Troubling the Idealised Pageantry of Extractive Conflicts:
Comparative Insights on Authority and Claim-making from Papua New Guinea, Mongolia and El Salvador

Jennifer Lander, School of Law, De Montfort University, Leicester, LE1 9BH, UK. Email: jenny.lander@dmu.ac.uk

Pascale Hatcher, Political Science and International Relations, University of Canterbury, Christchurch, 8140, New Zealand. Email: pascale.hatcher@canterbury.ac.nz

Denise Humphreys Bebbington, International Development, Community and Environment Department, Clark University, Worcester, MA 01610, USA. Email: dbebbington@clarku.edu

Anthony Bebbington, Graduate School of Geography, Clark University, Worcester, MA 01610, USA. Email: abebbington@clarku.edu

Glenn Banks, Massey University, Palmerston North, 4442, New Zealand. Email: g.a.banks@massey.ac.nz

Abstract

This article challenges simplified and idealised representation of conflicts between corporations, states and impacted populations in the context of extractive industries. Through comparative discussion of mineral extraction in Papua New Guinea, Mongolia and El Salvador, we argue that strategies of engagement over the terms of extraction vary significantly as a result of the interaction between relations of authority and recognition in the context of specific projects and the national political economy of mining. As mineral extraction impinges on their lands, livelihoods, territories and senses of the future, affected populations face the uncertain question of how to respond and to whom to direct these responses. Strategies vary widely, and can involve confrontation, litigation, negotiation, resignation, and patronage. These strategies are targeted at companies, investors, the national state, local government, multilateral institutions, and international arbitrators. We argue that the key to understanding how strategies emerge to target different types and scales of authority, lies ultimately with inherited geographies of state presence and strategic absence. This factor shapes the construction of "community" claim-making in relation to state and non-state authorities, and calculations regarding the relative utility of claiming rights or mobilizing relationships as a means of seeking redress, compensation or benefit sharing. In the context of plural opportunities for claim-making, we query whether plurality is more emancipatory or, ironically, more constricting for impacted populations. In response to this question, we argue that "community" strategies tend to be more effective where they remain linked in some way to the territorial and legislative structure of the national state.

1. Introduction

The literature on mining conflicts has grown enormously over the last two decades. This literature has revealed the diverse ways in which local populations seek to claim rights, entitlements and benefits in the face of mineral extraction. Just as there are nuanced "tactics of dispossession" at play in these disputes (Frederiksen and Himley, 2019), so also the tactics of defense and claim-making are complex and varied. Among these different tactics, the literature documents violent and peaceful protests, blockades, efforts to influence Environmental Impact Assessments, participation in formal political arenas, the conduct of "counter-science" (Spalding, 2018), demands for Free Prior and Informed Consent, community organized consultations, strategic and case based litigation, complaints submitted to the ombudsmen's offices of international financial institutions, calls for mining bans or moratoria, negotiations for compensation, the creation of indigenous development funds, and direct involvement in company social responsibility and community development programmes (O'Faircheallaigh, 2015). Increasingly, these tactics come together to form "repertoires of contention" (Tilly, 1977; Tarrow, 1998) that have been learnt over time and shared nationally and globally through solidarity networks and epistemic communities that link populations affected by mineral expansion.

The different tactics that make up such "repertoires of contention" are used to defend local populations' livelihoods, ways of living, and access to resources. They also imply claims for *de jure* or *de facto* rights to protection, to participation, to identity, to resources, and to benefit streams. In claiming rights, these tactics recognize a diverse set of actors and bodies with the presumed power and legitimacy to protect rights and grant reparations, as well as rely upon a range of legal and political norms at the local, national, international and transnational scales. We argue that processes of claim-making contribute to new patterns of *authority,* whereby actors and institutions are recognized and accepted as exerting public power over populations (Cutler, 1999: 62-63). Authority, as opposed to outright domination, "lies somewhere between coercion and persuasion", and is constructed through iterative and varied processes of

consensus, negotiation, submission and resistance which produce a relationship of governance (ibid.: 64-65).

In the context of extractive conflicts, the recognized authority might be the national government, the national judiciary (part of the State, but not the government), a transnational body deemed to have the authority to confer protections, the mining company itself, or a more vaguely defined public sphere of moral recognition. Authority can also be recognized as hierarchical, as when (for instance) actors recognize government as an authority, while also acknowledging that mining companies in turn have authority over government on account of their privileged knowledge, resources and skills. Indeed, populations can sometimes combine tactics that imply the recognition of several bearers of authority simultaneously, while in other cases tactics focus relentlessly on one particular authority. All this happens at the same time as these different "recognized authorities" are themselves caught up in sometimes contentious interactions as they seek to claim or retain certain governing roles whilst delegating others, or denying that they have other responsibilities or powers to act on behalf of or towards impacted populations. The transformation of state power often exists in a two-way relationship with the rise of the large-scale extractive economy: a strategically absent state can facilitate the consolidation of a privately controlled mineral economy (c.f. Ferguson, 2005), and the consolidation of large-scale private extractive industry can further complicate the national state's authority to govern and respond to the rights claims of citizens. In this paper, we ask how the recognition of diverse authorities might be interpreted, and what this might convey regarding the ways in which the rise of large-scale, transnationally financed mining affects the relationship between states and citizens in the countries where extraction occurs.

This paper contributes to the literature by offering multi-country comparative analysis of how the "louder" (e.g. coercion, domination) as well as the "quieter" (e.g. seduction, persuasion, manipulation) "registers of power" (Frederiksen & Himley, 2019: 9) shape the diverse repertoire of resistance used by local populations in the cases discussed. We will suggest that the diversification and pluralisation of authorities reflect the erosion, transformation, and sometimes "strategic" absence (cf. Szablowski, 2007) of the national state

in mineral economies. We explore how different modes of claim-making seek to engage new forms of political authority, and whether or not these new claims suggest plural access to justice and/or the withdrawal of "traditional" recourse mechanisms associated with the judicial apparatus of the national state. Drawing on Szablowski (2007: 140), we deconstruct the appearance of 'automatic community identity' commonly perceived in extractive conflicts, to understand the process by which new subjectivities and collective identities emerge. Finally, we ask whether or not such pluralisation of claim-making strategies has the potential to be emancipatory and transformative, or whether instead, it constricts populations' ability to successfully defend and claim rights.

To address these questions and make these arguments, the paper proceeds as follows. In the next section, and on the basis of an engagement with literatures in law, politics, political ecology and development studies, we develop a framework for conceptualizing and analysing the relationships between claim-making, authority and resource extraction. Following a discussion of research methodology, we then present case study material from Papua New Guinea, Mongolia, and El Salvador that speaks to the diversity of ways in which claims have been made, authorities recognized, and conflicts managed. While not conceived as a unified programme of comparative research, we discuss this material in a way that is deliberately dialogical, drawing out differences and similarities, in order to speak back to our conceptual framework and guiding questions. We use the final section of the paper to pursue that comparative analysis and to draw conclusions.

2. Authorities and Claim-making in Mineral Extraction Projects

Aptly described as ‘a place of upheaval’ (Frederiksen and Himley, 2019: 1), extractive projects are well known as sites of contestation and conflict. These projects are invariably shaped by “the critical three-way relationship between states, corporations and communities” (Banks, 2009: 44), as well as the differentiated norms, resources and legal rights around such projects. Particularly in encounters between powerful multinational corporations and local populations, the steep gradient of power asymmetry between these groups is routinely emphasised. As such, the literature often emphasises relations of domination and subjugation, which can centre and perhaps even naturalise “governing” forces (i.e., the corporation, the state, international institutions). Frederiksen and Himley (2019) point out that this emphasis has been infused by the dominant framework of ‘accumulation by dispossession’ (citing Harvey), which may reinforce the idealised pageantry of extractive conflicts. Such categories, as Szablowski (2007: 137) argues, are ‘black boxes’ which may hide the more complex dynamics, interactions and negotiations of power which occur at multiple scales around extractive industries (EI). In this section we discuss what recent literature reveals about these complex dynamics, focusing in particular on the relationships between shifting sources of authority and modes of claim-making around investments in territories of mineral extraction.

Extractive projects do not occur in a vacuum. They interact with pre-existing institutions, legal norms and power dynamics at the same time as introducing new ones (Szablowski, 2007; 2019). These interactions and their intended and unintended effects are realised within particular historical contexts which shape interactions between the state, investment and corporate entities, and affected populations. Extractive models of accumulation in general depend upon particular entanglements between legal, political, economic and geographical relations which facilitate access to land, govern and regulate claims over the distribution of benefits and costs, smooth capital investment, and manage the inevitable conflicts which emerge between different types and scales of actors, institutions and norms.

These entanglements have been the focus of a growing literature in political ecology, legal pluralism and development studies which converges around the theme of resource

extraction and new forms of political and legal authority in the context of the ascendancy of markets as the driver of development (Toumbourou et al., 2020). This literature has nuanced claims about the so-called "retreat" of the state, highlighting the vital role played by the state in securing the dominance of extractive land use through its legislative frameworks and judicial protections of property rights, including mining concessions and licenses (Campbell, 2009; Szablowski, 2007, 2019). Both national and transnational institutions and actors play roles in the creation of these "territories of extraction", which involve a reordering of authority to facilitate EI above all other activities (Szablowski, 2019: 124). Beyond the state, international financial institutions (IFIs) influence the shape and scope of national mining regimes through "technical" assistance, debt financing and investment promotion (Campbell 2009, 2013; Hatcher, 2014; Campbell & Hatcher, 2019; Szablowski, 2007). Rating agencies' assessments of countries' relative friendliness to mineral investment, such as that of the Fraser Institute, can similarly affect and discipline national regulatory regimes (Bridge, 2004). Other studies have focused on the role of domestic political negotiations which enable and secure – or "settle" – power relations in a configuration which aims to minimize investment risk by attempting to stabilise conflicting interests between political elites, corporations and local communities (Banks, 2009; Bebbington et al, 2018; Frederiksen, 2017; Szablowski, 2019). Whether focused on local, national or international political struggles over resource extraction, these studies have centrally addressed the way in which conflicts over resource control, ideologies of development, and variegated legitimacies effectively shape modalities of governance and political power in the context of resource extraction.

Yet at the same time, ethnographic and field-based studies show the tangible shifts in the *felt* presence of the state through regulation and administration that results from neoliberal reforms (Hatcher and Lander, forthcoming; Huber & Joshi, 2015). Not only are extractive projects commonly located at the margins of the national state – physically distant from municipal centres of regulation and law enforcement – but many foreign-investment dependent governments are reluctant to monitor corporate activities too closely or regulate stringently (Bhatt, 2020; Lander, 2020; Szablowski, 2019). Liberal modes of governance promoted in the Global South by IFIs particularly reinforce an arms-length "audit model" of

socio-environmental regulation, where private consultancy firms are contracted by mining companies to undertake impact assessment reports without direct supervision or oversight from a government regulatory department (Bhatt, 2020: 79). Likewise, states actively delegate regulatory functions away from central control and legitimise the localised containment and negotiation of encounters between companies, local administrations and populations. In this context, EI companies assume significant degrees of political authority through direct and indirect management of relations with the local population and sub-national governments (e.g. resettlement, local benefit agreements) (see Bhatt, 2020; Crane, Matten & Moon 2008). As Szablowski (2019: 3) puts it, 'extractive firms are often the vector through which national law is more vigorously asserted into territorial ordering in rural spaces.'

Political authority, unlike outright domination, implies a degree of recognition by the subjects of that authority, as well as a process of social legitimation (Cutler, 1999: 62). The relatively long-term lifespan of EI alongside their significant impact on the environment, livelihoods and culture of a local area gives rise to a recognition of a public effect, despite the fact that the industry itself may be privately owned and operated. The 'publicness' (ibid) of a corporation acting in a local area is expressed in the corporation's capacity to influence tangible and intangible public goods, such as housing, livelihood, health, environment and even the legal status of the local population. Companies also determine the publicness of information through confidentiality clauses, self-monitoring and reporting, or the creation of dependencies with government staff ostensibly responsible for exercise corporate oversight. These are all techniques that enhance the authority of the company while reducing the availability of knowledge through the imposition of secrecy practices that are ultimately anti-democratic. Local populations cannot "choose" whether to individually opt in or out of many of these corporate arrangements, which suggests that a corporation becomes an authority over collective futures at least in a *de facto* sense. Furthermore, alongside recognition of public dimensions of EI, the legitimacy of a corporation as a source of political authority in a local context can also be reinforced through its management of 'community relations', through benefit-sharing agreements, infrastructure development (e.g. roads, schools, hospitals) and other activities which give companies a 'social license to operate' (Harvey & Bice, 2014). This

does not mean that such corporate social responsibility and benefit sharing arrangements necessarily succeed in asserting the territorial order that companies might desire, indeed the complex social and political agendas that cut across communities can make such success quite unlikely (Arellano-Yanguas, 2011; Warnaars, 2013). Whatever the case, the presence of an extractive operator impacts local political settlements, as subnational governments and political elites position themselves in relation to the "new game in town". Many of these ways in which corporations influence social, political and economic dynamics, as well as the regulation of value chains, have been addressed in the well-established literature on private governance (e.g. Cashore, 2002; Auld et al., 2018).

The infusion of new norms and relations into the political ecology of a mineral project is made even more authoritative because of their increasing references to various legal regimes which influence and structure the governance of extractive industries (Szablowski, 2019: 723). As Cotula (2013: 1606) argues, 'the law provides multiple arenas for negotiation and contestation between competing actors and authorities' in the context of 'the global land rush': community-based dispute resolution and property systems, national legal and regulatory frameworks, international investment and human rights regimes, and the web of contracts and financing mechanisms that stabilise and secure capital investment in a project. Not all of these arenas are created equal, however, in terms of the enforceability of legal rights, leading to 'asymmetrical negotiations with extractive firms and their allies' (Szablowski, 2019: 727). National and transnational forms of legal ordering are often designed to override local rights norms and customs in order to effectively 'enclose local legal spaces' (ibid., 726) to support the construction of an extractive zone (see also Bhatt, 2020).

These asymmetries are largely produced by the powerful alignment of state and corporate interests in sustaining and supporting EI. Extractive access to land, water and other resources is secured through the state's lease of its sub-soil rights and the provision of property rights (e.g. mining licenses). The effectiveness of such access depends on the extent to which the central state can trump local entitlements to land and resources (and this varies across territories depending on national law and the nature of community land rights, as seen in the case of Papua New Guinea later). The state might also argue that it *should* override local

entitlements on the grounds that it is a trustee and administrator of subsoil resources, and that these should be managed for the benefit of the nation not just the local population – an argument reflected in the frequent invocation of "national interest" to justify extractive projects in Latin America (Humphreys Bebbington et al., 2018; Humphreys Bebbington, 2013). The fundamentally supportive orientation of the state towards EI tends to water down the efficacy of "participatory" mechanisms (e.g. local consultation and impact assessment). While once again this varies across jurisdictions, the best-case scenario is often that these mechanisms engage only the least "risky" claims of local populations (Szablowski, 2007: 724-725; see also Lander, 2020; O'Faircheallaigh, 2017).

The effects of other international and commercial legal structures which govern an extractive project are often less well recognised in the resource extraction literature. For example, investors and lenders will rarely risk investments without legal clauses and investment guarantees enshrined in investment agreements and public-private partnerships which effectively 'demotivate' the state from 'taking action to protect human rights or apply new laws that may affect profits' (Bhatt, 2020: 96). The 'contractual matrix' of private law and project financing gives lenders and corporations immense influence and control over the implementation of local populations' land rights as well as access to justice (ibid., 19). For example, the designation of "direct and indirectly affected populations" which guides social responsibility standards hides the discretionary role of corporations and IFIs in determining not only which local populations qualify as 'vulnerable' or 'affected' (Jokubauskaite, 2018) but in actively interpreting the relevance and scope of international legal norms designed to protect them (e.g. Free Prior and Informed Consent) (see Bhatt, 2020; Young, 2019).

While the literature continues to explore the authoritative role of corporations and extractive investments within national and local political economies, less systematic attention has been paid to how the pluralisation of political authority relates to local populations' claim-making and resistance strategies, with notable exceptions (Frederiksen and Himley, 2019; Li, 2014; Szablowski, 2007; 2019; Lander, 2020; Bhatt, 2020; Jokubauskaite, 2018). There is a small but important literature emerging which suggests that the process of 'conditioning local political economies and societies' to new economic, political and legal forces can produce 'new

subjects and objects of legality, localised and delocalised social relations, territorialised and deterritorialised systems of rule, and hard and soft forms of regulation' (ibid., Cutler, 2011: 30; 31-32). While Cutler discusses the socially transformative effects of the global political economy in general, we would add that these effects are likely to be particularly pronounced in the context of extractive projects which 'display novel and highly specialised assemblages of bits of territory, authority and rights for a particular purpose, that cut across traditional binaries of global/local, public/private, and formal/informal' (Bhatt, 2020: xv). Our interest when it comes to "the critical three-way relationship between states, corporations and communities" (Banks, 2009: 44) is that the "community" element is not pre-set in many cases; concepts and practices of what constitutes the affected "community" are constructed in the process of contesting EI in relation to public and private governances forces.

4. Method and Comparison

Our argument is based on a comparative analysis of separate bodies of research conducted independently of each other. Each body of research – from Papua New Guinea, Mongolia, and El Salvador[1] – was conducted over extended periods, in most instances combining the insights of separate research projects and other forms of engagement. In this sense, the comparative element is to bring the insights of three countries heavily impacted by extractive industries into dialogue with each other, exploring similarities and differences. The country case studies are spread across three geographic regions which do not share the same political history, although their economic history has been influenced by similar processes of peripheralization in the global political economy. As peripheral economies, these countries are more likely to be "rule-takers" than "rule-makers" in the global political economy, and have less clout in relation to large-scale extractive industries in terms of dictating investment terms, debt and project finance agreements, and global governance norms.

Our purpose in drawing them into a comparison is not necessarily to find similarities between the country contexts, but to highlight how claim-making by mining-impacted

[1] A fourth body of research in Brazil also informs the argument here, though space constraints meant that this case study material could not be discussed in the paper.

populations operates within distinctive political contexts shaped by similar transnational economic, political and legal pressures. Our comparisons and contrasts are made heuristically rather than systematically, as the different bodies of research have followed somewhat different methods. The findings generate insight into the ways that countries on the periphery of the global economy, but targeted for investment by extractive industries, negotiate increasingly complex relations of authority. While these negotiations are inevitably context dependent, we believe that it is possible to draw out some general insights.

Data from Papua New Guinea draws on Banks's research there since the late 1980s. This work has combined community level ethnographic-style fieldwork in areas affected by mining, collaborations with some mining companies around themes of community compensation, development, governance and social responsibility, and coordination of national level policy reviews on human well-being and the extractive economy. The work has involved community-level surveys, in-depth interviews with a wide range of key stakeholders in industry, government, civil society and communities, longitudinal studies, and documentary analysis.

Lander and Hatcher have been respectively involved in research on mineral extraction in Mongolia since 2012. Lander's research focuses on the transformation of the state vis-à-vis transnational extractive investment relations and examines its impact on sub-national administrations and civil society (see Lander, 2020). Hatcher's research focuses upon the role of IFIs, particularly those within the World Bank Group, in shaping domestic policy options and civil society contestations (see Hatcher, 2014). Since 2019, the authors have been collaboratively exploring the emergence of transnational claim-making by communities affected by the Oyu Tolgoi and Tavan Tolgoi mining projects, drawing primarily on qualitative focus groups and key informant interviews with community claim-makers and their transnational network of supporting Non-Governmental Organizations (NGOs), alongside pre-existing interviews with senior policy-makers, sub-national government officials, civil society groups, investment banks, mining company personnel, investment associations and local community activists conducted between 2012 and 2019.

Data from El Salvador draws on Bebbington's work there since 2005, and collaborations with the Government of El Salvador from 2010 to 2018. This latter work involved interviews

with NGOs, social movements, public officials, private sector leaders and Church leaders, as well as direct involvement in policy processes linked to the regulation of the mining sector (Bebbington et al., 2019). This work also involved participation in, and observation of, interactions within the Salvadoran state as well as between state officials, social movement organizations, and community leaders.

The data for this paper grow out of our sustained engagement on issues of contestation and claim-making around natural resource extraction in each country. That engagement has been based on qualitative research and direct involvement in some of the contentious politics and negotiations that have characterized efforts to expand the extractive frontier across the three cases. At the same time, we have drawn comparisons across these different work programmes in the course of our own long-standing conversations and discussions with each other. These conversations have run over anything from three to twelve years, depending on the conversation. The collective, comparative conversation for this paper began in 2018 in the run up to and during a conference session we co-organized and conceived to speak to some of the issues we discuss here. Subsequent to the conference session, our conversations continued electronically and in person, ultimately converging on the conviction that comparison across these bodies of work lead us to the argument made in this paper. In these senses, our diverse data collection methods have been largely qualitative, and our methods for cross project data synthesis have been primarily dialogical.

5. Authority and claim-making across diverse geographies

Papua New Guinea, Mongolia, and El Salvador are each part of a global political economy of mining investment, that renders them subject to the same overall set of global authorities, financial institutions, and commodity and capital markets. Local populations and civil society groups in each country make claims against similar companies and within the same overall network of global norms. At the same time, however, the nature and distribution of diverse authorities that govern how resources are accessed differ among the three countries, as do the histories of state involvement in the extractive sector. In addition, each country became

a global resource frontier at different times, with Papua New Guinea experiencing significant EI interest and investment earliest, and El Salvador the latest. Papua New Guinea and Mongolia have become consolidated resource frontiers,[2] while El Salvador has not. In this section, we discuss ways in which claim-making has evolved in each country in relationship to shifts in the overall relationship between state, market and civil society, and note some of the consequences that this evolution has implied for communities. Claim-making in Papua New Guinea has revolved primarily around direct interactions between communities and companies, with the state and international authorities playing more marginal roles until quite recently; in Mongolia, closing national civic space has forced community-based movements to make increasing use of transnational claim-making spaces but with limited success because of the "enclosed" and managed nature of negotiations in such venues; in El Salvador, the overall environment for civil society has been more favorable, and partly as a result of this, claim-making strategies have prioritized the national scale while being occasionally pulled into international arena by companies' own strategies. The discussion of these cases sets the table for the final section of the paper, in which we discuss the three country experiences comparatively and relate patterns across the cases back to conceptual themes laid out in the opening sections.

5a. Papua New Guinea: Plurality and persistence in claim-making

During the first few months of 2020 in Papua New Guinea, the state refused to renew a mining lease at the large-scale Porgera gold mine operated by Barrick Gold. In the same period, a Sepik river civil society group called for the government to reject proposals by a multinational to develop the long-standing Freida River copper-gold mining project (Doherty, 2020), and an Australian-based NGO released a report into the long-term environmental and human rights effects of the now-closed Bougainville Copper Limited (BCL) (a Rio Tinto subsidiary) mine at Panguna in Bougainville (Human Rights Law Centre, 2020). These events are representative of the last 50 years of mining politics and governance in Papua New Guinea. Ever since the very

[2] That is to say, countries that became targets for new investment in resource extraction (i.e. they became a frontier for investment), and where this investment has now become significant and an accepted part of the landscape.

first public realization of dissent - namely a powerful radio broadcast of local women being dragged from in front of construction bulldozers at Arawa as part of the same BCL development in 1969 - conflictive relationships between impacted populations and companies have marked mining development.

Papua New Guinea has been the testing ground for a range of local responses - 'claim-making' – to large scale mining over the past 50 years. Research in Papua New Guinea has been foundational in the more general literatures on mining, communities and conflict (Ballard and Banks, 2003; Kirsch, 2014; Filer, 1990;), and strategies honed there, by both companies and local populations, have travelled globally. Most of these claims have been over access to revenue and benefit streams, as well as protection of rights and environments. Claim-making strategies have included violent conflict, lawsuits (both against the State and against the corporations in international courts), and coalitions with international NGOs to address issues of human rights and the environment. There have also been novel developments to try and reduce or work through these conflicts, such as the Development Forum (a mechanism for local representatives to negotiate a set of benefit agreements with provincial and national levels of government: Filer, 2008) and the more controversial Benefit Sharing Agreements (in which elements oflocal populations negotiate the distribution of mostly government revenues from the project).

This proliferation of claims making strategies has much to do with competing and changing relationships of authority. Part of this context is related to a "felt" retreat of the state. The arrival of the mines has typically sparked a gradual decline of the already limited state presence, particularly in terms health and education services with the (usually unstated) expectation that the mining companies will take on the provision of these services. As a result, the facilities at the Ok Tedi and Lihir mines are among the best in the country for local people (Banks et al 2013). More significantly, the state has delegated responsibility for providing security in these territories of extraction. This has opened space for mine-contracted private security to expand, and with it scope for human rights abuses (see Human Rights Watch, 2011 for the case of the Porgera mine). As a result, the primary everyday authority has become the

mine, albeit never with the legitimacy necessary to fully exert its order over the territory (not least because of such human rights abuses and heavy-handed security).

In contexts in which 'the company is our government now' (Strathern 1991, cf. West, 2007), local populations in PNG target their claims primarily towards mine operators. Such claim-making happens in ways that reflect a more general mode of doing politics in Melanesia that is highly personalised and parochial, based strongly on relational understandings of identity and personhood (Banks 2019). Claims become ways of constructing and negotiating relations of connection and dependency, as a means for differently positioned individuals and groups to secure access to company benefits. While this may deepen the degree to which the local economy becomes a rentier economy, this is not necessarily seen as problematic. Dependency becomes both a moral and economic imperative, with novel constellations of 'community' – what Ernst (1999) described as processes of 'entification', or the making of new group entities – forming around the claims to facilitate ongoing access to revenue streams and other forms of dependency that the companies are obligated to maintain through negotiated agreements.

At the same time, the character of property rights gives local populations certain leverage in their claim-making strategies. Most land in Papua New Guinea is 'owned' communally under customary forms of tenure, and so companies cannot operate unless recognised community groups grant access to land. This communal authority over land becomes a mechanism for negotiating access to benefits and income streams from the mine. However, the ability to leverage this authority is greater at those moments when mine leases are to be issued or renewed; it then tends to diminish over time until leases have to be renewed. Furthermore, exercising this authority and determining *who* will receive benefits can expose deep internal divisions and fractured politics within communities over representation, who constitutes community in relation to the mine, and the inability to get all parties to agree. Claim-making processes produce new insiders, outsiders and coalitions within pre-established communities, making the relationship to the mining company a key factor in determining individual and group access to resources and representation.

In a context in which broader civil society is weak, and the national polity is diverse and differentiated (with more than 800 distinct language groups in a national population of just over 8million spread over 600 islands), there is relatively limited national-level 'resistance' to mining. This has meant that, in instances in which local populations have not been able to secure concessions or protect their rights, they have had to depend constructing local-global coalitions rather than local-national alliances. Such coalitions can often be opportunistic and fleeting for both claim-makers and external organizations. These relationships can open access to transnational venues for claims making, but they have rarely lasted long, as discussed below in relation to the Porgera mine.

While claims have often been cast within moralities of mutual dependency that recognise the authority of the company as benefit provider, and of the community as arbiter of land access, recent years have shown that basic questions of political economy – such as the distribution of revenues between local, national and multinational stakeholders – still lingered (see Banks and Namorong 2018). Indeed, these themes have gained prominence since the mid 2010's, as there has been increasing concern expressed by politicians, journalists, academics and the general public about the limited benefits that flow from mining to the national economy, and to the state. With the PNG state retaining less than 5 percent of the value of minerals produced (Banks and Namorong 2018, EITI 2019), and companies paying hardly any corporate tax for a number of years,[3] political overtures towards resource nationalism have increased (as has also been seen in other countries: Andreucci; Radhuber; Lander, 2020; Hatcher, 2016). Arguments that the nation should have a more prominent role in resource extraction are strengthened by actual experiences, such as community and state ownership of the Ok Tedi mine, local government ownership of the Bougainville mine, state control over a sizeable share of oil and gas resources, and ongoing claims for increased state ownership of the Porgera mine. This increased state involvement, however, reduces the space for state-community coalitions and is not always viewed favourably by local populations who have, since independence, viewed state equity in mines with suspicion on the presumption it means the

[3] While there are a range of other taxes, for the four-year period 2014-2018, they amounted to very little (based on EITI data).

state will seek to maximise profit above all else. In this context, customary land ownership becomes a less secure basis of authority as a means of making claims on state owned and, in some cases, operated mines.[4]

As a way of illustrating the plurality of shifting actors, authorities and forms of claim-making, a brief potted history of such claims over the last 30 years at the Porgera mine is useful. After a set of 'tough' negotiations, and Papua New Guinea's first multi-stakeholder Development Forum (Filer 2008), the Porgera mine began construction in 1989, and started producing gold two years later. The spectacular success of the mine – in 1992 it was the world's third largest gold producing mine and the largest outside South Africa – produced a claim by the State for an increase in their initial 10% equity in the project, half of which was (and still is) held by the Provincial Government and mining lease landowners. Warnings of the impact on investors of such claims did not stop the state securing an additional 15% from the then three corporate players (nor did this deter further investors). By 1994, local alluvial miners who had worked the river downstream from the mine for more than 30 years began a campaign for compensation for loss of access to the alluvial resource due to it being covered by sediment and waste from the new mine. A government-mediated settlement was reached and one of the leaders of the campaign subsequently became the local Member of Parliament (Biersack 2006). In the mid-1990s, an internationally coordinated campaign against the riverine disposal of tailings from the mine developed, and while the mine increased the corporate environmental monitoring and outreach activities to downstream communities, it did not change its waste disposal practices (Kennedy 1996, CSIRO 1996).

From the turn of the 21st century the focus shifted to disputes between the mine and local small-scale miners who started accessing the waste dumps and the open pit to recover ore that they would then process using rudimentary methods (typically involving mercury). This quickly became a major operational and law and order issue: at times over the course of the next 20 years, mine security have shot intruders, armed gangs of illegal miners have occupied

[4] The Ok Tedi and Tolokuma mines are currently state owned.

and closed the open pit, and people have fallen from the steep pit walls and been killed. Various methods – including a US$50million security 'fence' around the open pit, and a local reporting system tied to community payments – have failed to resolve the issue. The heightened securitisation associated with this also brought about another issue: assaults, rapes and murders, and other human rights abuses of locals by the mine security personnel. From 2010 onwards this again brought the attention of international NGOs after pleas to the state to resolve these abuses had no effect. Amnesty International (2010) and Human Rights Watch (2011) produced reports on these abuses, and after an initial denial, Barrick Gold agreed to a restitution framework for the women involved (Barrick Gold 2011), although this has itself subsequently been criticised (Columbia Law School Human Rights Clinic and Harvard Law School International Human Rights Clinic, 2015). Most recently (2020), the inability of the state, mining corporation, and local populations to agree on the terms of the renewal of the mining lease for another 20 years has led to the cancellation of the lease and the withdrawal of the operators (Barrick and Zijin) from the site. Legal action by the mining company, and possible arbitration in international courts, has begun.

Each of these events, claims and counter-claims, campaigns and conflicts have been focussed around different matters, and most of the campaigns have been of limited duration. The effectiveness of the claim-making in achieving their aims has likewise varied: for some, compensation has been agreed, greater State equity achieved, and restitution frameworks put in place, but many other conflicts remain obdurate and unresolved. The modes of claim-making outlined above are all set against a 30-year history of on-going, small-scale and morphing claims, contests and disputes. There is an element, from the local point of view of '*triam tasol*' – if one approach does not work, then try another. Hence negotiations, lawyers, arguments, international NGOs, violence, consultants and academics have all been enlisted by local populations as ways of advancing their claims as the impacted "community" which interfaces with the mining company and state agencies at different times. This broadening of claim-making over the past 30 years has allowed some specific claims to be resolved, but the effects of the mine are complex, varied, and dynamic, and the inequalities in the "community" are

huge. At the end of the day, structurally, the mine and its effects persist, while the gold continues to flow.

5b. Mongolia: transnational claim-making as opportunity and enclosure

In the early 1990s amidst the collapse of the Soviet Union, Mongolia's colossal mineral reserves (valued at 1.3 trillion USD) were quickly identified as a much-needed source of revenue for the country's depleted coffers. The ensuing fast expansion of the mining frontier in the country was forged on neoliberal norms championed by the IFIs, notably a series of World Bank technical assistance projects (Hatcher, 2014). By the mid-1990s, Mongolia had adopted one of Asia's most liberalised mining regimes and shy of ten years later, the country had positioned itself as one of Asia's key mineral producers, with mining rent accounting for 23.4 per cent of GDP in 2017 (EITI, 2020).

With the fast expansion of the mining frontier, social tensions across the country have been on the rise, particularly as a result of conflict over land and water use between miners and Mongolia's semi-nomadic pastoralists which constitute approximately 20 to 30 per cent of the population. In the first decade of the mining boom (2003-2013), Mongolia's first environmental social movements emerged out of rural areas (Byambajav, 2012, 2015; Lander, 2020). Known as the River Movements, this civil society mobilisation engaged in direct political actions (e.g. mass protests, blockades), as well as efforts to introduce new legislation prohibiting mining activities near headwaters, rivers and forests (see Lander, 2020: 176-177). Strategically, this mobilization has been embedded within an environmental discourse that closely resonated with the country's history and culture of nomadism and a strong state presence (see Ahearn, 2019; Lander 2020; Sneath, 2010), with claims based on customary land norms and entitlements, national environmental legislation as well as constitutional rights to a healthy and safe environment. Alongside the River Movements, the number of environmental NGOs rapidly grew, some aligning with the direct action, litigious approach of the River Movements and others seeking more collaborative relationships with government ministries and corporations.

Since the end of the commodity boom and the economic slowdown in China, which consumes 89 per cent of Mongolia's total exports (Ernst & Young, 2015: 2), the political spaces

to contest the country's mining regime have substantially contracted. The pursuit of an FDI-led extractive economy has severely exposed the state to the fluctuations of global commodity markets, as well as investor backlash for seeking to reintroduce stronger state interests in the mining economy between 2006 and 2012 (Lander, 2020). The fall of global commodity prices coincided with spiralling FDI in 2013, leading to a reorientation of the mining and investment regime towards liberal regulatory norms.[5] Alongside attempts to stabilise Mongolia's investment environment, the government clamped down on the "politicised" River Movements by criminalising the key leaders in September 2013. Since then, civil society organisations which pursue more conflictual, litigious strategies have been side-lined within the Mongolian environmental movement, partly facilitated by the institutional preference of the Mongolian Environmental Civil Council (ibid., 176), in favour of "collaborative" multi-stakeholder partnerships where NGOs are brought into a "constructive" dialogue with government and corporate actors to promote social and environmental responsibility in the sector (ibid., 180).

Within the wider context of narrowing and fragmenting political space to contest mining at the national level, impacted populations have resorted to project-specific accountability mechanisms. This is particularly so in the South Gobi where the brunt of the mining boom has been felt. Here local pastoralists have had to compete for land and their livelihoods with two of the world's largest mines,[6] with increasingly heightened tensions over water, pollution and compensation. The conflict between local residents and these mega-mines has occurred in the context of a "selectively absent" state which delegates its authority to manage socio-environmental and redistributive claims onto extractive firms by legislatively mandating the *local* negotiation of benefit sharing agreements as a mechanism to smooth state-investor relations at the national level and maintain the expansion of the extractive frontier (Lander, 2020b; generally see Szablowski, 2007, 2019).

Furthermore, the region has felt the absence of the state's regulatory presence in relation to the uneven enforcement of provisions for the mines' social and environmental impact

[5] As a result, in 2017, the state sought a USD 5.5 billion bailout package from the International Monetary Fund.

[6] In addition to the ten other significant mining projects currently underway in the South Gobi region alone, it is also home to two of the world's largest mining projects: Oyu Tolgoi, expected to become the third largest copper-gold mine, and Tavan Tolgoi, boasting significant reserves of high quality thermal and coking coal.

assessments, with key aspects of such requirements being hurried, ignored and/or delegated to private actors.[7] In the early years of Oyu Tolgoi's development, the country's largest mine, pastoralists were also resettled without compensation or real consultation. Lacking any kind of property right that could legally challenge their displacement, the loss of winter shelters for herds and access to wells, pastoralists were left feeling frustrated, humiliated and with a sense of hopelessness, unable to access justice through local courts or through the local government, which was incentivised to cooperate with the company through benefit sharing agreements.[8] These sentiments were echoed by herders living in the vicinity of Tavan Tolgoi's coal road, whose livestock suffered injury and death as a result of road accidents, and whose land and water sources became degraded as a result of raw coal pollution (Focus Group with South Gobi herders, July 2019).

Consequently, as a last resort, local pastoralists in the South Gobi sought to trigger transnational complaint mechanisms available through the international financial structure of each project.[9] In 2012 and 2013, two claims were made to the International Finance Corporation's (IFC) Compliance Advisor Ombudsman (CAO) in relation to the "impacts [of Oyu Tolgoi mine] to land and water, indigenous culture and livelihoods, compensation and relocation, [and] project due diligence" (CAO, 2019a), as well as to the diversion of the Undai River attached to the development of the second phase of the mine (CAO, 2019b). The CAO facilitated a process of dispute resolution between the complainants and the Oyu Tolgoi Project, which led to the creation of a "Tripartite Council" (TPC) mandated with the task of discussing and resolving issues related to matters raised in the complaints, and overseeing two agreements signed by the parties in May 2017 over areas of key concern to the herders related to pastureland, water, waste dumping, river management, and support for the local herding economy, among others. Comprised of representatives of the mine, herders and the local

---

[7] For an analysis of Oyu Tolgoi's flawed Environmental and Social Impact Assessment, see: Goodland (2012); Hatcher (2020); OT Watch et al. (2012); United States Treasury (2013).

[8] Gobi Soil Director (local pastoralist NGO), personal communication, July 2019. With local governments in the South Gobi increasingly dependent on maintaining positive relationships with mining companies as a result of mandatory benefit-sharing agreements, they now offered limited support for pastoralist concerns.

[9] The involvement of the European Bank for Reconstruction and Development and the Organisation for Economic Cooperation and Development in the Tavan Tolgoi Project and the International Finance Corporation (IFC) in the Oyu Tolgoi Project gives local populations recourse to a complaint mechanism as part of these development banks' investment performance standards.

government, the TPC is being hailed as “historic” (Edwards, 2017). For the herders who lodged the complaint, the Council is a welcome new arena to voice their concerns and continue to monitor the agreements now that the CAO has concluded the complaint (Focus Group with South Gobi herders, July 2019).

Notably, the TPC explicitly recognises herders in the vicinity of the Oyu Tolgoi mine as a distinctive group with their own representation system apart from locally elected officials. While this sounds like a straightforward victory, Prior to the complaint process, herders in the vicinity of the mine had not adopted or sought a collective identity on the basis of their livelihood. However, mutually entangled processes of claim-making and corporate recognition of the distinctive impact of the mine on pastoralists has led to the formation and articulation of a new kind of ‘affected’ community (Jokubauskaite, 2018) in the South Gobi. This recognition and status offers a vehicle for the articulation of pastoralist interests, but it does so in a highly mediated way that allows private governance to impact public rights with little accountability. As Lander (2020, 93) argues elsewhere, this global dispute resolution process, facilitated by the CAO, assumes ‘a distinctive quasi-judicial structure… which involves recognition of standing (based on impact and identity), creating systems of community representation, evidence gathering and the negotiation and acceptance of new terms for the relationship.’ In this sense, private actors – a corporation and an investment bank – broker and oversee ‘new procedures, parameters and platforms which channel social conflict in “constructive” directions’ (ibid.). Concretely, it is illustrative to note that the CAO process that led to the TPC has side-lined the attempts from claimants to trigger the IFC’s Performance Standard 7 on Indigenous Peoples (IFC, 2012). Rather, the claimants explained that throughout the mediation process they were encouraged “to reach the middle point” (Focus Group with South Gobi herders, July 2019). This “middle point” required the pastoralists to accept a framework that has no real capacity to adjudicate or ameliorate the violation of rights and entitlements through legal sanctions that could enforce remedies from the corporate and investment actors (Lander and Hatcher, n.d.; also see Bhatt, 2020).

Furthermore, the categorisation process of who consists of a “herder” within the tripartite grouping is made even more complex by virtue of the ongoing relevance of the

authority of the local government, as election to the TPC is conducted by the district administration for people living within a certain area, rather than on the basis of livelihood. Consequently, this tension between the TPC as a new private institution coexists uneasily with sub-national public administration, and has exposed the newly defined group to infiltration by non-herding individuals who incidentally also represent local business interests. This raises concerns about the development of the TPC as a vehicle for corporate and private business interests in the long-run (Hatcher and Lander, n.d.). Furthermore, the herders involved in the TPC are bound by confidentiality agreements, which insulates these small groups from other herders and national and international-level advocacy groups.

Overall, despite some obvious short-term benefits for local herders in terms of formalising and anticipating ongoing negotiations with the company, the TPC can be seen as part of “enclosure” efforts increasingly typical of the making of territories of extraction whereby local claims are funnelled towards a substantially privatised and insulated governance arrangement that remains dislocated from broader legal public spaces (Szablowski, 2019). The CAO-facilitated mediation process effectively cuts herders off from realising the full application of indigenous status and diverts questions of public rights and recognition away from authorities that rule in these terms towards a new forum that is premised upon private interests and stakeholder-based norms. The TPC has created new opportunities for ‘quieter registers’ of power to be exercised (Frederiksen & Himley, 2019: 9) as the boundaries of “community” are mediated by NGOs, manipulated by local politics of patronage, and quietly determined by the opaque assessment of private ombudsman associated with the very financial institutions supporting the project. Hence while the TPC has opened up new opportunities for herders to participate in the governance of key agreements with Oyu Tolgoi to some extent, this “opening” has many of the qualities of a *cul-de-sac* rather than a clear pathway to rights realisation.

5c. El Salvador: multilevel claim-making to change national policy

As thirteen years of civil strife came to an end in El Salvador, the warring parties, the government and the Frente Farabundo Martí para la Liberación Nacional (FMLN), negotiated

what became known as the Chapultepec Peace Accords of 1992. The accords laid out commitments to broaden political participation while leaving in place the open market economy model that privileged private investment. In keeping with this commitment, which reflected as much the influence of the US Embassy on the Peace Process as that of national elites, the following years saw legal and policy changes that increased protections to private sector investment in general, and the mining sector in particular (Spalding, 2013, 2018). In addition to reforms to the mining code, companies were allowed to take their investment disputes to the International Centre for the Settlement Investment Disputes (ICSID, part of the World Bank Group), bypassing the national court system. These changes went largely unchallenged and unnoticed by civil society organizations which were primarily focused on securing the political bases to the transition to democracy, together with human rights issues.

While El Salvador did have some pre-war history of mining, reforms such as these were intended to increase the economic weight of the sector. During the late 1990s and 2000s, the number of mining concessions increased (Spalding, 2013). Concession holders were primarily junior companies, many with a base in Canada. During the early 2000s, as company presence became apparent, community-based organizations began to challenge mineral exploration, often in conjunction with Roman Catholic priests and church related organizations (Nadelman, 2015). Some of the most organized resistance to mining occurred in departments that had been particularly supportive of the FMLN guerrilla forces during the civil war (Cartagena, 2009). With time, national and international NGOs began supporting these efforts, with Oxfam America and the Institute for Policy Studies (Broad and Cavanagh, 2011) playing important roles in facilitating lobbying and visibility in North America, as well as offering support to organizations in El Salvador.

Within El Salvador, a group of ten civil society organizations created a Roundtable Working Group (or "*Mesa*") against mining in 2005 (Spalding, 2013). The *Mesa* became an important vehicle for projecting the concerns that a series of community-based, non-governmental and church-based organizations had about mining into national debate, both in

the public sphere and more directly with government. Though sometimes crafted as "community" concerns, these were more accurately a composite of the worries of various civil society interests. The national Roman Catholic Church became increasingly vocal, suggesting that El Salvador's social and environmental problems were too significant for the country to be able to absorb the risks and conflicts that would likely accompany the emergence of large-scale mining (Nadelman, 2015). Strengthening these arguments, a university sponsored public opinion survey in 2007 showed that a majority of Salvadorans were opposed to mining (IUDOP, 2008). The *Mesa* began to argue that El Salvador should prohibit all large-scale mining because of the threat that it would imply for already fragile national water resources, targeting its arguments towards both national government and national public opinion (Achtenberg, 2011). Some local groups representing impacted populations also took their claims of rights abuses to the Human Rights Procurator's office, which over time became increasingly supportive of these positions. While other local interests remained more supportive of mining, they were less successful in gaining traction in national debate.

These processes were accompanied by gathering contention and periodic violence, and a number of activists were murdered. This violence and the associated problems of governability led the Minister of the Environment to place a *de facto* moratorium on mining in 2006/7. This was done by halting the processing of all impact assessments and other approval procedures that companies needed to undergo if they were to move their projects forward. National Presidential elections in 2008 offered a venue for community-based, civil society and Church organizations to target their claims at the national level, and at national candidates. This strategy was successful. The FMLN candidate for President, Mauricio Funes, committed on the campaign trail to prohibit mining should he be elected (which he subsequently was).

While civil society targeted its claim-making primarily towards national scale institutions (albeit mobilizing and/or partnering with international allies who amplified their case on the international scale, mostly in the US and Canada), mining companies took their concerns to the courts at both the national and international scale. Once the *de facto* moratorium began, two

companies (Pacific Rim Cayman LLC. and Commerce Group Corp., San Sebastian Gold Mines Inc.) initiated legal proceedings against El Salvador under the terms of the ICSID Convention, available to investors through provisions of domestic investment law as well as the Central American Free Trade Area (CAFTA) agreement. Once Funes was elected in 2009, the companies activated their claims at ICSID, and arbitration proceedings began. These proceedings pulled the Government of El Salvador into this transnational venue requiring it to acknowledge a new authority in the conflict. In due course, civil society followed in a support role – either by sharing information with the lawyers defending El Salvador in these disputes, or through US based allies who, inter alia, filed *amicus curiae* (Friend of the Court) briefs in support of El Salvador's position.

Having begun as localized mobilizations that targeted claims about mining's impacts on local populations at companies and toward the national government, by 2009 civil society organizations were making claims across scales from the subnational to the international, and arguing that the 'national community' had an interest in banning mining because of the potential impacts on national water resources. Meanwhile, companies were also making their case about the benefits of mining (and the rights of companies) at these same three levels. For all parties, this claim-making combined efforts to sway public opinion, influence government opinion, and win legal opinion. That said, the election of Funes gave the national level particular resonance. The *Mesa* pressured Funes to deliver on his campaign commitment to prohibit mining, combining indirect channels through their close contacts with FMLN legislators, with public statements and periodic direct engagements with the Executive. The Executive, however, felt constrained by the ICSID proceedings. The claimant company, Pacific Rim (later Oceana Gold)[10] was arguing that its future returns on investment had been expropriated for political reasons as opposed to legitimate technical and legal reasons, and the lawyers representing El Salvador in Washington DC advised the government that to pass a law banning mining would strengthen the claimant's argument. Meanwhile other parts of the government were

[10] Commerce Group Corp., San Sebastian Gold Mines Inc.'s claim was rejected on procedural grounds.

concerned that a ban on mining might undermine investors' belief in the government's commitment to contracts in general.[11]

By the 2010s, claim-making was firmly on a two-track strategy: to try and shape national debate on new mining policy that would ban mining, and to try and win the arbitration proceedings at ICSID. For government, the primary worry was the arbitration proceedings, because to lose them would not only cost the government dear, but also encourage other mining companies whose projects were on hold to take their disputes to ICSID also. For El Salvadoran civic organizations, the primary concern was to secure a law prohibiting mining in the country. In the end, concerns about outcomes at the transnational venue were those which dominated the government's calculations, and so it shifted its electoral commitment and in 2012 proposed a policy that would be less than a ban, but would effectively paralyse mining on the basis of strong technical arguments (thus protecting itself from Pacific Rim's legal argument that the government's refusal to process its environmental impact statement was a political act). This policy, which was presented to the National Assembly, proposed an indefinite suspension of administrative procedures for mining projects until government capacity constraints to adequately regulate mining were resolved. The proposal was, however, roundly rejected by the *Mesa* who presented the Assembly with their own counterproposal for a ban (for more on this process and the political calculations involved, see Bebbington, 2015; Bebbington et al., 2019; Spalding 2018).

Ultimately, neither proposal prospered until 2016, when the ICSID arbitrators ruled in favor of El Salvador on a technical issue rather than on the basis of any argument related to mining risk. The arbitrators concluded that Pacific Rim/Oceana Gold had in fact never secured permission from the local landowners for the construction of the mine, as required by law, and that therefore they did not have a legal basis on which to operate the mine, regardless of the EIA process (Pac Rim Cayman LLC vs. Republic of El Salvador, 2016). With the removal of the threat of massive compensation payments to mining companies, civic organizations saw the

[11] Much of this discussion draws on Bebbington's direct observations and interviews with government officials.

opportunity to move ahead again with a proposal for a national law banning mining. In a process that involved a progressively closer collaboration with the national leadership of the Roman Catholic Church, as well as opening channels of communication with some opposition legislators who shared concerns about national water resource security under conditions of climate change, civic actors began elaborating draft legislation. The Church collected signatures in favor of the law after celebrations of Mass, and in a final show of theatre, church leaders walked the petition and the proposal to the National Assembly, requesting that lawmakers pass it. On March 29th, 2017, the Legislative Assembly of El Salvador passed the law.

El Salvador's national ban on mining was the culmination of over a decade and a half's efforts on the part of diverse community based, civil society and public sector organizations. While the movement had used a range of strategies to contest mining and had presented claims in different venues at different geographical scales, these revolved around one constant: to secure a national law that would prohibit mineral extraction outright. This focus meant, necessarily, that the movement directed its actions at the institutions of national government. For a time, mining companies had also prioritized national government as the venue in which to make their claims, but after 2007 they steadily moved their focus to ICSID, a transnational dispute resolution venue. From then on, because the stakes were so high at this transnational scale, the ICSID process loomed over all other claim making and policy proposing efforts. This did not lead civil society organizations to change their focus, but it did nullify any likelihood that national government would respond to their claims even when some within key ministries were, personally, persuaded of the need for a ban on mining. Once ICSID removed itself from the equation, the national scale returned as paramount. Though the ban has been legislated, it has not yet been regulated, and doubts remain as to whether it will stand the test of time. For their part, companies have taken their attention back to the national level, with a lower profile, but steady public opinion campaign, trying once again to make the case for responsible mining as a vehicle of development in El Salvador.

The El Salvadoran case is one in which claim-making by impacted populations and civil society organizations has had the effect, ultimately, of strengthening state capacity relative to

mining companies. This was a two-decade process in which local community-based organizations initially contested the absences of the state in protecting rights and environments and its efforts to facilitate the creation of new territories of extraction, leading to a powerful expression of national "community" interests against mining. This had the effect of changing the tenor of national public debate on mining and of forcing the state to exercise authority over mining companies: first by paralyzing mine approval processes, then by conducting a review of mining policy, and ultimately bypassing legislation to ban mining. Each of these sequential outcomes was contingent on other factors, some more ad hoc than others, but their cumulative effect was to profoundly change the relationships of power and territorial authority among companies, civic organisations and the state in ways that have now placed companies in a far more dependent position.

6. Discussion of Case Studies

Reading the three country experiences of claim-making strategies side by side helps to show just how far the "idealised pageantry of extractive conflicts" that is reflected in much of the literature is, indeed, an ideal type. In Papua New Guinea, claim-making is rooted in direct relationships between local populations with customary land authority and companies, with very little state involvement. These populations have developed new senses of identity, community and dependency by seeking concessions and benefits directly from companies. As they do not see the state as the primary mechanism through which to advance claims, they avoid engaging it. Conversely in El Salvador, claim-making has been primarily targeted towards the central state, with prominent civil society networks seeking national policy and regulatory change above all to protect water resources, framed as an interest of a national community. In Mongolia the pattern has been less stable over time, with claims made directly to companies at some times, government at other times, and transnational bodies at yet other times. Central to the legitimacy and efficacy of these claims at the local and national level has been the construction of a political narrative around pastoral nomadism, which has, in some cases, led to the recognition of new "community" identities within corporate conflict resolution mechanisms.

These differences have several explanations. At one level they reflect different cultures of contentious politics: more bilateral and personalised in Papua New Guinea (and Melanesia), more state-centred in El Salvador (and Latin America), and relatively individualised and fragmented in Mongolia (and recently post-communist societies). They also reflect differences in community land rights. Strong customary land rights in Papua New Guinea have given communities significant leverage and encourages them to engage in direct negotiations with companies (the sheer physical distances, or inaccessibility, of mine sites from seats of government authority also encourage this). The rights of the owners of surface property were what ultimately led ICSID to find in favour of the Government of El Salvador. Conversely in Mongolia, pastoralists' lack of any kind of property rights that could legally challenge their displacement generally gives them little or no direct leverage with companies. The lack of land rights, even for customary use, has also meant that companies do not have to negotiate with pastoralists themselves in order to secure land access.

These different patterns also reflect varying public views on the legitimacy and desirability of mining. In Papua New Guinea, while there is a distrust of mining companies, there is also a belief that mining is a source of development. This belief nourishes strategies that seek benefits rather than ones that aim to block mining investment, shaping "community" engagement in directions which while they may appear conflictual, are typically seeking more collaborative outcomes. El Salvador sits at the other extreme. Public opinion was heavily against mining which meant that making claims for benefits directly to companies made no sense and allowed an alternative *national* "community" discourse to emerge alongside state-corporate negotiations. Mongolia lies somewhere between these extremes. Early social movements focused on calling for new environmental legislation and effective regulation (targeting the state as the key authority), but this state-focused advocacy has been fragmented by threats of criminalization and incentives to collaborate directly with companies to support "socially and environmentally responsible" mining practices. Increasingly, civil society organizations and local populations are relying on specific categories of identity and impact to pursue claims as a kind of "traditional", almost-indigenous "community".

Fourth, these differences reflect the distinct ways in which the state has been "strategically absent" and "strategically present" in the three countries. The cases make clear the synergistic relationship that exists between degrees of state absence and large-scale extractive enterprise. In all three cases these enterprises required a certain form of state presence in order to establish themselves (i.e. a presence that consisted of laws, policies and norms that facilitated and legalised company access to natural resources). At the same time, degrees of state absence in other domains (taxation, socio-environmental monitoring, human rights commissions, social services etc.) created space for companies to assume a more public role as the actor leading the organization of territory. However, companies can also overplay this hand in ways that ultimately bring state authority back into the territory in ways that do not suit corporations. This phenomenon is reflected in the examples of growing resource nationalism in Papua New Guinea, and the mining ban in El Salvador.

In none of the countries is it the case that the state is involved in an across the board retreat. In Mongolia, the state has organized its absences and presences with a view to catalysing and then sustaining the rapid growth of mining, a strategy that has led it to repress protest at certain times and funnel local grievances and conflicts with companies into nationally legislated benefit sharing agreements (Lander, 2020b). And in the case of Oyu Tolgoi, the country's largest mine, the state has watched from the side line as the CAO process led to the creation of a new institution (TPC) that recognizes pastoralists as a distinctive group. In Papua New Guinea, the state has been largely absent; its primary role has been to delegate authorities to the corporation, and to seek to securitise the operations on behalf of the investors. In El Salvador, the state, albeit weak, has been forced to be present in the regulation of extraction, in large measure because of the strength of conflict and claim-making by civil society actors. In each country, the initial role assumed by the state was, above all, to facilitate investment by private sector mining corporations. The state has sustained this role in Mongolia and Papua New Guinea (albeit with increasing nods towards resource nationalism in the latter case), while in El Salvador the state was forced to change its primary role as a result of social protest. This final observation draws attention to a final factor: the relative strength of civil society organizations, NGOs, and social movements. The stronger these are, the more they are able to

pull the state back into the arena of claim-making and extractive industry regulation. El Salvador stands out in this regard.

That said, in each country, the number and range of authorities exercising influence over actual or potential extractive territories has increased over time. These new authorities have become relevant because of the financing of mining projects (this brought in the IFC and the CAO as an authority in Mongolia), the domicile of mining companies (which at different times has brought in Canadian and Australian civil society and the specific bodies of law in these countries as potential authorities for claims in Papua New Guinea and El Salvador), and trade agreements and investment laws (which brought in ICSID as a relevant authority in El Salvador). These new authorities each opened up additional venues for claim-making – in some cases this has given pre-existing communities more opportunities (e.g. the Ok Tedi case in Papua New Guinea: Kirsch, 2014), but in other instances these strategies have either led to emergent – and precarious – constructions of community with limited rights (Mongolia) or catalysed defensive responses at the national level (El Salvador). Furthermore, these responses are structured in response to the specific national and institutional qualities of these new sources of authority. For example, particular legal arguments and coalitions have to be built to respond to the specificities of ICSID, while the companies' host country legislation structures possibilities of recourse (Kirsch, 2014).

Across all cases, mining companies themselves have become increasingly relevant exercisers of authority over territory – a power that has been given them by government, by the nature of project finance arrangements and also by virtue of opportunities the companies have simply taken. Over time, the spaces for claim-making and protest have opened and closed in each country, and civil society organizations have adapted their strategies in response to this. These responses have tended to involve re-scalings of these claim-making strategies and the articulation of different representations of the impacted "people" in the corporate-state-community-conflict model that dominates EI governance paradigms and discourses.

7. Conclusion

In summary, we return to the larger questions laid out at the beginning of this paper. Firstly, the three case studies strongly suggest that pluralisation in claim-making strategies is positively associated with state absence (whether strategic or otherwise). In both Papua New Guinea and Mongolia, close negotiations and encounters between companies and local populations have emerged by virtue of the state having taken a relative backseat in terms of regulation, whether as a result of domestic land tenure systems ceding significant power to recognised communities (PNG) or as a result of significant transnational pressures for the state to deregulate (Mongolia). The El Salvador case bears this out, as strengthened state presence correlated with declining space for alternative corporate authorities.

Related to this point, it is notable that contexts with a stronger state *regulatory* presence in the extractives sector allow for the emergence of vocal and coordinated instantiations of "community resistance" by the local population and civil society in relation to mining activities. In El Salvador, a strong sense of *national* community interests emerged over public debates on mining's possible impacts on the country's water resources and then a highly visible and politicised international arbitration case. However, where the state is ambivalent or takes strategic positions of absence to facilitate investment flows and extractive exports, claim-making strategies inevitably become more fragmented and more vulnerable to the exercise of the "quieter registers of power" (Frederiksen & Himley, 2019: 9) on the part of corporate and financial actors. While some local populations, as in PNG, may not be immediately concerned about the entanglements of patronage and dependency, the exercise of private power over public matters raises profound questions about the political authority and accountability of mining companies in extractive contexts, particularly given their repeated adamance that they are not "political" actors.

Second, the existence of increasingly diverse actors that are able to exercise authority over extractive territories often weakens local populations' abilities to assert their rights vis-à-vis their states. In part, these actors acquire this authority because it is delegated to them by host governments, either because these governments withdraw from the provision of services and remedies or because they surrender such authority by virtue of their participation in trade and investment treaties, contracts and policies. In other instances, these non-state actors

simply assume such power and use transnational law to legitimise it in order to defend their interests within a territory (as in the case of investors, for instance) (Lander, 2020). Unless the state is taking a pro-active regulatory role and maintaining a strong sense of presence in relation to the extractive project, local populations begin to interface primarily with a pre-established contract-based legal order (Bhatt, 2020) where project finance and land concession agreements pre-emptively seal conditions around displacement processes, compensation agreements, environmental rehabilitation, and so on. If the state is unwilling to attract a potential arbitration case by challenging the terms of a contract, it is unlikely that local populations will get very far with domestic challenges on the basis of citizenship rights. Consequently, local populations tend to "go local" or "go global" in their claim-making strategies with corporations in search of an angle through which to achieve recognition as a relevant *community* for the mining company to consider. While in PNG that local communal position is already well-established through a strong system of customary land tenure (vis-à-vis the state), Mongolian pastoralists are in the more precarious position of having to actively carve out a distinctive group identity so that they "feature" in extractive negotiations in a way that triggers at least certain benefits and standing, if not rights. In either case, local populations expend significant energy and resources interfacing with corporations, trying to achieve greater margins in the shadow of largely pre-set legal and political relations at the national and transnational levels.

Finally, we conclude by responding to the question we posed at the beginning of the article as to whether or not plural claim-making opportunities are emancipatory or constricting for local "communities". There cannot be a universal answer to this question, given the variety of experiences around the world and the reality that the answer may be different at different phases of a project's life cycle. However, overall we argue that the plurality of opportunities is likely to be of most benefit to groups which already hold distinct identities and rights within the state, such as recognised indigenous communities and other populations with legally recognized land rights. These local populations are more likely to hold long-term sway over the terms of negotiations, and may be able to exercise significant power of their own in relation to mining companies and other transnational bodies.

In contexts with established national systems of recognition (i.e., citizenship) with histories of strong state presence in the economy – as in Latin America and post-socialist Central/East Asia – plurality arguably allows states to steadily “absent” themselves. Not only do local populations face the jarring reality that their state may not support their national rights, but they then have to navigate a whole new world of soft legal norms, informal negotiations and transnational networks to launch claims. Unless they are already recognised as a vulnerable or special group by virtue of national law, populations have to prove their ‘affectedness’ (Jokubauskaite, 2018) to merit a place at the table of “corporate-community” engagement. Not only does this reality make a mockery of national guarantees like constitutional rights, but makes it virtually impossible for local people across a national state to be treated with parity. Instead, certain entitlements accrue to certain groups in relation to certain mining projects, leaving some prosperous and others impoverished. If plurality emerges due to state absence, it will likely leave “communities” more precarious in the long-term, unless they can gain a degree of recognition that is equally as secured by the state as the mining contract.

References

Achtenberg, E. 2011. A mining ban in El Salvador? *NACLA: Report on the Americas*. Retrieved from https://nacla.org/article/mining-ban-el-salvador.

Ahearn, A. (2019) 'The New Mongolian State Herder: Examining Invocations and Improvisations of the State in Rural Mongolia.' *Annals of the American Association of Geographers* DOI: 10.1080/24694452.2019.1638750

Arellano-Yanguas, J. (2011) 'Aggravating the Resource Curse: Decentralisation, Mining and Conflict in Peru.' *The Journal of Development Studies* 47(4): 617-638.

Auld, G., Betsill, M., VanDeveer, S.D. (2018) 'Transnational governance for mining and the mineral cycle.' *Annual Review of Environment and Resources* 43: 425-453.

Ballard, C. & Banks, G. 2003. 'Resource Wars: Mining and Anthropology. Annual Review of Anthropology.' 32:287–313.

Banks, G. 2009. 'Activities of TNCs in Extractive Industries in Asia and the Pacific: Implications for Development.' *Transnational Corporations* 18(1): 43-59.

Banks, G. 2019. Extractive Industries in Melanesia. In E. Hirsch and W. Rollason (eds) *The Melanesian World* (pp. 501-516). Routledge.

Banks, G. and Namorong, M. (2018) PNG's disappearing Resource Revenues. DevPolicy Blog. https://devpolicy.org/papua-new-guineas-disappearing-resource-revenues-20180815/

Banks, G., Kuir-Ayius, D., Kombako, D., & Sagir, B. (2013). Conceptualizing mining impacts, livelihoods and corporate community development in Melanesia. *Community Development Journal* 48(3), 484-500.

Barrick Gold (2011) Addressing Violence Against Women at Porgera. https://barrick.q4cdn.com/788666289/files/porgera/Progress-on-Human-Rights-at-Porgera.pdf

Bebbington, A., Abdulai, A. G., Humphreys Bebbington, D., Hinfelaar, M. and Sanborn, C. 2018. *Governing Extractive Industries: Politics, History, Ideas.* Oxford: Oxford University Press.

Bebbington, A. 2015. “At the Boundaries of La Política: Political ecology, policy networks and moments of government,” pp. 198-208 in G. Bridge, J. McCarthy and T. Perreault (eds.) *Handbook of Political Ecology*. London: Routledge.

Bebbington, A., Fash, B., Rogan, J. 2019. “Socio-environmental conflict, political settlements and the governance of extractivism: a cross-border comparison, El Salvador and Honduras.” *Latin American Perspectives* 46(2): 84-106.

Bhatt, K. I. 2020. *Concessionaires, Financiers and Communities: Implementing Indigenous Peoples’ Rights to Land in Transnational Development Projects.* Cambridge: Cambridge University Press.

Biersack, A 2006. Red river, green war: the politics of place along the Porgera river. In A. Biersack and J. Greenberg (eds) *Reimagining political ecology*. Duke. p. 233-280.

Bridge, G. 2004. Mapping the Bonanza: Geographies of Mining Investment in an Era of Neoliberal Reform. *The Professional Geographer* 56 (3), 406-421

Broad, R. and Cavanagh, J. 2011. Like Water for Gold in El Salvador. *The Nation*, July 11th, 2011.

Byambajav, D. (2012) Mobilizing against dispossession: Gold mining and a local resistance movement in Mongolia. *Journal of the Center for Northern Humanities*, 5: 13–32.

Byambajav, D. (2015) The River Movements' Struggle in Mongolia, *Social Movement Studies* 14(1): 92-97.

Campbell, B. (Ed.) 2009. *Mining in Africa: Regulation and Development*. Co-publication, London: Pluto Press, Ottawa: IDRC, and Uppsala: The Nordic Africa Institute.

Campbell, B. (Ed.) 2013. *Modes of Governance and Revenue Flows in African Mining*. Basingstoke, Hampshire: Palgrave Macmillan.

Campbell, B. and P. Hatcher 2019. ‘Neoliberal reform, contestation and relations of power in mining: observations based on the experiences of Guinea and Mongolia’, *Extractive Industries and Society*, https://doi.org/10.1016/j.exis.2019.06.010

CAO (Compliance Advisor Ombudsman) (2019a) ‘Mongolia / Oyu Tolgoi-01/Southern Gobi’, http://www.cao-ombudsman.org/cases/case_detail.aspx?id=191

CAO (Compliance Advisor Ombudsman) (2019b) ‘Mongolia / Oyu Tolgoi-02/Southern Gobi’, http://www.cao-ombudsman.org/cases/case_detail.aspx?id=196

Cartagena, R. E. 2009. Orígenes del movimiento de oposición a la minería metálica en El Salvador. *Estudios Centroamericanos*, 64(722): 497–501.

Carroll, T. 2012. 'The Cutting Edge of Accumulation: Neoliberal Risk Mitigation, the Baku-Tbilisi-Ceyhan Pipeline and its Impact', *Antipode*, 44(2): 281-302.

Cashore, B. (2002). 'Legitimacy and the privatization of environmental governance: How non-state market-driven (NSMD) governance systems gain rule-making authority.' *Governance* 15(4): 503-529.

Columbia Law School Human Rights Clinic and Harvard Law School International Human Rights Clinic 2015, *Righting Wrongs? Barrick Gold's Remedy Mechanism for Sexual Violence in Papua New Guinea: Key Concerns and Lessons Learned*, Columbia Law School and Harvard Law School, Columbia and Harvard Universities, http://hrp.law.harvard.edu/wp-content/uploads/2015/11/FINALBARRICK.pdf.

Cotula, L. 2013. 'The New Enclosures? Polanyi, International Investment Law and the Global Land Rush.' *Third World Quarterly* 34(9): 1605-1629.

Crane, A., Matten, D., and Moon, J. 2008. *Corporations and Citizenship*. Cambridge University Press.

CSIRO Environmental Projects Office 1996. Review of Riverine Impacts: Porgera Joint Venture. Dickson, ACT: CSIRO Australia. December 1996.

Cutler, C. 1999. 'Locating "Authority" in the Global Political Economy.' *International Studies Quarterly* 43: 59-81.

Cutler, C. 2003. *Private Power and Global Authority: Transnational Merchant Law in the Global Political Economy*. Cambridge: Cambridge University Press.

Doherty, B. 2020 "Papua New Guinea Chiefs call for halt to plan for country's largest ever mine." *The Guardian*, June 17th, 2020. https://www.theguardian.com/world/2020/jun/18/papua-new-guinea-chiefs-call-for-halt-to-plan-for-countrys-largest-ever-mine (accessed August 22nd, 2020)

Edwards, S. (9 August 2017). 'How a group of Mongolian herders took on a mining giant — and won', Devex. Available https://www.devex.com/news/how-a-group-of-mongolian-herders-took-on-a-mining-giant-and-won-90765

EITI Mongolia (Extractive Industries Transparency Initiative) (2020) ‘Overview’. https://eiti.org/mongolia

Ernst, T. 1999. ‘Land, Stories and Resources: Discourses and Entification in Onabasulu Modernity.’ American Anthropologist 101 (1): 88–97.

Ernst and Young (2015) Mongolia Mining and Metals Tax Guide: June 2015. http://www.ey.com/Publication/vwLUAssetsPI/tax-guide-mongolia-june- 2015/$FILE/ey-tax-guide-mongolia-june-2015.pdf

Filer, C. 1990. ‘The Bougainville rebellion, the mining industry and the process of social disintegration in Papua New Guinea.’ *Canberra Anthropology* 13(1) 1-39.

Filer, C. 2008. Development forum in Papua New Guinea: upsides and downsides. *Journal of Energy & Natural Resources Law*, 26(1), 120-150.

Frederiksen, T. and Himley, M. 2019. ‘Tactics of Dispossession: Access, Power, and Subjectivity at the Extractive Frontier.’ *Transnational Institute of British Geographers* 2019: 1-15.

Frederiksen, T. 2019. ‘Political Settlements, the Mining Industry and Corporate Social Responsibility in Developing Countries.’ *Extractive Industries and Society* 6(1): 162-170.

Goodland, R. (2012) ‘The Oyu Tolgoi Copper & Gold Mine Project: Comments on Chapter D1 of the ESIA: Environmental and Social Management Plan Framework’, October. http://www.bicusa.org/en/Document.102989.pdf

Harvey, B. and Bice, S., 2014. ‘Social Impact Assessment, Social Development Programmes and Social Licence to Operate: Tensions and Contradictions in Intent and Practice in the Extractive Sector.’ *Impact Assessment and Project Appraisal* 32(4): 327-355

Hatcher, P. 2016. Le boom minier de la Mongolie et la montée du nationalisme des ressources: tensions politiques, promesses électorales et normes néolibérales. *Canadian Journal of Development Studies* 37(4): 466-483

Hatcher, P. 2014. *Regimes of Risk: The World Bank and the Transformation of Mining in Asia*. Palgrave Macmillan: London.

Hatcher, P. (forthcoming). ‘Global Norm Domestication and Selective Compliance: the case of Mongolia’s Oyu Tolgoi Mine’, *Environmental Policy and Governance*.

Hatcher, P., B. Campbell and E. Roy-Grégoire (2016) ‘The Political Economy of Mineral Resource Governance and Children’s Rights: the Case of Mongolia’, Paper no. 2016-7, Geneva: UNRISD.

Hatcher, P. and J. Lander (under review) ‘Negotiating Political Spaces on the “Final Frontier”: Extractive Development and Transformations in the Practice and Governance of Citizenship in Mongolia’.

Huber, A. and Joshi, D. 2015. ‘Hydropower, Anti-Politics, and the Opening of New Political Spaces in the Eastern Himalayas.’ *World Development* 76: 13-25.

Human Rights Law Centre (2020) *After the Mine: Living with Rio Tinto’s Deadly Legacy*. Melbourne: Human Rights Law Center. https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5e7d7cce47c7f816da86005f/1585282297310/AfterTheMineRioTintoDeadlyLegacy.pdf (accessed August 22nd, 2020)

Human Rights Watch 2011, Gold's Costly Dividend: Human Rights Impacts of Papua New Guinea’s Porgera Gold Mine, Human Rights Watch. www.hrw.org/report/2011/02/01/golds-costly-dividend/human-rights-impacts-papua-new-guineas-porgera-gold-mine.

Humphreys Bebbington, D. 2013. Understanding the relationship between extraction, territory, inequality/inequity and conflict in the Bolivian Chaco. *Environmental Science and Policy* 33: 438-446.

Humphreys Bebbington, D., Verdum, R., Gamboa, C., Bebbington, A. 2018. The Infrastructure-Extractives-Resource Governance Complex in the Pan-Amazon: roll backs and contestations. *European Review of Latin American and Caribbean Studies 106*:183-208

IDS (Institute of Development Studies) (2011). Lessons from Social Protection Programme Implementation in Kenya, Zambia and Mongolia. Research Report 2011(69). http://www.ids.ac.uk/files/dmfile/rr69.pdf

International Finance Corporation (2012b) ‘Performance Standard 7 – Indigenous Peoples.’ IFC: online. www.ifc.org/ps7 Accessed 22nd November 2018.

IUDOP (Instituto Universitario de Opinión Pública) 2008. Conocimientos y percepciones hacia la minería en zonas afectadas por la incursión minera. Boletín de prensa, 23, No. 1. Retrieved on August 15, 2020 from http://www.uca.edu.sv/publica/iudop/Web/2008/Resumen-IUDOP-Mineria.pdf

Jokubauskaite, G. 2018. 'Tied Affectedness? Grassroots Resistance and the World Bank.' *Third World Thematics: A TWQ Journal* 3(5-6): 703-724.

Kennedy, Danny. 1996. "Ok Tedi All Over Again: Placer and the Porgera Gold Mine." *Multinational Monitor*, March 1996, 22-24

Kirsch, S. (2014). *Mining Capitalism: The Relationship between Corporations and their Critics*. Berkeley: University of California Press.

Lander, J. 2020. *Transnational Law and State Transformation: The Case of Extractive Development in Mongolia*. Abingdon: Routledge.

Lander, J. 2020b. "Community Development Agreements and the State's Extractive Strategy in Mongolia: Participatory Governance or Governance Participation?" in A. Paliwala and S. Adelman (eds.) *The Limits of Law and Development: Neoliberalism, Governance and Social Justice*. Abingdon: Routledge.

Li, T. M. 2014. *Land's End: Capitalist Relations on an Indigenous Frontier*. Durham, NC: Duke University Press.

Macdonald, K. and J. Nem Singh (Forthcoming) 'Resource Governance and Norm Domestication in the Developing World', *Environmental Policy and Governance*.

McGrath, F., V. Martsynkevych, D. Hoffman, R. Richter, S. Dugersuren and A. Yaylymova (2012) 'Spirited away – Mongolia's mining boom and the people that development left behind', CEE Bankwatch Network, Regine Richter, urgewald, OT Watch and Bank Information Center, http://bankwatch.org/sites/default/files/spirited-away-mongolia-mining.pdf.

McLennan, S and G Banks 2018, 'Reversing the lens: Why corporate social responsibility is not community development', *Corporate Social Responsibility and Environmental Management*, 1–10, https://doi.org/10.1002/csr.1664.

Nadelman, R. 2015. Let Us Care for Everyone's Home': The Catholic Church's Role in Keeping Gold Mining out of El Salvador. Center for Latin American and Latino studies (CLALS) American University Working Paper Series, No. 9. Washington DC: American University.

O'Faircheallaigh, C. 2013. 'Community Development Agreements in the Mining Industry: An Emerging Global Phenomenon.' *Community Development* 44(2): 222-238.

O'Faircheallaigh, C., 2015. *Negotiations in the Indigenous World. Aboriginal peoples and the extractive industry in Australia and Canada*. London: Routledge.

O'Faircheallaigh, C., 2017. Shaping projects, shaping impacts: community-controlled impact assessments and negotiated agreements. *Third World Quarterly* 38: 1181–1197.

OT Watch (Oyu Tolgoi Watch), Bank Information Center (BIC), Central and Eastern European Bankwatch (CEE Bankwatch), London Mining Network, Accountability Counsel, and Urgewald (2012). 'Review of the Oyu Tolgoi Copper/Gold Mine Environmental and Social Impact Assessment'. http://en.minewatch.mn/wp-content/uploads/2012/11/CSO-submission-to-EFIC.pdf.

Pac Rim Cayman LLC v. Republic of El Salvador. 2016. Award. ICSID Case No. ARB/09/12. Retrieved on December 10, 2017 from https://www.italaw.com/sites/default/files/case-documents/italaw7640_0.pdf.

Sneath, D. (2003) 'Land-Use, the Environment and Development in Post-Socialist Mongolia.' *Oxford Development Studies* 31(4): 441-459.

Spalding, R. (2018) "From the Streets to the Chamber: Social Movements and the Mining Ban in El Salvador." *European Review of Latin American and Caribbean Studies* No. 106 (2018): July-December, pp. 47-74

Spalding, R. (2013). Transnational Networks and National Action: El Salvador's Antimining Movement. In E. Silva (Ed.), *Transnational Activism and National Movements in Latin America: Bridging the Divide* (pp. 23–55). London: Routledge.

Strathern, A. 1991. "Company" in Kopiago, in Man and a Half: Essays in Pacific Anthropology and Ethnobiology in honour of Ralph Bulmer. A. Pawley (ed.) Auckland: The Polynesian Society: 612-615.

Szablowski, D. (2007) *Transnational Law and Local Struggles: Mining, Communities and the World Bank*. Oxford: Hart Publishing.

Szablowski, D. (2019). '"Legal Enclosure" and Resource Extraction: Territorial Transformation through the Enclosure of Local and Indigenous Law.' *Extractive Industries and Society* 6(3): 722-732.

Toumbourou, T., Muhdar, M., Werner, T., Bebbington, A.J. (2020) Political ecologies of the post-mining landscape: Activism, resistance, and legal struggles over Kalimantan's coal mines. *Energy Research and Social Science* 65 101476

United States Treasury (2013) 'United States Position: Mongolia – Oyu Tolgoi Mining Project'. Available https://www.treasury.gov/resource-center/international/development-banks/Documents/OT%20Position%20for%20Web%20Posting%20Feb%2028.pdf

Urgewald (2012) 'Review of the Oyu Tolgoi Copper/Gold Mine Environmental and Social Impact Assessment'. Available: http://en.minewatch.mn/wp-content/uploads/2012/11/CSO-submission-to-EFIC.pdf (accessed 4 May 2013).

Warnaars, X. (2013) 'Territorial transformations in El Pangui.' In *Subterranean Struggles: New Dynamics of Mining, Oil and Gas in Latin America* A. Bebbington and J. Bury (eds.) Austin: University of Texas Press.

West, P. (2006). *Conservation is our government now: the politics of ecology in Papua New Guinea*. Duke University Press.Young, S. (2019). *Indigenous Peoples, Consent and Rights: Troubling Subjects.* Abingdon: Routledge.