165-225.
- Kamphuis, C. (2018). Building the Case for a Home-State Grievance Mechanism: Law Reform Strategies in the Canadian Resource Justice Movement. In Feichtner, I & Krajewski, M. *Human Rights in the Extractive Industries: Transparency, Participation, Resistance* (In Press). (2018). New York: Springer. Copy of document in possession of author.
- Kaump, B. (2018, May 24). Former NISGUA Guatemala Programs Coordinator. Personal Interview. Guatemala City, Guatemala.
- Kearns, J. (2006). Bare Life, Political Violence, and the Territorial Structure of Britain and Ireland. In Gregory, D. & Pred, A., *Violent Geographies: Fear, Terror, and Political Violence* (7-36). London and New York: Routledge.
- Kennedy, D. (2016). *How Power, Law and Expertise Shape Global Political Economy*. Princeton: Princeton University Press.
- Kobayashi, A. (1994). Coloring the Field: Gender, 'Race', and the Politics of Fieldwork. *The Professional Geographer* 46(1): 73-80.
- Kobayashi, A., Brooks, M., de Leeuw, S., Lewis, N., Nolin, C. & Sutherland, C. (2014). Advocacy. In Lee, Castree, Kitchin, Lawson, Paasi, Philo, Radcliffe, Roberts, & Withers, (Vol.1), *Sage Handbook of Human Geography* (404-420). Thousand Oaks: Sage.
- Kuyek, J. (2006). Legitimizing Plunder: Canadian Mining Companies and Corporate Social Responsibility. In North, L., Clark, T. & Patroni, V. *Community Rights and Corporate Responsibility: Canadian Mining and Oil Companies in Latin America* (203-221). Toronto: Between the Lines.
- LaFortune, R. (2018, February 19). "Rule of Law" is not a Justification for Colonial Violence in Wet'suwet'en Pipeline Dispute. Accessed February 12, 2019. Retrieved from: <https://www.straight.com/news/1196861/rachel-lafortune-rule-law-not-justification-colonial-violence>.
- Lakhani, N. (2017, July 13). The Canadian Company Mining Hills of Silver – and the People are Dying to Stop It. *The Globe & Mail*. Accessed April 1, 2018. Retrieved from: <https://www.theguardian.com/environment/2017/jul/13/the-canadian-company-mining-hills-of-silver-and-the-people-dying-to-stop-it>.
- Laliberté, N. (2015). Geographies of Human Rights: Mapping Responsibility. *Geography Compass* 9 (2): 57-67.
- Laplante, J.P. (2014). *La Voz del Pueblo: Maya Consultas and the Challenge of Self-Determination for Socially Responsible Investment in the Mining Sector* (Masters thesis). University of Northern British Columbia, B.C, Canada.
- Laplante, J. P. & Nolin, C. (2011). Snake Oil and the Myth of Corporate Social Responsibility. *Canadian Dimension - Special Issue: Bad Neighbours: A Focus on Canadian Mining Abroad*, 45 (1): 24-27.
- Laplante, J. P. & Nolin, C. (2014). Consultas and Socially Responsible Investing in Guatemala: A Case Study Examining Maya Perspectives on the Indigenous Right to Free, Prior and Informed Consent. *Society & Natural Resources: An International Journal*. 27 (3): 231-248.
- Lawson, V. (2007). *Making Development Geography*. London: Hodder Education.

- Le Billon, P. (2005). *Geopolitics of Resource Wars: Resource Dependence, Governance and Violence*. London: Frank Cass.
- Lenczner, A. (2018). Litigator at Lenczner & Slaught and HudBay Minerals Board Member. Presentation at the *Piercing the Corporate Veil: Multinational Corporate Accountability Conference* (November 15-16, 2018). Osgoode Hall Law School, Toronto, Ontario.
- Lefebvre, H. (1991). *The Production of Space*. Oxford: Blackwell.
- Lefebvre, H. (2009). *State, Space, World: Selected Essays*. Brenner, N. & Elden, S. (Eds). Minneapolis: University of Minnesota Press.
- Lewis, A. (2012). Ethics, Activism and the Anti-Colonial: Social Movement Research as Resistance. *Social Movement Studies* 11 (2): 227-240.
- Lewis-Beck, M., Bryman, A. & Futing Liao, T. (2004). Constant Comparison. In *Sage Encyclopedia of Social Science Research Methods* (Vol. 3) (88). London: Sage.
- Lovell, W. G. (1988). Surviving conquest: The Maya of Guatemala in Historical Perspective. *Latin American Research Review*, 23 (2): 25-57.
- Madge, C. (2016). Empowering Methodologies: Feminist and Indigenous approaches. In Hay, I. (4th ed.), *Qualitative Research Methods in Human Geography* (76-94). Canada: Oxford University Press.
- Maheandiran, B. (2016). Impeding Access to Justice: Establishing Civil Jurisdiction in Canadian Courts in the Global Extractive Economy. In Deonandan, K. & Dougherty, M. (Eds). *Mining in Latin America: Critical Approaches to the New Extraction* (250-271). London: Routledge.
- Maldonado, R. (2018, May 24). Former Lawyer at CALAS. Personal Interview. Guatemala City, Guatemala.
- Manredo Loy, Hugo. (2018, May 7). Mayor of Mataquescuintla, Jalapa. Public Gathering in Casillas, Santa Rosa, Guatemala for the Visit of the UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz. *UNBC Geography & Rights Action Field School to Guatemala, May 2018*.
- Mansvelt, J. & Berg, L. (2016). Writing Qualitative Geographies, Constructing Meaningful Geographical Knowledges. In Hay, I. (4th ed.), *Qualitative Research Methods in Human Geography* (394-421). Toronto: Oxford University Press.
- Manz, B. (2008). The Continuum of Violence in Post-War Guatemala. *Social Analysis* 52 (2): 151-164.
- Maria (2018, May 17). Maya Q'eqchi' Community Member of Chab'il Ch'och. Site Visit to Rio Dulce, Izabal Department, Guatemala. *UNBC Geography & Rights Action Field School to Guatemala, May 2018*.
- Mathieson, T. (2010). *Managing Stakeholder Ambiguity in the International Mining Sector: The Case of Goldcorp Inc. in Guatemala* (Master's thesis). Simon Fraser University, B.C, Canada.
- Mattei, U. & Nader, L. (2008). *Plunder: When the Rule of Law is Illegal*. Oxford: Blackwell Publishing.
- McEwan, C. (2008). Post-Colonialism. In Desai, V. & Potter, R (Eds.), *The Companion to Development Studies* (124-129). London: Hodder Education.
- McVicar, J. (2018, August 8). UMJ Coordinator. Personal Interview. Skype.
- Melnyk, K., Iwanicki, J. & Yinger, J. (2016). Timeline of Events Surrounding the El Escobar Mine and a Short Guide to Timeline Writing. *Justice and Corporate*

- Accountability Project*, Osgoode Law School. Copy of Document in Possession of Author.
- MiningWatch Canada. (2014, October 17). Witness for the Indefensible: A Cheat Sheet for Kevin McArthur on Tahoe Resources' Tactics to Silence Opposition in Guatemala. Accessed December 20, 2018. Retrieved from: <https://miningwatch.ca/blog/2014/10/17/witness-indefensible-cheat-sheet-kevin-mcarthur-tahoe-resources-tactics-silence>.
- MiningWatch Canada. (2015). In the National Interest? Criminalization of Land and Environmental Defenders in the Americas. Accessed December 11, 2018. Retrieved from: https://miningwatch.ca/sites/default/files/inthenationalinterest_fullpaper_eng_1.pdf.
- MiningWatch Canada. (2017a, October 16). Accessed April 20, 2018. Guatemalans Denounce Tahoe Resources' Plan to 'Pick Them Apart'. Retrieved from: <https://miningwatch.ca/blog/2017/10/16/guatemalans-denounce-tahoe-resources-plan-pick-them-apart>.
- MiningWatch Canada. (2017b, August 31): Tahoe Resources Lobbies U.S., Canada to Intervene Over Guatemala Court Decision to Suspend Escobal Mine. Accessed April 20, 2018. Retrieved from: <https://miningwatch.ca/blog/2017/8/31/tahoe-resources-lobbies-us-canada-intervene-over-guatemala-court-decision-suspend>.
- MiningWatch Canada. (2018a, March 9). Guatemalan Constitutional Court Keeps Tahoe Resources Operations Suspended, Orders Presentation of Further Documentation. Accessed April 20, 2018. Retrieved from: <http://www.miningwatch.ca/news/2018/3/9/guatemalan-constitutional-court-keeps-tahoe-resources-operations-suspended-orders>.
- MiningWatch Canada. (2018b, February 22). Guatemalan Communities Denounce Tahoe Resources for Trying to Provoke Conflict During Suspension of Escobal Mine. Retrieved From: <https://miningwatch.ca/blog/2018/2/22/guatemalan-communities-denounce-tahoe-resources-trying-provoke-conflict-during>.
- Moore, E. (2018, December 1). Pan American Silver Poised to Buy Huge Trouble with Acquisition of Escobal Mine. *EarthWorks*. Accessed December 11, 2018. Retrieved from: <https://earthworks.org/blog/pan-american-silver-poised-to-buy-huge-trouble-with-acquisition-of-escobal-mine/?fbclid=IwAR17vX5iN35gxLt4WJKax-trDJ1pt5aDSVZOwNyqnSwOtxlyhmCpYSdAIRI>.
- Moore, J. (2018, June 19). Former MiningWatch Canada Latin America Program Coordinator. Personal Interview. Ottawa, Ontario.
- Morán, Sandra. (2018, May 6). Guatemalan Congresswoman. Hotel Spring, Guatemala City, Guatemala. *UNBC Geography & Rights Action Field School to Guatemala, May 2018*.
- Naples, N. (2003). *Feminism and Method: Ethnography, Discourse Analysis and Activist Research*. New York: Routledge.
- Nast, H. (1994). Women in the Field. *The Professional Geographer*. 46(1): 54-66.
- Natural Resources Canada (NRCan). (2018). Canadian Mining Assets. Accessed November 26, 2018. Retrieved from: <https://www.nrcan.gc.ca/mining-materials/publications/19323>.
- NISGUA. (2013a, September 3). Guatemalan Indigenous Organizations File Complaint over Mining Law with Inter-American Commission on Human Rights. Accessed July 15,

2018. Retrieved from: <https://nigua.org/guatemalan-indigenous-organizations-file-complaint-over-mining-law-with-inter-american-commission-on-human-rights/>.
- NISGUA. (2013b, November 19). Jalapa Says NO to Mining! Guatemala Constitutional Court Hears Case Related to Tahoe Resources' Mining License. Accessed January 23, 2019. Retrieved from: <https://nigua.org/jalapa-says-no-to-mining-guatemalan-constitutional-court-hears-case-related-to-tahoe-resources-mining-license/>.
- NISGUA. (2014, November 19). "We are a Peaceful People" – Mataquescuintla Celebrates 2nd Anniversary of Municipal Referendum Against Mining. Accessed January 29, 2019. Retrieved from: <https://nigua.org/we-are-a-peaceful-people-mataquescuintla-celebrates-2nd-anniversary-of-municipal-referendum-against-mining/>.
- NISGUA. (2015, July 13). In the Wake of Guatemala Corruption Scandals, Tahoe Resources' Escobal License Faces Legal Challenge. Accessed November 26, 2018. Retrieved from: <https://nigua.org/in-wake-of-guatemala-corruption-scandals-tahoe-resources-escobal-license-faces-legal-challenge/>.
- NISGUA. (2016, November 8). Community Members Protest Damage to Homes Near Tahoe Resources' Mine, Fear Violent Reprisal. April 20, 2018. Retrieved from: <https://nigua.org/community-members-protest-damage-to-homes/>.
- NISGUA. (2017a, June 15). Communities Maintain Peaceful Demonstration in Protest of Negative Impacts of Tahoe Resources' Mine in Guatemala. April 20, 2018. Retrieved From: <https://nigua.org/24-hour-peaceful-blockade-tremors-escobal-mine/>.
- NISGUA. (2017b, September 1). Tahoe Resources Lobbies U.S. and Canadian governments to intervene over Guatemalan Court Decision to suspend Escobal Mine. April 20, 2018. Retrieved from: <https://nigua.org/tahoe-resources-lobbies-u-s-and-canadian-governments-to-intervene-over-guatemalan-court-decision-to-suspend-escobal-mine/>.
- NISGUA. (2018a, June 18). Lawsuit Against Tahoe Resources Wake Up Call for Investors and Canadians. Accessed February 15, 2018. Retrieved from: <https://nigua.org/%EF%BB%BFlawsuit-against-tahoe-resources-a-wake-up-call-for-investors-and-canadians/>.
- NISGUA. (2018b, April 15). Communities Impacted by Mining Deliver Message of Resistance to Tahoe Resources. Accessed December 20, 2018. Retrieved from: <https://nigua.org/communities-impacted-mining-deliver-message-resistance-tahoe-resources/>.
- NISGUA. (2018c, May 30). Letter to U.S. Embassy in Guatemala. June 1, 2018. Retrieved from: <https://nigua.org/wp-content/uploads/Letter-to-US-Embassy-May2018.pdf>.
- NISGUA. (2018d, April 12). Thousand March in Protest of Escobal Mine and in Support of Xinca People's Right to Self-Determination. Accessed December 20, 2018. Retrieved from: <https://nigua.org/protest-supporting-xinca-people-self-determination/>.
- Nolin, C. (2006). *Transnational Ruptures: Gender & Forced Migration*. Aldershot: Ashgate.
- Nolin, C. (2018). Memory-truth-justice: The Crisis of the Living in the Search for Guatemala's Dead and Disappeared. In Henighan, S. & Johnson, C. (Eds.), *Human and Environmental Justice in Guatemala* (35-55). Toronto: University of Toronto Press.
- Nolin, C. & Russell, G. (2016a, May 13). Press Release: Urgent Need to End Impunity of Canadian & U.S. Mining Companies in Guatemala. Retrieved from: <https://www.unbc.ca/sites/default/files/sections/catherine-nolin/2016guateemergencyclelegationmay13pressrelease.pdf>.

- Nolin, C. & Russell, G. (2016b, May 23). Tahoe Resources: Where is Your Mining License? Retrieved from: <https://www.unbc.ca/sites/default/files/sections/geography/field-schools/2016guateemergencylegationmay23tahoeresources-min.pdf>.
- Nolin, C. & Russell, G. (2019, accepted). *Mining in a Time of Impunity in the Aftermath of Genocide in Guatemala*. Springer Briefs in Latin American Studies. New York: Springer.
- Nolin Hanlon, C. & Shankar, F. (2000). Gendered Spaces of Terror and Assault: the Testimonio of REMHI and the Commission for Historical Clarification in Guatemala. *Gender, Place & Culture*, 7 (3): 265-286.
- Nolin, C., & Stephens J. (2010). “We Have to Protect the Investors”: ‘Development’ & Canadian Mining Companies in Guatemala. *Journal of Rural & Community Development*, 5 (2): 37-70.
- Norway Government Pension Fund Global. (2014). Annual Report. Accessed November 26, 2018. Retrieved from: <https://www.nbim.no/contentassets/0ff9cd1d5c8e4737a7b7262d3ec167d4/norges-bank-investment-management-annual-report-2014.pdf>.
- Notice of Civil Claim. (2014). Garcia v. Tahoe Resources Inc. Supreme Court of British Columbia, No. S-144726. Copy of Document in Possession of Author.
- Paley, D. (2007). This is What Development Looks Like: Part II: Canadian Mining Firm Burns Homes. *The Dominion*. Retrieved from: <http://www.dominionpaper.ca/articles/900>.
- Pan American Silver. (2018, November 14). Pan American Silver and Tahoe Resources Create the World’s Premier Silver Mining Company. Accessed November 30, 2018. Retrieved from: <https://www.panamericansilver.com/investors/news-releases/detail/65/2018-11-14-pan-american-silver-and-tahoe-resources-create-the-worlds-premier-silver-mining-company>.
- Peluso, N. & Lund, C. (2011). New Frontiers of Land Control: Introduction. *Journal of Peasant Studies*, 38 (4): 667-681.
- Perakyla, A. & Ruusuvuori, J. (2011). Analyzing Talk and Text. In Denzin, N. & Lincoln, Y. (4th ed.), *The Sage Handbook of Qualitative Research* (529-544). London: Sage.
- Permanent Peoples Tribunal (PPT). (2014). Session on the Canadian Mining Industry: Hearing on Latin America. Montreal, Canada. May 29 – June 1, 2014. Retrieved from: <http://tpp.cdhal.org/wp-content/uploads/Ruling-PPT-CanadaFINAL.pdf>.
- Perrigo, B. (2016, November 19). The Devastating Effects of American Intervention in Guatemala. *The Panoptic*. Retrieved from: <https://thepanoptic.co.uk/2016/11/19/american-intervention-guatemala/>.
- Plaintiffs’ Submission. (2015). Garcia v. Tahoe Resources Inc. Supreme Court of British Columbia, No. S-144726. Copy of Document in Possession of Author.
- Power, M. (2003). *Rethinking Development Geographies*. London and New York: Routledge.
- Rankin, L. (2017, November 3). Evictions by State Forces in Chab’il Ch’och’, Izabal and Tactic, Alta Verapaz. Accessed December 19, 2018. Retrieved from: <http://www.breakingthesilenceblog.com/general/evictions-by-state-forces-in-chabil-choch-izabal-and-la-cumbre-tactic-alta-verapaz/>.
- Rankin, L. (2018, May 25). BTS Guatemala Coordinator. Personal Interview. Guatemala City, Guatemala.

- Reasons for Judgement. (2015). *Garcia v. Tahoe Resources Inc.* Supreme Court of British Columbia, No. S-144726. Copy of Document in Possession of Author.
- Recovery of Historical Memory (REMHI). (1999). *Guatemala: Never Again! The Official Report of the Human Rights Office, Archdiocese of Guatemala*. Maryknoll: Orbis Books.
- Rey Rosa, M. (2018). A Diary of Canadian Mining in Guatemala, 2004-2013. In Henighan, S. & Johnson, C. (Eds.), *Human and Environmental Justice in Guatemala* (87-117). Toronto: University of Toronto Press.
- Richmond, O. (2007). Critical Research Agendas for Peace: The Missing Link in the Study of International Relations. *Alternatives: Global, Local, Political*, 32 (1): 247-274.
- Rights Action. (2013, May 8). Bullets & Break-in, After Kidnappings & Murder, Linked to Tahoe/Goldcorp in Guatemala. Accessed December 20, 2018. Retrieved from: <http://www.breakingthesilenceblog.com/general/bullets-break-in-after-kidnappings-murder-linked-to-tahoe-goldcorp-in-guatemala/>.
- Robinson, D. & Graham, N. (2017). Legal pluralisms, justice and spatial conflicts: New directions in legal geography. *The Geographical Journal* 184 (1): 3-7.
- Robinson, R. (2013). Memo: Engineer's Observations Requiring Action. *Justice and Corporate Accountability Project*, Osgoode Law School. Copy of Document in Possession of Author.
- Rodríguez, J. (2013). 2013-05: San Rafael State of Siege. Retrieved from: https://mimundo.photoshelter.com/gallery/2013-05-San-Rafael-State-of-Siege/G0000A_vuceeUF_U/C0000cpKO_Cp0Z38.
- Rombouts, S.J. (2014). *Having a Say: Indigenous Peoples, International Law and Free, Prior and Informed Consent*. Oisterwijk: Wolf Legal Publications.
- Roth, T. (2017). Human Rights and the Canadian Extractive Sector in Latin America: Can Canada do More to Prevent Abuses and Improve Access to Justice? *University of Ottawa*. Accessed July 20, 2018. Retrieved from: <https://ruor.uottawa.ca/bitstream/10393/37123/1/ROTH%2C%20Tania%2020179.pdf>
- Russell, B. (2015). Beyond Activism/Academia: Militant Research and the Radical Climate and Climate Justice Movement(s). *Area* 47 (3): 222-229.
- Russell, G. (2017). There is No Means by Which to Quantify What was Lost in Río Negro. In Einbinder, N. *Dams, Development and Displacement in Perspectives from Río Negro, Guatemala* (85-89). Springer Briefs in Latin American Studies. New York: Springer.
- Russell, G. (2018, May 6). Director of Rights Action. Spring Hotel, Guatemala City, Guatemala. *UNBC Geography & Rights Action Field School to Guatemala, May 2018*.
- Schirmer, J. (1998). *The Guatemalan Military Project: A Violence Called Democracy*. Philadelphia: University of Pennsylvania Press.
- Seck, S. (2006). Home State Responsibility and Local Communities: The Case of Global Mining. *Yale Human Rights and Development Law Journal*, 11 (1): Article 10.
- Seck, S. (2011). Canadian Mining Internationally and the UN Guiding Principles for Business and Human Rights. *Canadian Yearbook of International Law* 49 (1): 51-116.

- Seck, S. (2012). Home State Regulation of Environmental Human Right Harms as Transnational Private Regulatory Governance. *German Law Journal*, 13 (1): 1363-1385.
- Seck, S. (2013). Transnational Judicial & Non-Judicial Remedies for Corporate Human Rights Harms: Challenges of & For Law. *Windsor Yearbook of Access to Justice*, 31 (1): 177-195.
- Sibley, S. (2001). "Let Them Eat Cake": Globalization, Postmodern Colonialism, and the Possibilities of Justice. In Blomley, N., Delaney, D. & Ford, R. *The Legal Geographies Reader* (207-236). Oxford: Blackwell Publishers.
- Sidaway, J. (2008). Post-Development. In Desai, V. & Potter, R. (Eds.). *The Companion to Development Studies* (16-20). London: Hodder Education.
- Sieder, R. (2011). Contested Sovereignities: Indigenous Law, Violence and State Effects in Postwar Guatemala. *Critique of Anthropology*, 31 (2): 161-184.
- Simatei, T. (2005). Colonial Violence, Postcolonial Violations: Violence, Landscape, and Memory in Kenyan Fiction. *Research in African Literatures*, 36 (2): 85-95.
- Simons, P. & Macklin, A. (2014). *The Governance Gap: Extractive Industries, Human Rights, and the Home State Advantage*. Oxon: Routledge.
- Solano, L. (2013). Development and/as Dispossession: Elite Networks and Extractive Industry in the Franja Transversal del Norte. In McAllister, C. & Nelson, D. (Eds.), *War by Other Means: Aftermath in Post-Genocide Guatemala* (119-142). Durham: Duke University Press.
- Solano, L. (2015). Under Siege: Peaceful Resistance to Tahoe Resources and Militarization in Guatemala. *International Platform Against Impunity in Central America, MiningWatch Canada and Network in Solidarity with the People of Guatemala*. Retrieved from: <https://miningwatch.ca/sites/default/files/solano-underseigereport2015-11-10.pdf>.
- Solano, L. (2016, June 16). El Pasado de Los Tres Grandes Ex Ministros Capturados en Caso La Cooperacha. *Centro de Medios Independientes*. Accessed January 19, 2019. Retrieved from: <https://cmiguate.org/el-pasado-de-los-tres-grandes-ex-ministros-capturados-en-caso-la-cooperacha/>.
- Solis, I. (2018, May 25). GHRC Director. Personal Interview. Guatemala City, Guatemala.
- Springer, S. (2011). Violent Accumulation: A Postanarchist Critique of Property, Dispossession, and the State of Exception in Neoliberalizing Cambodia. *Annals of the Association of American Geographers*, 103 (3): 608-626.
- Springer, S. (2015). *Violent Neoliberalism: Development, Discourse and Dispossession in Cambodia*. New York: Palgrave MacMillan.
- Springer, S. & Le Billon, P. (2016). Violence and Space: An Introduction to the Geographies of Violence: An Introduction to the Geographies of Violence. *Political Geography* (52): 1-3.
- Standing Committee on Foreign Affairs and International Trade (SCFAIT). (2005). Fourteenth Report of Subcommittee on Human Rights and International Development. *Government of Canada*. 38th Parliament, 1st Session. Retrieved from: www.ourcommons.ca/DocumentViewer/en/38-1/FAAE/report-14.
- Stern, M. & Öjendal, J. (2010). Mapping the Security-Development Nexus: Conflict, Complexity, Cacophony, Convergence? *Dialogue*, 41 (1): 5-29.

- Stratford, E. & Bradshaw, M. (2016). Qualitative Research Design & Rigour in Hay, I. (4th ed.), *Qualitative Research Methods in Human Geography* (117-129). Toronto: Oxford University Press.
- Submissions of the Defendant Tahoe Resources Inc. (2015). Garcia v. Tahoe Resources Inc. Supreme Court of British Columbia, No. S-144726. Copy of Document in Possession of Author.
- Swadener, B. & Mutua, K. (2008). Decolonizing Performances: Deconstructing the Global Post-Colonial. In Denzin, N., Lincoln, Y. & Smith, L. *Handbook of Critical and Indigenous Methodologies* (33-44). London: Sage.
- Tahoe Resources (Tahoe). (2012, September 19). Tahoe Reports Civil Unrest from Outsiders at Escobal. Accessed January 30, 2019. Retrieved from: <http://www.marketwired.com/press-release/tahoe-reports-civil-unrest-from-outsiders-at-escobal-tsx-tho-1703351.htm>.
- Tahoe Resources. (2013, July 10). Guatemala Proposes Temporary Moratorium on New Mining Licenses. Accessed January 30, 2019. Retrieved from: <https://www.sec.gov/Archives/edgar/data/1510400/000106299313003391/exhibit99-1.htm>.
- Tahoe Resources. (2015). Annual Information Form (For the Year Ended December 31, 2015). Retrieved from: https://www.sec.gov/Archives/edgar/data/1510400/000106299316008506/exhibit99-1.htm#page_29.
- Tahoe Resources. (2016a, November 22). Tahoe Resources Reports End to La Cuchilla Home Purchase Protest. Retrieved from: <https://www.newswire.ca/news-releases/tahoe-resources-reports-end-to-la-cuchilla-home-purchase-protest-602524915.html>.
- Tahoe Resources. (2016b). Sustainability Report. Retrieved from: http://s22.q4cdn.com/803885423/files/doc_downloads/sustainability_reports/TahoeSustainabilityReport2016.pdf.
- Tahoe Resources. (2017a, May 24). Tahoe Reports on Legal Claim in Guatemala. Accessed December 11, 2018. Retrieved from: <https://www.prnewswire.com/news-releases/tahoe-reports-on-legal-claim-in-guatemala-300462974.html>.
- Tahoe Resources. (2017b, September 26). Guatemalan Supreme Court Confirms Limited Consultation Area and Declines to Act on Export Credential. Retrieved from: <https://www.tahoeresources.com/English/investors/news-releases/press-release-details/2017/GUATEMALAN-SUPREME-COURT-CONFIRMS-LIMITED-CONSULTATION-AREA-AND-DECLINES-TO-ACT-ON-EXPORT-CREDENTIAL/default.aspx>.
- Tahoe Resources. (2017c). Tahoe Annual Information Form (For the Year Ended December 31, 2016). Retrieved from: <https://www.sec.gov/Archives/edgar/data/1510400/000106299317001299/exhibit99-1.htm>.
- Tahoe Resources. (2017d, August 11). Letter from U.S. Congressman Mark E. Amodei to U.S. Commerce Secretary Wilbur Ross. Retrieved from: <https://www.marketscreener.com/TAHOE-RESOURCES-INC-6287716/news/Tahoe-Resources-Letter-from-Rep-Mark-Amodei-to-The-Hon-Wilbur-Ross-U-S-Secretary-of-Commerce-24985783/>

- Tahoe Resources. (2018a). Escobal Mine. Retrieved from: www.tahoeresources.com/operations/escobal-mine/.
- Tahoe Resources. (2018b, September 3). Guatemalan Constitutional Court Resolution Provides Path Forward for Escobal Mine Restart. Retrieved from: <https://www.businesswire.com/news/home/20180907005407/en/Guatemalan-Constitutional-Court-Resolution-Path-Escobal-Restart>.
- Tahoe Resources. (2018c, February 13). Tahoe to Develop Comprehensive Indigenous Peoples Policy. Retrieved from: <https://www.prnewswire.com/news-releases/tahoe-to-develop-comprehensive-indigenous-peoples-policy-in-2018-300598239.html>.
- Tauli-Corpuz, V. (2018a, May 23). Guatemala Needs to Do More to Stop the Killings of Indigenous Activists. Accessed July 1, 2018. *Washington Post*. Retrieved from: https://www.washingtonpost.com/news/global-opinions/wp/2018/05/23/guatemala-needs-to-do-more-to-stop-the-killings-of-indigenous-activists/?noredirect=on&utm_term=.ccb035779d71.
- Tauli-Corpuz, V. (2018b). End of Mission Statement by the UN Special Rapporteur for the Rights of Indigenous Peoples on her Visit to Guatemala. Retrieved from: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23068&LangID=E>.
- Taylor, S. (2018, September 7). Tahoe Resources Resumes Peru Mine Operations as Protestors Agree to Talks. *Reuters*. Accessed December 11, 2018. Retrieved from: <https://www.theglobeandmail.com/business/article-tahoe-resources-resumes-peru-mine-operations-as-protesters-agree-to/>.
- Tri-Council Policy Statement (TCPS): Ethical Conduct for Research Involving Humans. (2014). Canadian Institutes of Health Research, Natural Sciences & Engineering Research Council of Canada, and Social Sciences & Humanities Research Council of Canada. Retrieved from: http://www.pre.ethics.gc.ca/pdf/eng/tcps2/TCPS_2_FINAL_Web.pdf.
- Tuhiwai Smith, L. (1999). Towards Developing Indigenous Methodologies: Kuapapa Maori Research. In *Decolonizing Methodologies: Research and Indigenous Peoples* (183-195). New York & London: Zed Books.
- Tyner, J. (2012a). *Genocide and the Geographical Imagination: Life and Death in Germany, China, and Cambodia*. New York: Rowman & Littlefield Publishers.
- Tyner, J. (2012b). Everyday Geographies of Violence. In Tyner, J., *Space, Place, and Violence: Violence and the Embodied Geographies of Race, Sex, and Gender* (1-24). London and New York: Routledge.
- Tyner, J. (2016). *Devaluing Life in an Age of Responsibility*. Lincoln: Nebraska University Press.
- UNHCHR (United Nations Office of the High Commissioner for Human Rights). (2011). *The Guiding Principles on Business and Human Rights*. HR/PUB/11/04. Retrieved from: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
- United Nations General Assembly. (2007). *United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295)*. Retrieved from: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

- USAID. (2017). Guatemala Urban Municipal Governance Project: Political Economy Assessment. Retrieved from: <https://urban-links.org/wp-content/uploads/2018/05/Guatemala-Urban-Municipal-Governance-Project-Political-Economy-Assessment.pdf>.
- U.S. Securities Exchange Commission Registration Statement. (2015). Tahoe Resources Inc. Retrieved from: <https://www.sec.gov/Archives/edgar/data/1510400/000104746915005459/a2225074zf-10.htm>.
- Van Aartsen, C. (2016, September 14). The End of the Public-Private Divide. *Maastricht University Law Blog*. Accessed February 13, 2019. Retrieved from: <https://www.maastrichtuniversity.nl/blog/2016/09/end-public-private-divide>.
- Van de Sandt, J. (2009). Mining Conflicts and Indigenous Peoples in Guatemala. *Amsterdam University Law Faculty*. Retrieved from: https://www.cordaid.org/nl/wp-content/uploads/sites/2/2012/12/Mining_Conflicts_and_Indigenous_Peoples_in_Guatemala.pdf.
- Vecchione, J. (Producer). (1985). *Crisis in Central America – Part 1: The Yankee Years* [Film, 60 min.]. Boston, MA: WGBH Educational Foundation.
- Veltmeyer, H. (2013). The Political Economy of Natural Resource Extraction: A New Model or Extractive Imperialism? *Canadian Journal of Development Studies* 34 (1): 79-95.
- Vogel, D. (2010). Taming Globalization?: Civil Regulation and Corporate Capitalism in Coen, D., Grant, W. & Wilson, G. *The Oxford Handbook of Business & Government* (472-494). Oxford: Oxford University Press.
- Voluntary Principles on Security and Human Rights. (2000). Governments of United States & United Kingdom. Retrieved from: http://www.voluntaryprinciples.org/wp-content/uploads/2013/03/voluntary_principles_english.pdf.
- von Benda-Beckmann, F. Benda-Beckmann, K & Griffiths, A. (2009). *Spatializing Law: An Anthropological Geography of Law in Society*. Burlington: Ashgate.
- Waitt, G. (2016). Doing Foucauldian Discourse Analysis – Revealing Social Identities. In Hay, I. (4th ed.), *Qualitative Research Methods in Human Geography* (217-240). Toronto: Oxford University Press.
- Walter, M. & Urkidi, L. (2016). Community Consultations: Local Responses to Large-Scale Mining in Latin America. In F. de Castro et al. (Eds.), *Environmental Governance in Latin America* (287-325). London: Palgrave Macmillan.
- Watts, M. (2005). Righteous Oil? Human Rights, the Oil Complex and Corporate Social Responsibility. *Annual Review of Environment and Resources*, 30 (9): 373-407.
- Weisbart, C. (2012). Beyond Recognition: Alternative Rights-Realizing Strategies in Northern Quiché Region of Guatemala. *Centre for Research on Latin America and the Caribbean, York University*. Retrieved from: <https://yorku.academia.edu/CarenWeisbart>.
- Weisbart, C. (2018a). Diplomacy at a Canadian Mine Site in Guatemala. *Critical Criminology*, 26 (1): 1-17.
- Weisbart, C. (2018b, June 29). MISN Member. Personal Interview. Skype.
- Wilson, K. (2007). Worlds Beyond the Political? Post-Development Approaches in Practices of Transnational Solidarity Activism. *Third World Quarterly* 38 (12): 2684-2702.

- Winchester, H. and Rofo, M. (2016). Qualitative Research and Its Place in Human Geography. In Hay, I. (4th ed.), *Qualitative Research Methods in Human Geography* (3-28). Toronto: Oxford University Press.
- Wiretap Transcripts. (2015). Affidavit of Roger Barany. *Garcia v. Tahoe Resources Inc.* Supreme Court of British Columbia, No. S-144726. Copy of Document in Possession of Author.
- Working Group on Mining & Human Rights in Latin America. (2014). The Impact of Canadian Mining in Latin America and Canada's Responsibility. *Report Submitted to the Inter-American Commission on Human Rights*. Retrieved from: www.dplf.org/sites/default/files/report_canadian_mining_executive_summary.pdf.
- Wright, R. (2004). *A Short History of Progress*. Toronto: House of Anansi.

APPENDICES
Appendix I: Figures

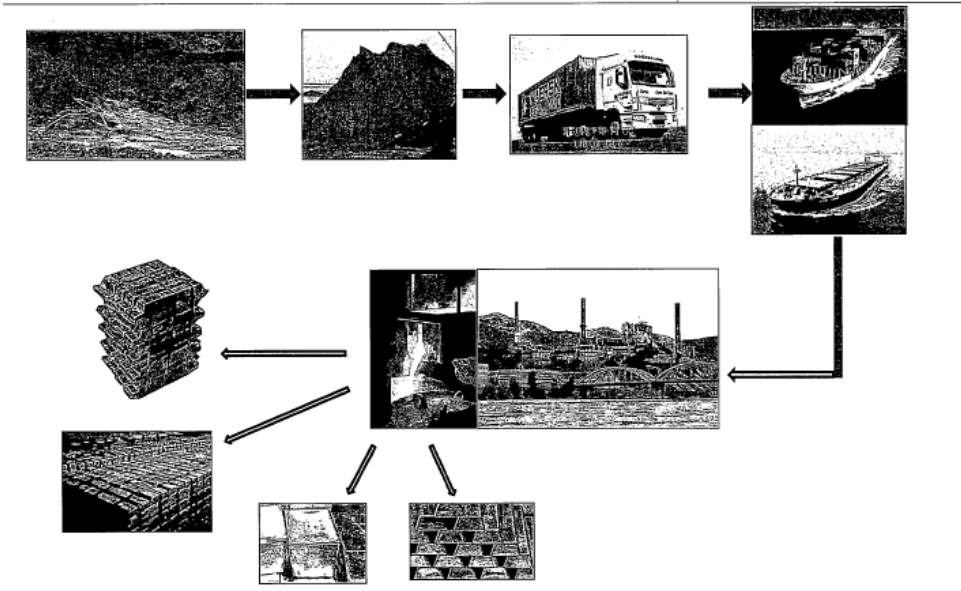
Figure 1: Major Mines in Guatemala



Source: Goldex (2019) “El Plato: Why Guatemala” at <http://goldex.ca/properties/why-guatemala/>

Figure 2: Tahoe's Chain of Production

DESTINO DEL PRODUCTO



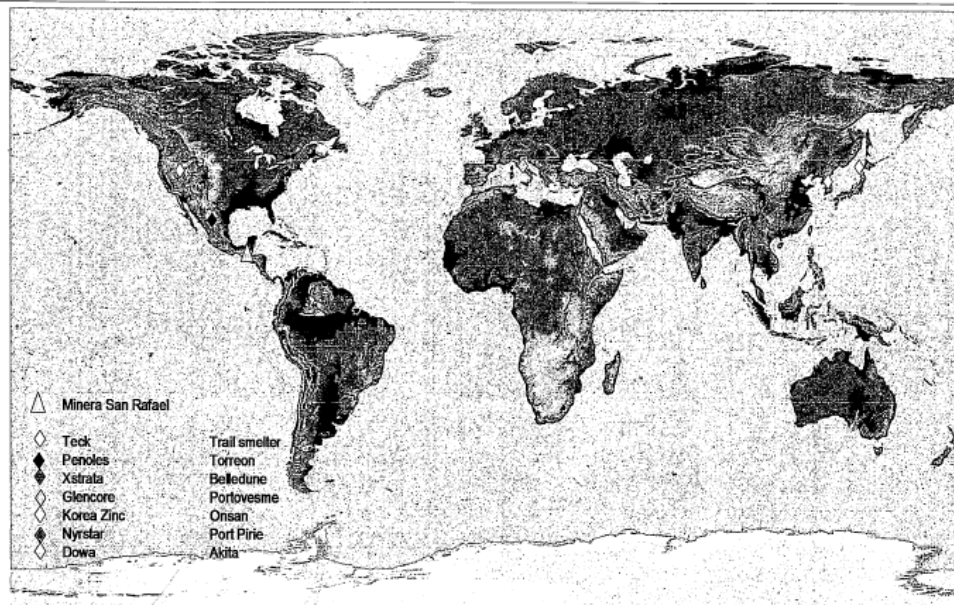
Minera San Rafael S.A.
GUATEMALA

Una Industria que Cree en Guatemala

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CLIENTES POTENCIALES



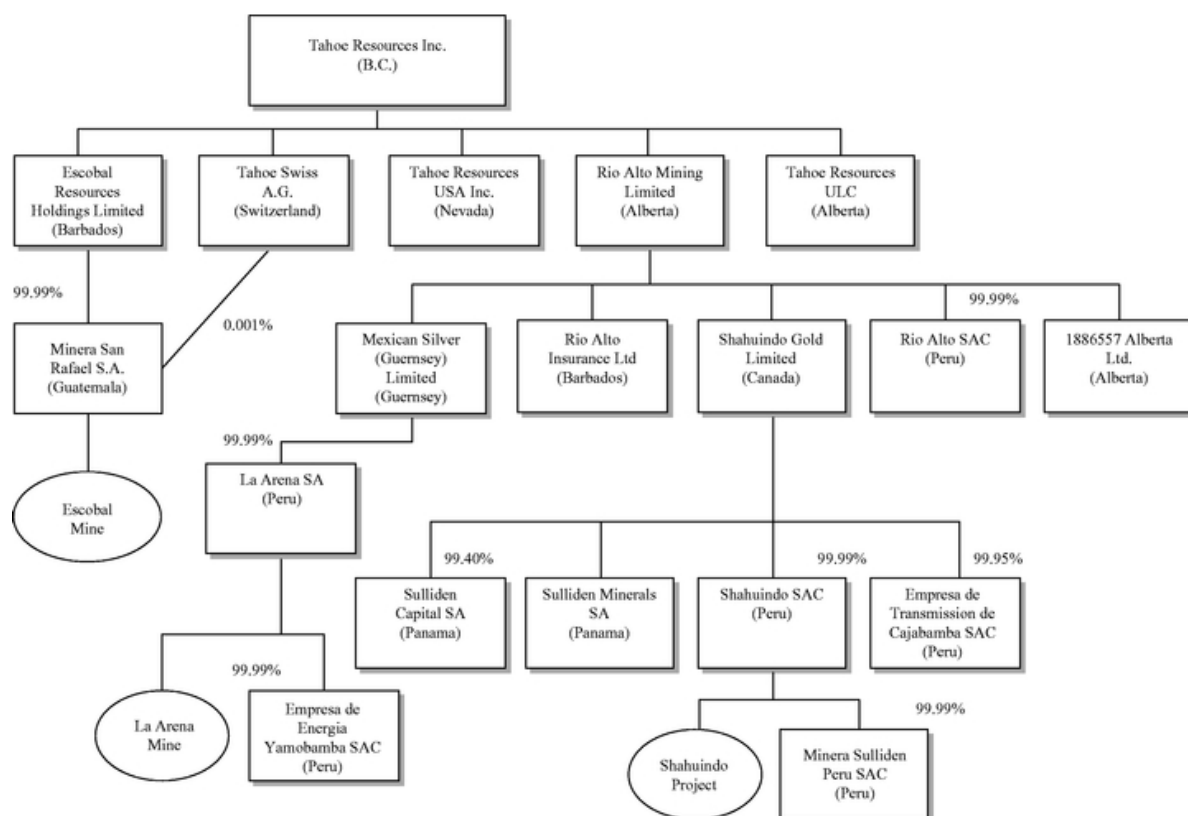
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Una Industria que Cree en Guatemala

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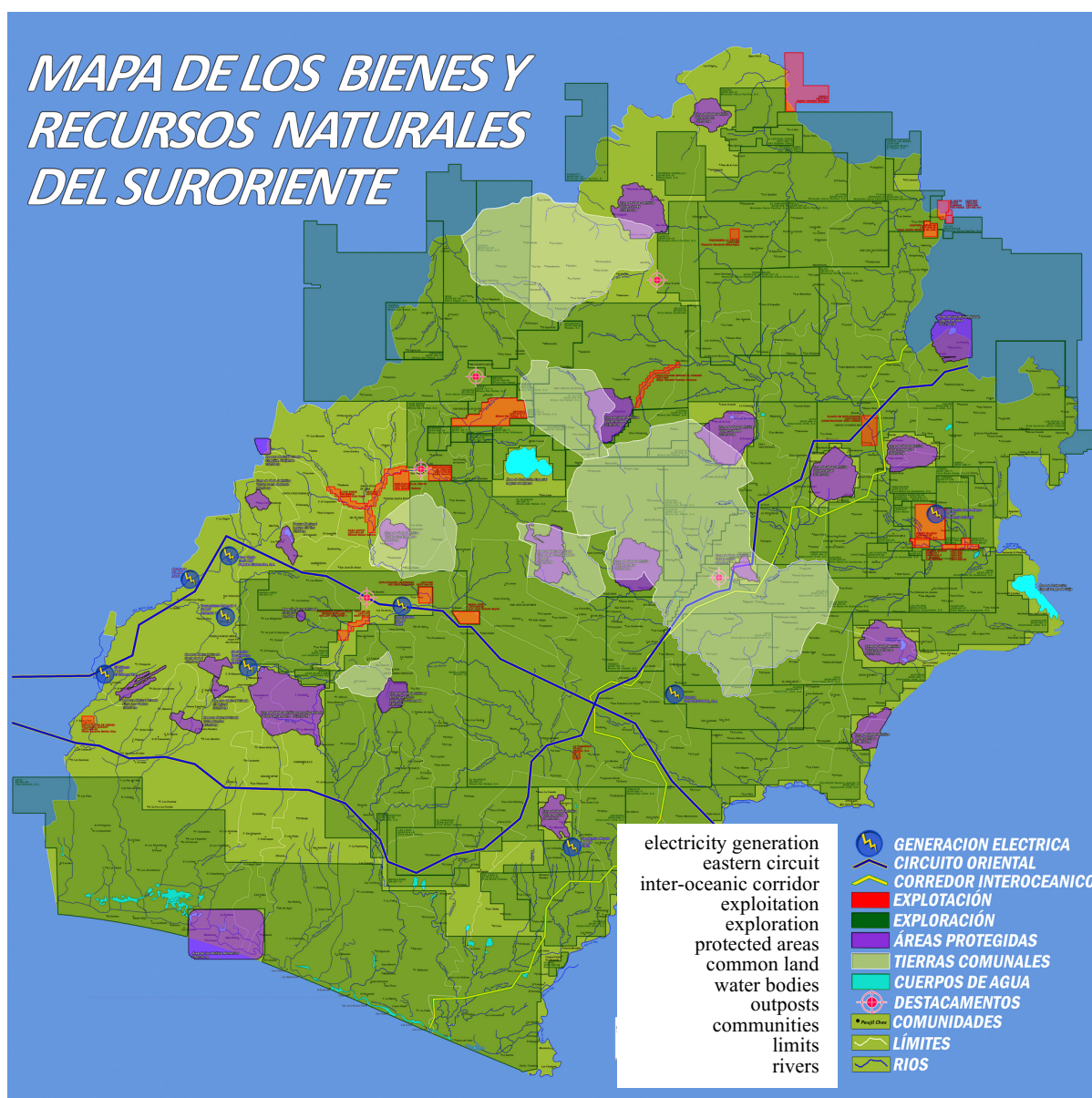
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Source: ATIP Request A201501699_2016-08-31_10-40-41.pdf at pages 82-83.

Figure 3: Tahoe's Corporate Structure

Source: U.S. Securities Exchange Commission Registration Statement (2015) at <https://www.sec.gov/Archives/edgar/data/1510400/000104746915005459/a2225074zf-10.htm>

Figure 4: Natural Resources in Southeastern Guatemala



Source: Resistencia de Los Pueblos (2014) at
<https://tahoecontrial.files.wordpress.com/2014/11/suroriente.jpg>

Figure 5: Tahoe's '*Démosle Vuelta a la Tortilla*' campaign



Let's flip the tortilla!

NGOs, people → government, national and local civil police} force → money, mayors, corruption

The right side of the tortilla!

Municipalities, projects, transparency → opportunities for all → better future
MARN, MEM, Universities} environmental controls, production audit

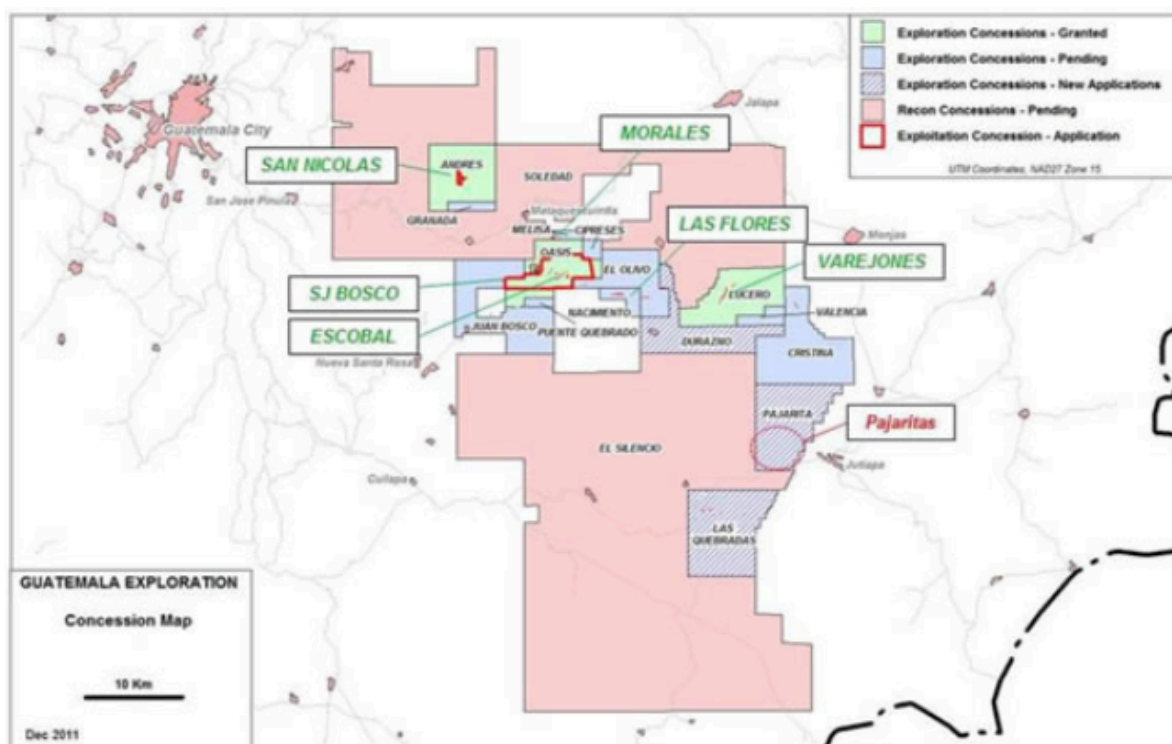
Source: E. Moore (2018)

Figure 6: Location of the Escobal Mine



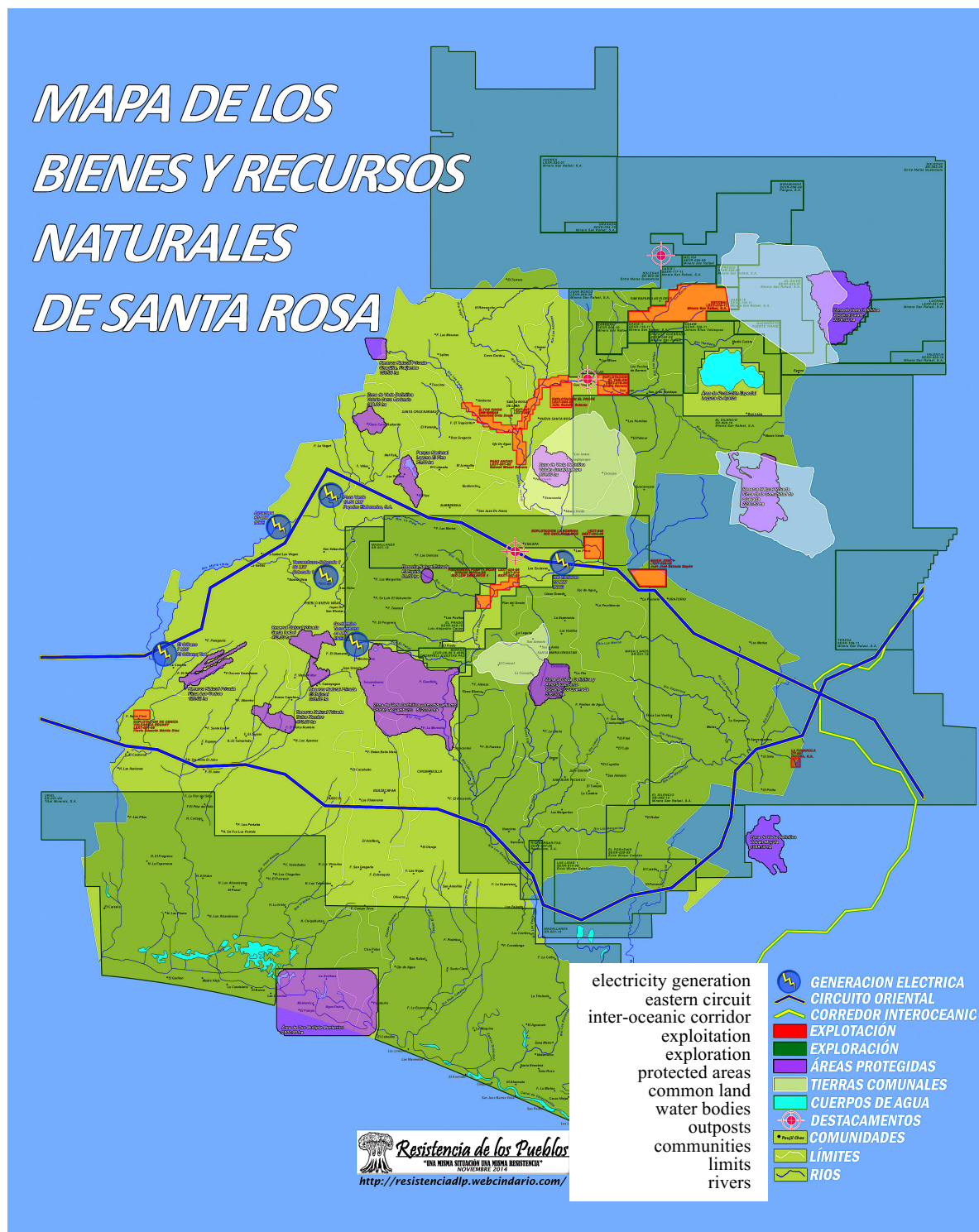
Source: Tahoe Resources (2013) Annual Information Form at
<https://www.sec.gov/Archives/edgar/data/1510400/000106299314001363/exhibit99-1.htm>.

Figure 7: Minera San Rafael Concessions



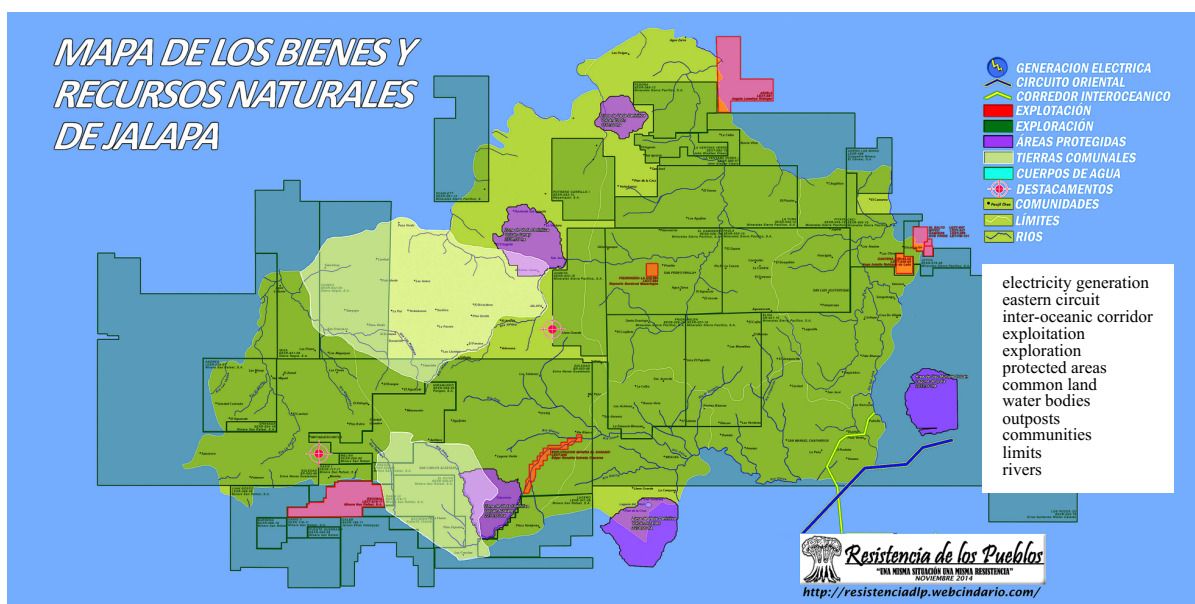
Source: Tahoe Resources (2013) Escobal Guatemala Project, Preliminary Economic Assessment at <https://www.sec.gov/Archives/edgar/data/1510400/000106299313003576/exhibit99-2.htm>

Figure 8: Tahoe's Licences in the Department of Santa Rosa



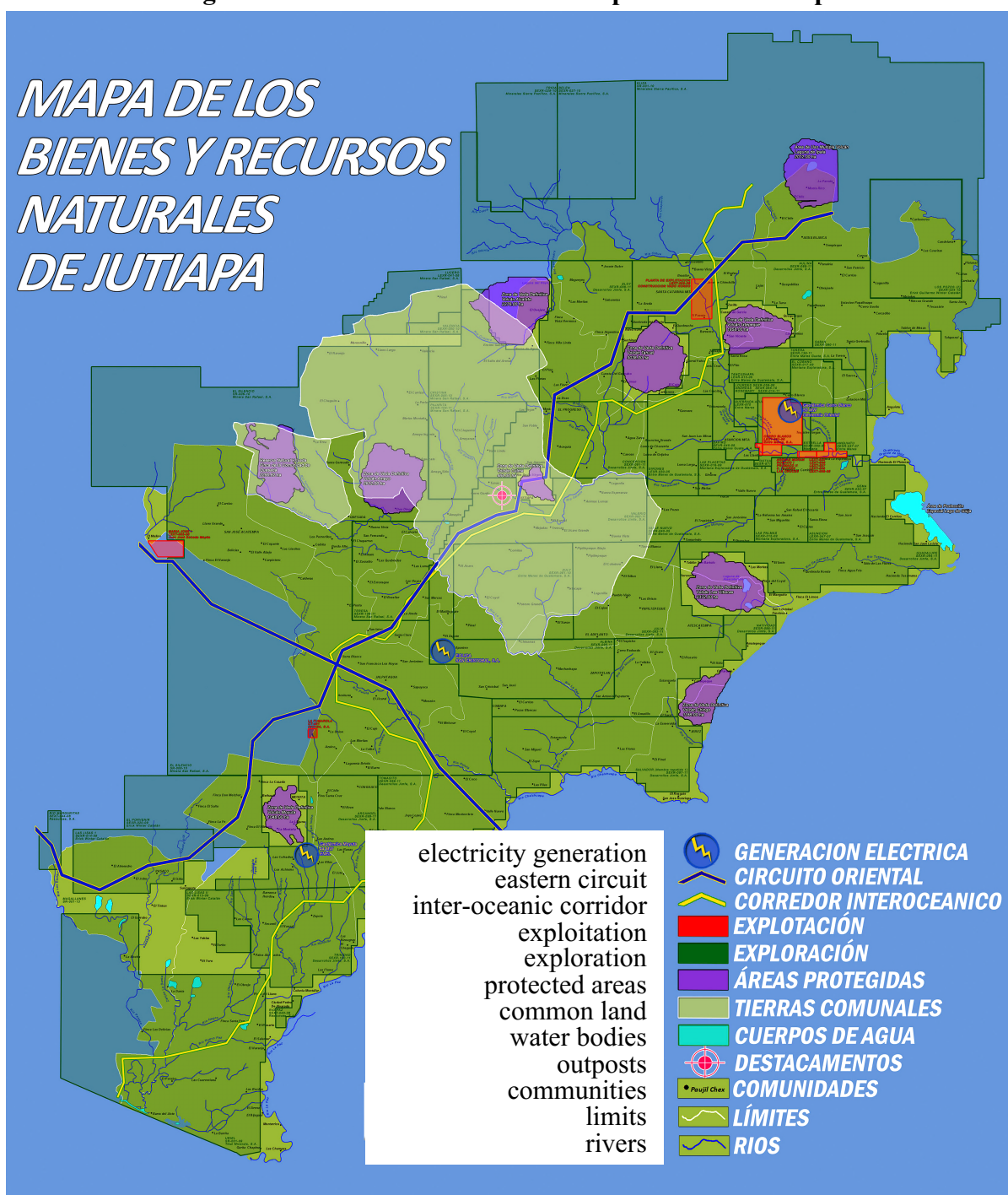
Source: Resistencia de los Pueblos (2014) at <https://tahoecontrial.files.wordpress.com/2014/11/santa-rosa.jpg>

Figure 9: Tahoe's Licences in the Department of Jalapa



Source: Resistencia de los Pueblos (2014) at https://tahoeontrial.files.wordpress.com/2014/11/jalapa_map.jpg

Figure 10: Tahoe's Licences in the Department of Jutiapa



Source: Resistencia de los Pueblos (2014) at: <https://tahoeontrial.files.wordpress.com/2014/11/jutiapa.jpg>

Appendix II: Timeline of Events Related to the Escobal Mine Conflict

June 27, 2012	President Molina proposes constitutional amendment to Article 125 to allow for 40% state participation in the natural resource sector.
July 2012	Canadian mining companies express concern over the proposed amendment to the Embassy; high-level meetings occur between President Molina, Minister of Energy and Mines Erick Archilla, the Extractive Industry Association (GREMIEXT) and the CEO's of several mining companies.
August 23, 2012	Molina calls off the proposed amendment to Article 125.
December 6, 2012	Protest take place outside of the Canadian Embassy during visit of Governor General David Johnston.
January 12-3, 2013	A violent incident occurs at the Escobal Mine entailing an armed confrontation between private security patrol at the Escobal mine and civilians. Two security guards were killed and five people were injured. Road blockades were set up in the area. The Minister of the Interior suggests illegal armed groups are responsible for this incident as well as other acts of violence.
February 6, 2013	Xinca call for an end to mining in Santa Rosa and Jalapa, citing concerns of water contamination.
March 8, 2013	300 police forcibly evict Xinca women from private land where they had been living for over four years. The Xinca request formal recognition of their territorial rights which date back to the 18 th century.
March 17, 2013	Four Indigenous Xinca leaders are kidnapped and one murdered after attending a community consultation in the town of El Volcancito.
March 21, 2013	The Secretary for Agricultural Affairs announces that an agreement was reached in Xalapan over land claims.
March 23, 2013	CALAS holds a good faith <i>consulta</i> in the neighbourhood of La Cuchilla in the Municipality of San Rafael Las Flores.
March 26, 2013	The Inter-Institutional Office for Integrated Development is installed in San Rafael as Flores.
April 3, 2013	Tahoe's exploitation license is approved amidst ongoing protests and violence.
April 4, 2013	CALAS accuses Tahoe of contamination at MSR; shots are fired at their offices and break in occurs at home of organization's lawyer, Rafael Maldonado.
April 8, 2013	Protestors set up a peaceful encampment outside the mine site and promise to stay until the exploitation license is revoked.
April 27, 2013	Shots are fired by Tahoe's private security outside of the gates of the Escobal mine, injuring seven protestors.

April 29, 2013	Canadian Ambassador Hugues Rousseau acts as an honorary signatory to a voluntary royalty agreement between Tahoe and the Guatemalan government.
May 2, 2013	Alberto Rotondo, head of Tahoe's private security at MSR is detained at the Guatemalan airport and questioned related to his participation in the April 27, 2013 incident.
May 3, 2013	The Guatemalan Government imposes a state of siege in four municipalities in the departments of Santa Rosa and Jalapa after anti-mining protests turned violent where one policeman was killed, six civilians wounded, and several police cars burned. The National Civil Police and Armed Forces enforce curfews and executive search and arrest warrants.
May 6, 2013	Guatemalan Government announces that police have executed 85 search warrants which have resulted in the capture of people allegedly connected to criminal structures involved in assassinations, extortion, kidnapping, the theft of explosives, illegal possession of arms and other crimes.
July 8, 2013	Guatemala announces a two-year temporary moratorium on new mining licenses.
July 24, 2013	Guatemalan Supreme Court rules that the MEM did not follow due process in the granting MSR its exploitation license after more than 250 citizens complaints were dismissed.
November 28, 2014	Congress approves an omnibus budget that increases royalties from 1% to 10%.
April 16, 2016	News of the <i>La Linea</i> corruption scandal breaks.
June 7, 2017	Peaceful protestors establish a permanent encampment in Casillas, Santa Rosa to prevent mine-related traffic from reaching the project.
July 5, 2017	The Supreme Court rules in favour of the Xinca for failure of Tahoe and the MEM to obtain their FPIC, resulting in the suspension of two of Tahoe's licenses.
August 24, 2017	The Constitutional Court upholds the lower court's ruling upon appeal.
September 10, 2017	The Constitutional Court reverses its earlier decision, reinstating Tahoe's licenses.
September 4, 2018	The Constitutional Court issues its final resolution on the consultation issue, ordering Tahoe and the MEM to complete a new consultation process according to the principles of ILO 169 and nullifying the Juan Bosco license.

Appendix III: Letter to Member of Parliament and Zine

[Name of Member of Parliament]
House of Commons
Ottawa, Ontario
K1A 0A6

Dear [Name of Member of Parliament],

I am deeply concerned about the Canadian government's diplomatic and economic support for Tahoe Resources, a British Columbia-incorporated mining firm operating in southwestern Guatemala through its wholly-owned subsidiary *Minera San Rafael*. On September 3, 2018, the Guatemalan Constitutional Court ruled that Tahoe's Escobal mine would remain suspended until the Ministry of Energy and Mines (MEM) consults with Indigenous Xinca communities in the region of the mine. While this is welcome news, the current constitutional crisis in the country due to the ousting of the UN-backed International Commission Against Impunity in Guatemala (CICIG) casts doubt on whether a fair and meaningful consultation can be conducted in such a corrupt and uncertain environment.

The checks and balances which exist between the executive branch of government and the judicial branch are being ignored. President Jimmy Morales is consolidating power and is attempting to restore historic structures of impunity in Guatemala, heightening the risk of repression against environmental defenders and indigenous leaders in the country, including those legitimately and peacefully opposing Tahoe's Escobal project. The Canadian government cannot stand by idly as this reversal towards an even more corrupt and autocratic state occurs. Affected communities must be guaranteed due process concerning discrimination and the violation of their right to self-determination.

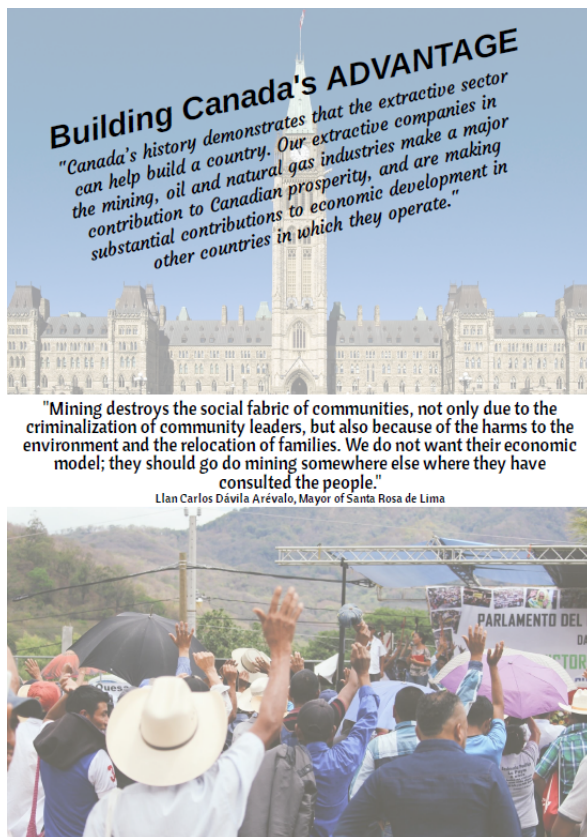
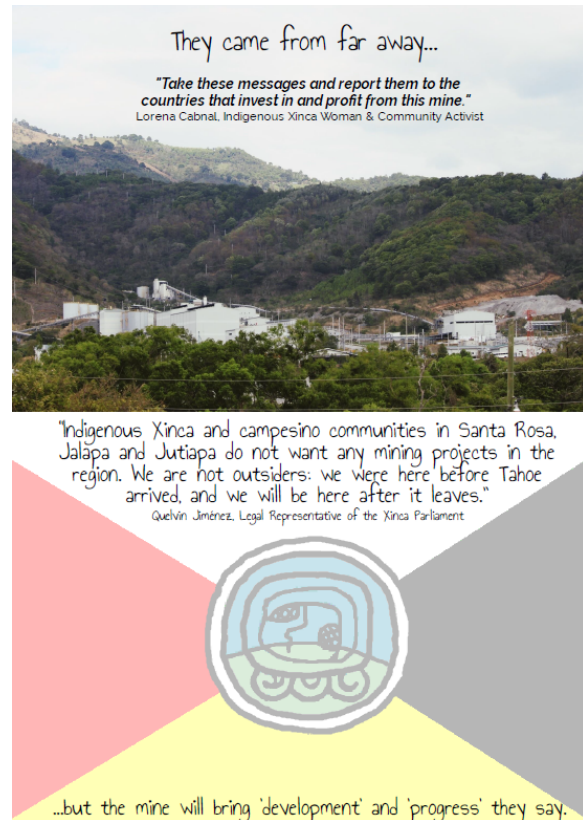
Since the original suspension of Tahoe's mine in July 2017 by Guatemala's Supreme Court, the company has made extraordinary efforts to influence the outcome of the lawsuit in its favor. In the past, Canadian officials have reinforced the company's problematic actions. For example, just two days after the shooting of seven protestors by Tahoe's private security personnel on April 27, 2013, Ambassador Hugues Rousseau acted as honorary signatory to the royalty agreement between Tahoe and the Guatemalan government. This is unacceptable. With seven out of eight municipalities formally rejecting the mine in local polls, Tahoe's lack of a social license is apparent. As former liberal MP and Cabinet Minister Don Boudria continues to lobby on behalf of Tahoe, it is important that the Canadian government takes a strong stance against the pattern of conflict and violence associated with this mine.

I call on the Government of Canada to assume leadership is showing unequivocal support for CICIG's work in Guatemala. I also urge the Guatemalan government to comply with the Constitutional Court's September 3 ruling ordering the MEM to conduct a consultation with the Indigenous Xinca according to the International Labour Organization (ILO) 169 Convention. Canada must also call on Guatemalan authorities to guarantee the safety of human rights and land defenders, as well as indigenous groups and civil society organizations, who continue to peacefully protest Tahoe's presence in their communities. Please let me know what concrete steps the Canadian government will take to support human rights defenders currently at increased risk for their legitimate and peaceful defense of their land, water, and livelihoods. As well, please let me know whether the Canadian government will continue to provide diplomatic and economic support for Tahoe.

Sincerely,

[Your Name]

cc: Ambassador Deborah Chatsis (Canadian Embassy in Guatemala), Minister Chrystia Freeland (Foreign Affairs), Minister Amarjeet Sohi (Natural Resources), Minister Marie-Claude Bibeau (International Development)



Doing business the 'Canadian' way

On April 27th, 2013, Tahoe's security personnel shot at seven men peacefully protesting the mine, leading to a civil suit against the company in the courts of British Columbia...

In an attempt to have the case dismissed on the grounds that Canada was an inconvenient and inappropriate forum, Tahoe argued the following:

"While Tahoe is incorporated in British Columbia and listed on the Toronto Stock Exchange (TSX), such ties are financial and not operational. The TSX and TSX Venture Exchange list the most mining companies in the world and between January and November 2014, 63% of the equity capital raised by mining companies globally was raised on those exchanges. Being incorporated in a Canadian jurisdiction and having mining projects located outside North America places Tahoe squarely in the majority of mining issuers listed on the TSX. This case therefore raises the prospect that innumerable plaintiffs from around the world will litigate in British Columbia simply because an indirect parent corporation of a local company obtains its financing in Canada."



...the sun never sets over the Empire.

...two days after the shooting, Canadian Ambassador Hugues Rousseau acts as honorary signatory to the royalty agreement between Tahoe and the Guatemalan government.

...In the face of such impunity, Lorena Cabnal (right) told the United Nations Special Rapporteur for the Rights of Indigenous Peoples, Victoria Tauli-Corpuz (left), during her May 2018 visit to Guatemala



"Let us be very clear that this is an illegal mining operation. Tahoe illegally installed itself in this territory, violated every one of our rights - starting with Free, Prior and Informed Consent - facilitated by a violent, racist, exploitative and centralized state..."

You have a big responsibility. We cannot go to the capitals of other countries because they won't let us speak."

5

Since July 2017, the Escobal Mine has been suspended due the government's failure to consult the Indigenous Xinca.

In response, Tahoe has lobbied the U.S. and Canadian governments in an effort to pressure the Guatemalan Constitutional Court to reinstate its license:

"Investors and shareholders, as well as Canadian and U.S. officials who the company has lobbied, should not be misled by statements that call us 'anti-development' or 'outsiders'. These misrepresent and obscure the broad opposition to the company's operations as tens of thousands of people have democratically expressed opposition to mining activities in numerous local votes organized by municipal and village authorities, as well as during peaceful protests outside the U.S. and Canadian embassies and in front of the company's office in Guatemala. Indigenous and non-indigenous communities in the area of influence of Tahoe's project are convinced that mining is not an appropriate activity for our territory – and that this should be our decision to make."

Quelvin Jiménez



"Our struggle is not against one but several systems. Against colonialism. Against neo-liberalism. Against Western and patriarchal systems."

Lorena Cabnal

Tahoe and the Guatemalan government deny the existence of indigenous peoples in the area of the mine:

"They told us that we don't exist, that we are ghosts."

Enrique Arredondo, Mayor of Nueva Santa Rosa.



"At the root of this violence is institutionalized racism and discrimination against Guatemala's indigenous population. Their inherent rights to their traditional lands, territories and resources are not recognized."

Victoria Tauli-Corpuz. End of Mission Report

References

- Arévalo, Llan Carlos Dávila. (2018, May 7). Mayor of Santa Rosa de Lima. Public gathering in Casillas, Santa Rosa, Guatemala for the visit of the UN Special Rapporteur on the Rights of Indigenous Peoples.
- Arredondo, Enrique. (2018, May 7). Mayor of Nueva Santa Rosa. Public gathering in Casillas, Santa Rosa, Guatemala for the visit of the UN Special Rapporteur on the Rights of Indigenous Peoples.
- Cabnal, L. (2018, May 7). Indigenous Xinca Woman and Activist. Public Gathering in Casillas, Santa Rosa, Guatemala for the Visit of the UN Special Rapporteur on the Rights of Indigenous Peoples.
- Front Line Defenders (FLD). (2011). Sixth Dublin Platform for Human Rights Defenders, 14-16 September, 2011. Retrieved from: <https://www.frontlinedefenders.org/en/6th-dublin-platform>.
- Garcia v. Tahoe Resources: Submissions of the Defendant, 2015 BCSC No. S-144726.
- Government of Canada. (2018b). Canada's Enhanced Corporate Social Responsibility Strategy to Strengthen Canada's Extractive Sector Abroad. Accessed July 15, 2018. Retrieved from: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng/>
- Jimenez, Q. (2018, June 4). "Why Guatemalan Indigenous Communities Are Fighting a Canadian Mining Giant". The Tyee. Retrieved from: <https://thetyee.ca/Opinion/2018/06/04/Guatemalans-Fighting-Canadian-Mining-Giant/>.
- Tauli-Corpuz, V. (2018). End of Mission Statement by the UN Special Rapporteur for the Rights of Indigenous Peoples on her Visit to Guatemala. Retrieved from: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23068&LangID=E>.

Learn more at: tahoeontrial.net
Get in touch: cconnolly@unbc.ca

Appendix IV: Research Ethics Board Letter of Approval**RESEARCH ETHICS BOARD**

MEMORANDUM

To: Charlotte Connolly
CC: Catherine Nolin

From: Henry Harder, Chair
Research Ethics Board

Date: May 4, 2018

Re: E2018.0412.034.00
Tahoe on Trial: Closing the Governance Gap? A Critical Legal Geography
Analysis of a Canadian Mining Conflict in Guatemala

Thank you for submitting revisions to the Research Ethics Board (REB) regarding the above-noted proposal. Your revisions have been approved.

We are pleased to issue approval for the above named study for a period of 12 months from the date of this letter. Continuation beyond that date will require further review and renewal of REB approval. Any changes or amendments to the protocol or consent form must be approved by the REB.

Good luck with your research.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Harder', is written above the printed name.

Dr. Henry Harder
Chair, Research Ethics Board

Appendix V: Interview Participants

Guatemala

Centre for Legal, Environmental and Social Action	Rafael Maldonado
Guatemala Human Rights Commission	Isabel Solis
Network in Solidarity with the People of Guatemala	Becky Kaump
Maritimes-Guatemala Breaking the Silence Network	Lisa Rankin

Canada

Camp Fiorante Matthews Mogerman LLP	Matt Eisenbrandt
Canadian Network on Corporate Accountability	Emily Dwyer
Mining Injustice Solidarity Network	Caren Weisbart
MiningWatch Canada	Jen Moore
United for Mining Justice	Jackie McVicar

Appendix VI: Interview Guides

Guatemalan-specific questions

1. Could you describe the relationship between Tahoe Resources and the Guatemalan government?
2. How does the state and/or Tahoe create and exacerbate local divisions in the communities affected by the Escobal mine?
3. What is the role of local government, in particular mayors, in either facilitating or resisting mining operations?
4. What were some the factors that led to the state of siege in 2013?
5. Can you reflect on the ways you think Tahoe is able to evade accountability within Guatemala?
6. What is the relationship between communities in resistance to the Escobal mine and the Guatemalan government?
 - a. Are they simply demanding that the state respect their right to self-determination OR are they making concrete social and economic demands as well?
 - b. How does the Guatemalan government define and regulate communities' relationship to the land?
7. What is the role of the state with regard to operationalizing FPIC? I am wondering if you could tell me more about Guatemala's national dialogue system, as well any efforts to legislate a formal consultation process?
 - a. Have these efforts involved local communities or indigenous people?
 - b. How can we incentivize the state and corporations to respect FPIC?
8. What is the role of law in challenging Guatemala's context of corruption and impunity?
9. Can you explain this idea of guilty until proven innocent in Guatemala? How does it relate to the criminalization of human rights and land defenders?
10. Can you comment on the resurgence on Indigenous Xinca and whether the rise in indigenous self-identification is related to ongoing and proposed 'development projects' which have failed to adequately consult these people in their traditional territories?

11. Do you believe sustainable mining is possible in Guatemala? If no, why not? If yes, what needs to happen before this is accomplished?

Canada-specific questions

1. Can you reflect on the ways you think Tahoe is able to evade accountability within Canada?
2. Could you describe the relationship between Tahoe Resources and the Canadian government (i.e. Canadian Embassy in Guatemala, Global Affairs Canada, Export Development Canada)
3. What do you think about Canada's recent move to establish a human rights ombudsman for the extractive sector? Do you perceive this merely symbolic or an important step towards increasing corporate accountability?
4. What is the likelihood of criminal and civil law reform in Canada? Could we see support for another bill like C-300?
5. Why, in your opinion, is there a reluctance on the part of the Canadian government to regulate the activities of its extractive sector abroad?
6. How do you think increased regulation would affect Canadian interests, economic or otherwise?
7. In your opinion, which strategies, legal and otherwise, are needed to improve access to justice for communities negatively impacted by Canadian mining operations?
8. What do you think are some of the advantages of bringing the Tahoe case to trial in Canada as opposed to Guatemala? What are some of its limitations in terms of improving access to justice for victims affected by Canadian mining operations abroad?
9. In your opinion, does civil lawsuit against Tahoe in Canada simply compensate for the weak rule of law, corruption and impunity victims face in Guatemala, or is it also about holding Canadian corporations/executives to account for crimes committed in Canada?

Appendix VII: Participant Information Letter and Note of Oral Consent

Interview Information Letter & Note of Oral Consent

Tahoe on Trial: Closing the Governance Gap? A Critical Legal Geography Analysis of a Canadian Mining Conflict in Guatemala

Thesis for Master of Arts in Natural Resources & Environmental Studies (Geography)

Student Researcher: Charlotte Connolly

University of Northern British Columbia
Prince George, BC V2N 4Z9
cconnolly@unbc.ca / 1-250-614-6947

Student Supervisor: Catherine Nolin

Associate Professor
University of Northern British Columbia
Prince George, BC V2N 4Z9
nolin@unbc.ca / 1-250-961-5875

Why are you being asked to take part in this study?

You are being invited to take part in this research study because you are an employee of a non-governmental organization (NGO) involved in mining issues in Guatemala and have expertise about the on-going resistance against the Escobal mine and Tahoe Resources, the Vancouver-based mining company that is the subject of this study. As permission from your organization has not been obtained, you are not asked to speak on behalf of your organization, but as individual experts on the themes under study.

The purpose of this study is to learn more about how Canadian multi-national mining companies evade accountability for their environmental, social and human rights abuses abroad, and conversely, how communities affected by mining operations resist these forms of violence in partnership with local and international NGOs.

The primary objective of this study is to learn more about how the relationships between Tahoe Resources and the Canadian and Guatemalan governments work to reinforce a climate of impunity. The secondary objective is to analyze whether extraterritorial jurisdiction can practically challenge this context of impunity, from the point of view of mining-affected communities and their NGO allies.

Participation is entirely voluntary. You can refuse to answer any questions and are free to withdrawal from this study at any time without justification. You are in no way obligated to participate in this research. If you choose to withdraw from the study, all information provided will also be withdrawn and destroyed, unless explicit consent is given allowing the use of said information. All recordings and digital files of the interview will be deleted.

How will the study be conducted? What will I be expected to do?

If you agree to participate in the study, you will be asked to respond to a series of questions over the course of approximately one hour in the office of your organization. Questions will be provided ahead of time, via e-mail, once you have agreed to participate.

You will be asked about your perspectives with regard to the perceived advantages and limitations of extra-territorial jurisdiction in enforcing corporate accountability and improving access to justice for individuals and communities affected by Canadian mining operations abroad. You will also be asked about your understandings of the current governance gap that exists with regard to Canada's international extractive sector, specifically what you think are its causes and potential solutions.

If you decide to take part in this research, you will be provided with a transcript summary, via mail, e-mail or sync.com, depending on your preference. Sync.com is a cloud storage service used to share files. If e-mail or sync.com is the preferred method, transcripts will be encrypted using Adobe Acrobat, with the password shared via telephone. You will be given the option to edit or retract any information.

Are there any potential risks in participating in this project?

The researcher does not believe that any element of this study could harm you. As mentioned, you do not have to answer any questions you do not want to. I recognize the heightened physical, legal, psychological, and social risks faced by environmental and human rights defenders in Guatemala, particularly their persecution by police, paramilitaries, and even the domestic judicial system. To mitigate these risks, you will not be asked to disclose any information not already available on the public record. You will simply be asked to clarify and expand upon issues and themes identified in secondary research.

In addition, given that group consent has not been obtained from your organization, there are potential risks, particularly a potential breach of privacy, to your participation. For this reason, you will not be asked to speak on behalf of your organization. I want to understand your perspectives as activists and lawyers, not as organizational representatives. To mitigate potential risks, you are given the option to retract or edit any information upon review of the summary transcript. Likewise, in the data analysis and writing phase, I will include a disclaimer that opinions are your own and do not express the views or opinions of your employer.

If you have concerns, or wish to withdraw your participation, please notify the researcher immediately and your decision will be respected as part of the researcher's commitment to ensuring your free, informed and ongoing consent. Your privacy and confidentiality will be respected to minimize any risks or potential harms.

Are there any potential benefits in participating in this project?

You will be given a small gift of appreciation in exchange for your time.

This research may also help identify whether extraterritorial jurisdiction may be an effective measure for increasing corporate accountability in Canada's international extractive sector, for the benefit of advocacy organizations working in this field, as well as for the communities impacted by Canadian mining operations abroad.

How will your privacy be maintained?

Your identity will not be released without your consent. You have the right to confidentiality and may request that the researcher use a pseudonym in the data transcription and analysis phase, as well as in the final thesis. While the researcher will do everything to protect your identity, confidentiality cannot be guaranteed due to the small size of the study population. In addition, given the small number of lawyers involved in the legal suit against Tahoe in Canada, confidentiality is possible only to an extent.

Data Management and Security

Pending your permission, the interview will be digitally recorded and transcribed. To ensure the confidentiality of the recordings and transcriptions, they will be encrypted and stored on password-protected devices (i.e. personal computer and external hard drive), and backed up to a secure folder on a server at UNBC. Only Ms. Connolly will have access to the raw data. After a period of three years, the digital files will be deleted.

How will the results of the study be disseminated?

The findings of this study will be reported in a graduate thesis. Results may also be published in an academic journal, a blog, and/or a news article. You have the option to have the final thesis either mailed or e-mailed to you.

Who can you contact if you have complaints or concerns about the study?

If you have any concerns or complaints about your rights as a research participant and/or your experiences while participating in this study, contact the UNBC Office of Research at 250-960-6735 or by e-mail at reb@unbc.ca.

Who can you contact if you have questions about the study?

If you have questions about the study, you can contact Ms. Connolly at any time by phone (cell: 250-614-6947), by e-mail (cconnolly@unbc.ca) or by skype (charlotte.connolly26).

Participant Consent and Withdrawal

This study is entirely voluntarily. You have the right to refuse participation and may withdraw from the study at any point in time without reason and without any negative consequences.

NOTE OF ORAL CONSENT

Your note of oral consent in response to the following items indicates that you have received a copy of this information letter for your own records and that you consent to participate in this study.

Turn on Audio Recorder and read the following items to the participant:

I have read or been described the information presented in the information letter about the project:

YES NO

I have had the opportunity to ask questions about my involvement in this project and to receive additional details I requested.

YES NO

I understand that if I agree to participate in this project, I may withdraw from the project at any time up until the report completion, with no consequences of any kind. I have been given a copy of this form.

YES NO

I agree to be recorded.

YES NO

I agree that my name can be used.

YES NO

Follow-up information (i.e. transcript summary, thesis) can be sent to me at the following e-mail, mailing address or through sync.com:

YES NO Address/ e-mail:

Note of verbal consent:

Date:

Appendix VIII: Confidentiality Form for Translator/Transcriber

Confidentiality and Non-Disclosure Agreement

This study, *Tahoe on Trial: Closing the Governance Gap? A Critical Legal Geography Analysis of a Canadian Mining Conflict in Guatemala*, is being undertaken by Charlotte Connolly [“Principal Investigator”], a graduate student researcher at the University of Northern British Columbia (“UNBC”). The study has two objectives:

1. To gain an understanding of the current governance gap that exists with regard to Canada’s international extractive sector and its evasion of accountability for the social, environmental and human rights abuses committed by Canadian multi-national mining companies abroad.
2. To analyze the perceived advantages and limitations of extraterritorial jurisdiction in addressing the current governance gap, from the point of view of mining-affected communities and local and international NGOs.

Data from this study will be used to supplement the literature review performed by the researcher, as a means of filling in any gaps of information.

I, (NAME OF TRANSLATOR) (the “Recipient”), agree as follows:

1. To keep all the research information shared with me confidential by not discussing or sharing the research information in any form or format (e.g. tapes, transcripts) with anyone other than the Principal Investigator;
2. To keep all research information in any form or format secure while it is in my possession;
3. I will not use the research information for any purpose other than to help the Principal Investigator clarify translation meanings;
4. To return all research information in any form or format to the Principal Investigator when I have completed the research tasks;
5. After consulting with the Principal Investigator, erase or destroy all research information in any form or format regarding this research project that is not returnable to the Principal Investigator (e.g. information stored on computer hard drive).

Recipient

_____	_____	_____
(Print name)	(Signature)	(Date)

Principal Investigator:

_____	_____	_____
(Print name)	(Signature)	(Date)

If you have any questions or concerns about this study, please contact:

Charlotte Connolly: (1-250-614-6947) and (cconnolly@unbc.ca)

Appendix IX: Wiretap Transcripts from Alberto Rotondo, Tahoe's Security Manager

Source: Affidavit of Roger Barany, Garcia v. Tahoe Resources Inc., Wiretap Transcripts (2015)

Telephone intercepts authorized on April 15, 2013 by the Criminal Trial Duty Judge, Narcotics Activity and Environmental Crimes of Guatemala. Reproduced in the Public Hearing of May 7, 2013 before the Criminal Trial Court, Narcotics Activity and Environmental Crimes of Santa Rosa.	Escuchas telefónicas autorizadas, con fecha 15 de abril de 2013, por el Juez de Primera Instancia Penal, Narcoactividad y Delitos Contra el Ambiente de Guatemala de Turno. Reproducidas en la Audiencia Publica el 7 de mayo de 2013 en el Juzgado de Primera Instancia Penal, Narcoactividad y Delitos Contra el Ambiente de Santa Rosa. ¹
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INTERCEPT No. 4006

Speaker	Message
Rotondo: Adilio, there are a ton of people here, that are standing ² in the, in the middle of the intersection, I'm going to force them out of there.	<i>Adilio, aquí hay un montón de gente, que está parada en medio de la, de la, del cruce de caminos, los voy a sacar a la fuerza.</i>
(SHOUTS) Get me all this shit out of here, this ton of shit... remove them, all of them from there. (sic) ³	<i>(Grita)-Me sacan a toda esa mierda, ese montón de mierda... sáquenlos, a todos de allí. (sic)</i>

INTERCEPT No. 4007

Rotondo: I've run them out man, it's done.	<i>Ya los corrí hermano, ya.</i>
Unknown: You ran them out?	<i>¿Ya los corristes? (sic)</i>
Rotondo: Yes, I ran them out. They can go to hell. They come here fuckin' starving to death! They should go make a living somewhere else, get a job. We agree?	<i>Si, ya los corrí. Que se vayan a la mierda. Vienen acá, muertos de hambre ¡carajo! Vayan a ganarse la vida a otro lado, a trabajar ¿Estamos así?</i>
Unknown: Oh yeah, right. (sic)... Good thing you've sent them fuckin' running, those sons of bitches.	<i>Ah así, va pues (sic)... Que bueno que les hayas volado verga esos hijue puta.</i>
Rotondo: Yes.	<i>Si</i>
Unknown: Right, understood then.	<i>va, así estamos entonces</i>
Rotondo: Right, understood.	<i>Va, así estamos</i>

INTERCEPT No. 4010

Rotondo: Hello	<i>Aló.</i>
Juan Pablo: Hello, Alberto, good evening.	<i>Aló, Alberto, buenas noches.</i>
Rotondo: How are you?	<i>¿Cómo estás?</i>
Juan Pablo: Good, thank you, Alberto	<i>Bien, gracias Alberto</i>
Rotondo: Look, I'm calling just to let you know that, about 15 minutes ago, 15 of those sons of bitches came to, from the camp and came out to block me, right.	<i>Mira, te llamaba solamente para contarte que, hace como unos 15 minutos; vinieron 15 de esos hijue putas, a, del campamento y salieron a bloquearme no.</i>
Juan Pablo: Uh-huh.	<i>Aja.</i>
Rotondo: The soldiers came out, and we fired a shitload of rubber bullets and gas at them.	<i>Salieron los soldados, y les tiramos, un carajo de balas de goma y gases.</i>
Juan Pablo: Who were they? Who knows.	<i>¿Quiénes eran? saber</i>
Rotondo: Who knows.	<i>Saber</i>
Juan Pablo: I'll send someone right away to check it out. <i>El Moreno</i> ⁴ is there, because I told him about an hour ago to be there.	<i>Ahorita mando a averiguar. El "Moreno" allí esta, porque yo le dije hace como una hora, que estuviera allí.</i>
Rotondo: I ran them out with bullets. (MOCKINGLY) "We're going to bring them the Xalapanes." And they'd better find some Indians so they can defend themselves, I tell them, faggots.	<i>Los corré a balazos (a manera de burla) "les vamos a traer a los Xalapanes" Y tienen que buscar indios para que se defiendan, les digo, huecos.</i>
Juan Pablo: (LAUGHS)	<i>(Juan Pablo se ríe)</i>
Rotondo: Bring on the priest Melgar then, or women and children to defend them, weren't you the real trouble-	<i>Traigan al cura Melgar pues, o a mujeres y niños para que se defiendan, ¿no eras el mero brincon? Así les dije a todos. ¡Bueno</i>

⁴ Nickname that means dark-skinned guy

maker? That's what I told all of them. Well then, sons of bitches! (JUAN PABLO LAUGHS) And I let them have it, but like this, with a load of rubber bullets. Bitch! But I gave them shit, and they're gone now. There is no way I am ever going to allow, I am not going to allow these people to get confident, and they end up on me like in La Puya, right.	<i>hijue putas!" (Juan Pablo se ríe) Y les metí pero así, cantidad de balas de goma ¡Putas! Pero les eche mierda, ya se fueron pues. En ningún momento yo voy a permitir, no voy a permitir que estos agarren confianza, y se me queden como en La Puya, no.</i>
Juan Pablo: And did the police arrive?	<i>Y ¿llegó la Policía?</i>
Rotondo: The police arrived after a half hour.	<i>La Policía, llegó después de media hora.</i>
Juan Pablo: And they didn't tell you anything?	<i>¿Y te no te dijeron nada?</i>
Rotondo: No, they already left I told them. No, no, no.	<i>No, ya se fueron les dije. No, no, no.</i>
Juan Pablo: And they didn't see anything?	<i>¿Y no vieron nada?</i>
Rotondo: No, but I did recover the bullet casings, I told them that "they came, they got scared, and they left."	<i>No, lo que sí, recogí los casquillos, les dije que: "vinieron, se asustaron y se fueron"</i>
Juan Pablo: Ah, that's good. I'm going to call right now, to see what they say over there.	<i>Ah que bueno, ahorita voy a llamar, para ver que dicen allí</i>
Rotondo: Well I was there, with them, with the top guys (AUDIO INTERRUPTED AND CALL ENDS).	<i>Pues yo estaba allí, con ellos, con los máximos (Se interrumpe el audio y finaliza llamada)</i>

INTERCEPT No. 4052

Unknown: Commander	<i>Comandante</i>
Rotondo: Are you (plural) shooting? ⁵	<i>¿Están disparando?</i>
Unknown: Eh, no, that's in the <i>tomatera</i> . (IN BACKGROUND: It was accidental)	<i>Eh, no, eso es en la tomatara (Fondo: fue accidental)</i>
Rotondo: In principle, there is clean-up to be done. ⁶	<i>En principio hay que limpiar.</i>
Unknown: Yes, it's behind, behind the <i>Quebrada</i> , there by the <i>tomatera</i> or the house of the other old man that lives right there, below the <i>Quebrada</i> . ⁷ (sic)	<i>Si es atrás, atrás de lo Quebrada, allá por la tomatara o la casa del otro viejito que vive, cabal, abajo de la Quebrada (sic)</i>
Rotondo: We are good. Clean (plural) the guns then.	<i>Quedamos bien. Limpien las armas pues.</i>
Unknown: Yes, we are doing them.	<i>Si, en esas estamos.</i>
Rotondo: Clean them well, we're saying "nothing happened here." There are no recordings. You understand me?	<i>Limpíenlas bien, decimos "aquí no pasó nada". Grabaciones no hay ¿me entiendes?</i>
Unknown: Understood.	<i>Enterado</i>
Rotondo: The version is: they entered and they attacked us. And we repelled them, right?	<i>La versión es: que entraron y ellos nos atacaron. Y los hemos repelido no.</i>
Unknown: Yes, yes, we're going to do what you say, (ROTONDO SAYS: 'that's good') without any detail that	<i>Sí, sí, eso vamos a hacer lo que dice, (Rotondo dice: eso está bueno) sin detalle de nada que</i>
Rotondo: The people need to be told, that they should not worry, that they come every day to attack us, with	<i>Hay que decirle a la gente, es de que no se preocupe, que ellos vienen todos los días a agredimos, con machetes y con</i>

⁵ Or possibly: Are they shooting?⁶ Or possibly: To begin with, there is clean-up to be done.⁷ A *quebrada* is a ravine, but the word is capitalized here. *Tomatera* could refer to a place or a tomato field.

machetes and rocks; and so the people have defended themselves. There are, there are the broken shields there. But break another two, so that they see that they attacked us.	<i>pedras; y la gente se ha defendido pues. Ahí están, allí están los escudos rotos. Pero quiebren dos más, para que vean de que nos atacaron.</i>
Unknown: Yes, very well, Commander. Yes, I'm going to take photos there of a stone injury to the shin, I'm going to take some as well, just in case.	<i>Si, muy bien Comandante. Si ahí, voy a tomarle fotos de una pedrada en la espinilla, le voy a tomar unas también, por cualquier cosa.</i>
Rotondo: They say that one has a, a bullet wound in the face and... if it exploded in their face, it's with bullets that they learn.	<i>Dicen que uno, tiene una, un balazo en la cara y...si le estallo en la cara, a balazos es que aprenden.</i>
Unknown: Yes, it could have landed there and exploded; yes.	<i>Si, allí le pudo haber caído y reventado; sí</i>
Retondo: Yes, well, good.	<i>Si pues, ta bueno (sic)</i>
Unknown: Okay then.	<i>Va pues.</i>