



# Post-extractive juridification: Undoing the legal foundations of mining in El Salvador

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## ABSTRACT

In 2017 El Salvador passed the world's first and only blanket ban on metal mining. This article explores this unique exception to the neoextractive path followed by much of Latin America since the early 2000s—an exception brought about by citizen-led lawmaking processes. Drawing from fieldwork research in El Salvador, I suggest that the ban was enabled not so much by a negative assessment of extraction-led development as by multiple other factors, including short-term electoral expediencies; the shared genealogy and history of grass-roots opposed to mining and left-wing governments; the ongoing convergence of nationwide anti-mining movements supported by the Catholic Church; and a lack of vested interests in the mining industry on the part of local elites. Indeed, a few years on from the ban, successive governments have not fulfilled their obligation to eradicate mining, with many activists fearing an eventual repeal. Crucially, citizen-led lawmaking aimed at undoing the neoliberal ethos of the legal architecture that has facilitated mining throughout much of Latin America has failed to address the colonial legacies of this architecture. Overall, the article argues that mining-free futures require comprehensive lawmaking endeavours that include both legislative challenges to neoliberal statecraft and a comprehensive overhaul and decolonization of the legal foundations of mining.

## 1. Introduction

On 29 March 2017, El Salvador became the world's first, and to date only, country to ban all forms of metal mining, whether industrial or small-scale and artisanal. With civil society anti-mining protagonists crowding the observation deck of the country's Legislative Assembly and yellow 'No to mining, Yes to life' banners festooning the seats of many left-wing deputies, the ban was passed by the Legislative Assembly with a majority of 69 out of 84 votes. When the Legislative Assembly's president announced the law's approval, the citizens attending the session cheered exuberantly while many deputies rose to applaud. This episode brought an end to over a decade of citizen-led political-legal mobilization that had made the ban its cornerstone. In a country where some regions had become water-stressed due to a lack of drinkable freshwater and where 90 percent of surface water sources had been deemed polluted by the Ministry of Environment in 2016 (CEPAL, 2011: 94; *La Prensa Gráfica*, 2016), many Salvadorans saw a ban on mining as an urgent and vital means of preserving life. For those advocating post-extractive futures to prevent a water crisis in Latin America and beyond,

it was also an episode that set an important precedent (Patterson, 2017).

To date, Costa Rica and Argentina are the only other Latin American countries to have established restrictions on mining, although their restrictions are far more limited than El Salvador's ban. In 2010 Costa Rica banned open-pit mining within its territory and any form of mining in protected areas.<sup>1</sup> Yet already-licensed open-pit mining projects could continue operating, as could already-licensed and future subterranean mines. Argentina, for its part, has passed eight provincial bans on industrial mining, but two have been suspended and a national law permits mining in the remainder of the nation's territory.<sup>2</sup> Aside from these partial bans, much of Latin America has intensively promoted extractive, export-oriented activities since the end of the 20th century, a development path that has been dubbed the 'extractive imperative' (Arsel et al., 2016a, 2016b) or the 'commodities consensus' (Svampa, 2019) given that it has been pursued by conservative and progressive governments alike. Mining has featured prominently within their extractive agendas; indeed, the region's share of global investment in mining surged from 12 percent in 1990 to 33 percent in 2000 (Bebbington et al., 2008: 897).

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<sup>1</sup> 'Costa Rica lawmakers vote to ban open-pit mining', *Reuters*, 10 November 2010.

<sup>2</sup> 'Factbox: Argentine legislation that targets mining', *Reuters*, 17 August 2010.

Even as statecraft and national sovereignty remain critical to facilitating mining ventures, these ventures have become part and parcel of planetary mining complexes composed of a constellation of infrastructures, technologies, financial corridors, and refashioned geographies of labour (Arboleda, 2020). In the new millennium, mineral extraction cannot be apprehended only from the geographies where mineral deposits are located; instead, we need to conceive of a delocalized ‘planetary mine’ which connects a variety of disperse resource-rich geographies to manufacturing centres in East Asia through global supply chains (Arboleda, 2020: 14). The legal foundations that govern mining and the processes thereof have been a crucial enabler of these planetary complexes (Arboleda, 2020: 92-111; Montoya et al., 2022). Conceived as a multi-scalar legal architecture, these foundations include the national constitutions that confer subsoil ownership to the state; the legislative and administrative regulations, developed in the 1990s by resource-rich states as conditions for World Bank and International Monetary Fund loans, that enable and promote foreign direct investment in mining; and the free-trade agreements and arbitration tribunals that have consolidated the preeminence of commercial international law over civil and human rights law (Montoya et al., 2022: 58-59).

This article explores the citizen-led process that led to El Salvador’s unique mining ban and placed the country on a path that diverged from the neoextractive one, largely mining-based, pursued by most of Latin America. It asks what enabled such a post-extractive step and how transformative a blanket ban on metallic mining can actually be. Explanations are multi-faceted. The ban stemmed from a diverse citizen opposition movement that persevered over more than a decade and enjoyed the unambiguous support of the Catholic Church. This movement gained momentum in a context in which domestic elites were not yet as involved in their country’s mining industry as were their counterparts in neighbouring Guatemala and Honduras (see Spalding, 2018; Bebbington et al., 2019; Edenhofner, 2022). Elite support for—or at least lack of opposition to—the mining ban can be also partly explained by the fact that mining threatens water supplies and thus the extractive interests, largely agrarian-based, of Salvadoran elites themselves (Artiga-Purcell, 2022).

Interestingly, not only have attempts to transcend extraction-based development such as El Salvador’s ban been citizen-led but they have also been increasingly juridified, that is, legally framed and pursued through legal routes (for similar processes in other contexts, see Sawyer, 2006; Szablowski, 2007; Sieder, 2010). Citizen-led juridification, as I explain below, denotes processes in which citizens engage the language and mechanisms of law to make political claims and assert their rights. They may appeal to the state to intervene, as was the case in El Salvador when citizens handed their lawmaking proposals to deputies. The citizen-led legislative initiative to ban mining in El Salvador constituted a creative use of law to promote post-extractivism, that is, to move the country beyond national development agendas focused on the intense extraction of natural resources.<sup>3</sup> Given its significant climate footprint, mining has been a key target of this endeavour.<sup>4</sup> Critical of the multi-scalar legal architecture that governs mining as it foregrounded business rights over human and socioenvironmental rights, Salvadoran citizens promoting the ban engaged law as a counterhegemonic political-legal strategy (cf. Santos and Rodríguez-Garavito, 2005; Sieder, 2010). At a juncture during which the governing party shared a historical genealogy and political affinity with social movements and NGOs, Salvadoran citizens opposed to mining saw in lawmaking a prospective avenue through which to channel their political claims. Yet the scope of their

<sup>3</sup> Although as noted by Fash (2022: 38) for Honduras the term ‘post-extractivism’ is not widely in use among Salvadoran citizens opposed to mining, their actions and discursive practices have endorsed the ideas denoted by the term.

<sup>4</sup> Mining is held responsible for between 4 and 7 percent of global greenhouse gas emissions and is based on water-intensive operations often carried out in water-stressed regions (Delevingne et al., 2020).

juridification efforts had to be narrowed down to metal mining in order to facilitate the ‘unlikely alliances’ with elites that made the ban possible (Artiga-Purcell, 2022: 101).

There are significant challenges inherent in juridification efforts to promote a post-extractive future via a mining ban. Salvadorans’ engagements with law have focused on citizen-authored lawmaking rather than litigation—a slower approach which has yielded limited success throughout Latin America given the colonial and racialized legacies still inherent in the region’s mining regulations (see González-Serrano et al., 2022). Indeed, a challenge to the planetary mining complex requires, among other things, a refashioning of its legal foundations. In developing a form of ‘post-extractive juridification’ based on lawmaking, Salvadorans have targeted aspects of the country’s legal architecture that enabled and furthered the growth of mining from the late 1990s, especially the legislation developed in line with the World Bank’s promotion of economic liberalization throughout the region. Yet the coloniality of constitutional law and its attribution of subsoil ownership to the state have remained untouched and constitute a potential limit to the legislative ban.

This article is part of a wider effort to explore citizen-led forms of juridification and their specificity when related to mining ventures. I shall support my arguments with evidence gathered from my participation in events and meetings held by NGOs and grassroots opposing mining in El Salvador, as well as informal conversations and interviews with a range of Salvadoran actors—including civil society organisations, state officials from the ministries of economy and the environment, and members of the business community—who have been involved in public discussions over the management of the country’s natural resources. Research with this constellation of actors has demonstrated that the legal foundations of the country’s transition to a liberal market democracy lay at the heart of citizen discussions over the governance of minerals. The focus of Salvadoran citizens’ legal undertakings has been an undoing of the neoliberal reforms introduced through the democratization process and the regaining of national sovereignty. A parallel analysis of the longstanding colonial roots of domestic constitutional law and the limitations that these colonial legacies place on popular sovereignty, however, has hardly been pursued. Fieldwork for this article was conducted over several research trips to El Salvador, both the capital city and parts of Cabañas and Chalatenango that are located near potential mines, between 2014 and 2018.<sup>5</sup>

In what follows, I characterize extractivism in Central America in comparison to that of the wider Latin America region, with a focus on the features of contemporary forms of extractivism, the prominent place of mining and the persistence of its colonial legal foundations. I go on to describe how mining developed in El Salvador and the roots of citizens’ opposition to it, to then examine the making of El Salvador’s mining ban. I conclude by suggesting that a window of opportunity opened in 2017 that enabled a legislative initiative, elaborated by the Catholic Church based on previous citizen drafts and reviewed by the Legislative Assembly Commission on the Environment and Climate Change, to become law. Citizen-led juridification processes to advance political claims against mining thus focused on remaking the country’s legal foundations at a favorable political juncture. Their lawmaking sought to undo El Salvador’s neoliberal ethos of law yet left intact the law’s colonial roots—a limitation to citizen sovereignty over territory and resource governance, and potentially standing in the way of profound and enduring transitions to post-extractive futures in El Salvador as elsewhere in Latin America.

<sup>5</sup> This article has also drawn from the open access, digital and bilingual (English/Spanish) repository of legal actions pertaining to mining projects entitled *The Legal Cultures of the Subsoil*.

## 2. Neoeextractivism in Central America

Colonial Spanish America was founded on an extractivist agenda whereby the colonised territories served as deposits of riches appropriated and commodified by the colonisers. Rubber, sugar, gold, silver, and dyestuffs were some of the commodities obtained most often through various forms of exploitative labour regimes and sent to far-flung imperial metropolises to nurture an incipient capitalism. Mining, which introduced pernicious effects on workers' health and the environment, was a pivotal extractive activity for the Spanish Crown (Bakewell, 1984; Brown, 2001). The Crown claimed ownership of the subsoil and allowed third parties to exploit it in exchange for fiscal contributions via mechanisms that have evolved but persist in essence throughout the region in the form of contemporary mining legislation, institutions, and legal concepts (González-Serrano et al., 2022). It thereby distinguished between ownership and usufruct rights over the subsoil—a distinction at odds with other colonial systems such as the British.

According to Seed (2001: 57-62), the division between the soil and the subsoil is rooted in the Iberian Peninsula's Islamic past. In Islamic jurisprudence, the subsoil was considered God's deposit for the common good, one to be owned collectively and to be administered by the leader of the dominant religious faith. In the sixteenth century, ideas about ownership, exchange, and acquisition of wealth in the Iberian Peninsula were gradually shaped by this notion of subsoil riches, just as it occurred with other economic practices. Mineral deposits in Spanish America were thus considered a collective property managed by Christian kings, and this approach is still reflected in the region's legal cultures and instruments (Seed, 2001: 7; González-Serrano et al., 2022). Other scholars have underlined that the state's ownership of the subsoil is rooted in Roman law and has been (re)introduced and maintained in Latin America at different stages from the colony to the present-day, including through 19th-century liberal reforms and post-Second World War UN proclamations of nations' sovereignty over their resources (Vildósola Fuenzalida, 1999; González-Serrano et al., 2022).

The raw material basis of Latin American economies has continued in the postcolony, subject to economic cycles, the fluctuating demands of global markets and processes of state formation (Svampa, 2019: 7). Contemporary extractivist, export-oriented activities are hence far from new and have continued to be founded on a colonial conception of subsoil materials as resources to be exploited for human consumption; such exploitation, often licensed by the state to private actors, is assumed to be in the public interest (González-Serrano et al., 2022: 102, 111). Yet scholars who coined the term 'neoeextractivism' to denote the extractive activities performed in the new millennium have identified several traits specific to this contemporary phase: a rapid, significant and intensified expansion of commodity frontiers; an increased dispossession of territories and the conflicts thereof; the reliance on large-scale, capital-, resource- and technology-intensive ventures that employ increasingly toxic substances and disruptive techniques; the resulting involvement of large transnational corporations; the World Bank-led harmonization and liberalization of related legislation; and the development of global complexes of extraction that connect disparate geographies with various specializations (see Svampa, 2019: 6-12; Arboleda, 2020). Mining has been one of the fastest growing extractive activities. Coinciding with a rise in the demand for—and price of—metals at the end of the 1990s, the new millennium has seen a renewed interest in the prospecting and exploitation of metals globally, and especially in Latin America.

The expansion of mining, and other forms of extraction, has been favoured by both conservative and progressive governments throughout Latin America. Indeed, the bulk of South American countries attempting to regain sovereignty and redistribute wealth more widely have done so through an intensive extraction of natural resources—namely subsoil resources, such as oil, gas, and metals (most notably copper, gold, and silver)—that capitalises on China's fast-growing demand and has

resulted in a 'progressive neoeextractivism' (Gudynas, 2009; Hogenboom and Fernández Jilberto, 2009; Hogenboom, 2012; Arsel et al., 2016a, 2016b). These countries' neoeextractivism has thus not shied away from forms of development grounded in modernity that seek to achieve progress through the appropriation and exploitation of nature (Gudynas, 2009: 219). Taxes and royalties on extractive activities such as mining no doubt expanded several states' public purse—albeit without the parallel pursuit of any real structural transformation—until 2012, when the knock-on effects of the global financial crisis hit that portion of Latin America (Webber, 2017). The region's alternatives to neoliberalism have thus emerged in tandem with typically neoliberal, extraction-based 'development strategies'—strategies rooted in the region's colonial history that serve to perpetuate colonial legacies and dynamics (Fash, 2022: 38).

Conservative and progressive governments alike have met opposition to mining and other extractive projects with harsh repression and criminalization (Montoya et al., 2022: 61). Attempts by progressive governments to pursue extraction-based post-neoliberal agendas have thus been rooted in practices that curtail basic rights (Bebbington, 2012: 1155–1156). Nor have these progressive governments sought to fully decolonize their countries' legal architecture. While some progressive governments have introduced legal innovations that grant rights to nature, they have not prevented the extractive activities that override those rights and indeed have wound up with contradictory legal developments that only reaffirm law's colonial foundations (Valeria Berros, 2021: 196; Quizhpe and Vallejo, 2022: 34-35). Meanwhile, new forms of coloniality have emerged through the expansion of commercial law promoted by free-trade agreements and US- and Europe-based arbitration tribunals. These mechanisms set conditions favourable to direct foreign investment and ensure that contracts be respected and guarantees offered by host states to international private investors who would otherwise be reluctant to invest in the region (Dougherty et al., 2016: 231).

### 2.1. Extraction of Subsoil Resources in Central America

The Central American region has been no exception to the expansion of the extractive frontier, though the scope of its extractive activities and the foreign direct investment thereof has not been comparable to that of the Andes, the Amazonia, or the Southern Cone. While countries like Guatemala, Honduras and Nicaragua have enthusiastically welcomed and promoted large-scale mining, in 2006 the portion of the Central American labour force involved in mining and quarrying (which includes metals, fossil fuels, sand, gravel and cement extraction) was well below 1 percent (Mowforth, 2014: 86-87). In 2014, the nominal GDP contribution of mining and quarrying in these countries, including crude petroleum and natural gas in Honduras and Guatemala, did not surpass 2.2 percent (Wacaster, 2017: 6.2-6.3).<sup>6</sup>

In Central America, it is the vested interests of economic and political elites and national political settlements that have been the key driver of extraction-based agendas (Bebbington et al., 2019; Edenhofer, 2022). The extraction of subsoil materials has contributed little to the public purse, and what little income states have received has not been employed to address poverty or inequality. Unable to see any benefits from mining investments in their localities, and aware of the potential socioenvironmental liabilities posed by these investments thanks to cross-country networks of civil society organizations and NGOs, the majority of populations in areas of the isthmus where mineral deposits lie have starkly opposed the exploitation of their territories or adjacent ones (see, for instance, Dougherty, 2011; Urkidi, 2011; Spalding, 2014a, 2014b; Middeldorp et al., 2016). This is a contrast with regions in South

<sup>6</sup> By contrast, in 2006 Chile's copper contribution to the public budget amounted to 33.3 percent and Peru's copper and gold amounted to 10.8 percent of fiscal revenue (Hogenboom and Fernández Jilberto, 2009: 96).

America where some local populations have instead sought to improve their stakes in mining ventures (see, for instance, Arellano-Yanguas, 2011: 630-632; Penfield and Montoya, 2021).

El Salvador initially followed an extraction-friendly path. The ascension to executive office of the elite-led Nationalist Republican Alliance (ARENA) in the 1989 presidential election, when the country's civil war (1980–1992) was ongoing, and the international promotion of peacebuilding alongside liberal market democracy, facilitated a gradual enactment of neoliberal policies (Montoya, 2018). Supervised by the United States Agency for International Development in the 1980s and the International Monetary Fund, the World Bank and the Inter-American Development Bank in the 1990s, these policies fostered investor-friendly political-legal conditions (Segovia, 2002: 33). After the war, the Salvadoran government passed the 1996 Mining Law, which attributed to the state inalienable and imprescriptible dominion over minerals within its territory. Aimed to attract foreign direct investment, its subsequent reforms reduced by half (from 4 to 2 percent) the royalties paid to the Salvadoran state. The law's preamble clearly stated the pro-extractive ethos of that law: "to harmonise it with the principles of a social market economy that is convenient for investors in the mining sector" (Preface to the 1996 Mining Law).<sup>7</sup> This legislation mirrored World Bank and IMF-conditioned reforms of mining legal codes in other Latin American countries and worldwide during the 1990s (see Hogenboom and Fernández Jilberto, 2009: 95; Hilson, 2012: 16).

In 1999, El Salvador introduced the Investment Law. This law's Article 15, along with the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA) with the US, ratified by El Salvador in 2004, acknowledged the jurisdiction of the International Centre for Settlement of Investment Disputes (ICSID). Both instruments thereby accepted the preeminence of commercial over civil and human rights law and conceded that this Washington, DC-based, World Bank-linked institution would arbitrate any dispute between the Salvadoran state and private investors from CAFTA-DR member states. The adoption of these legal instruments, which was consistent with ARENA's pro-business stance and favored its members' transnational commercial connections (see Segovia, 2006), paved the way for El Salvador's foreign direct investment in industrial mining. Facilitating this investment is Article 103 of El Salvador's 1983 Constitution, which maintains the colonial distinction between the soil and the subsoil, the attribution of subsoil ownership to the state, and the state's ability to license the private exploitation of the subsoil regardless of soil ownership. This constitutional article, a colonial legacy limiting popular sovereignty over territory and resource governance, mirrors legislation in other Latin American countries with a Spanish or Portuguese colonial past.

## 2.2. Post-Extractive Juridification

Notwithstanding these developments, a mining ban was passed in March 2017 that, as evidenced by its unanimous approval vote, resulted from a relative political consensus. Yet El Salvador had eschewed mineral extraction as a means of development since well before that. From 2006, the ARENA government—despite having initially passed mining legislation encouraging foreign direct investment—established a *de facto* moratorium on mining that was upheld by two subsequent governments of the former guerrilla organization, turned left-wing party, Farabundo Martí National Liberation Front (FMLN). It is the only country in Central America aside from Costa Rica to have taken steps away from the exploitation of metallic minerals—a move led by successive Salvadoran governments at opposite ends of the ideological spectrum through the establishment of the *de facto* moratorium eventually reaffirmed through a *de jure* ban. Although opposition to mining

<sup>7</sup> 1996 Mining Law, Decree No. 544, Official Gazette No. 16, Volume 330, 24 January 1996. Available at: <https://ilas.sas.ac.uk/research-projects/legal-cultures-subsoil/1996-mining-law>.

was initiated and led by citizens, it was eventually supported and ratified by the Legislative Assembly. This unique process and outcome calls for an examination of what enabled an alleged post-extractivist step in the unfavourable context of a regional 'commodity consensus' and the 'planetary mine'.

In the final quarter of the twentieth century, as Latin America underwent transitions to democracy and an expansion of constitutional rights, and as the language and mechanisms of human rights gained political currency, a range of actors contributed to appropriating, developing, and shaping legal repertoires (Sieder et al., 2005; Couso et al., 2010). Santos and Rodríguez-Garavito (2005) have explored the creative forms of mobilizing and experimenting with law, especially those with a counter-hegemonic bent, undertaken by grassroots movements. Grassroots challenges to hegemonic neoliberal legality, they posit, tend to endorse multi-scalar, plurally legal practices to transform law or even create innovative forms of law (Santos and Rodríguez-Garavito, 2005: 15–16). These practices, which entail both political and legal mobilization, range from law enforcement to lawmaking and involve a plurality of forms of law and institutions across scales. They are practices aimed, among other things, at disentangling human rights agendas from the neoliberal reforms that developed alongside them at the end of the twentieth century.

'Juridification' has been employed to refer to a wide set of processes related to the proliferation of law in various social domains. The term can refer to increased regulation of these domains, the adoption of a legal grammar with which to navigate political disputes, or the increased role of courts in the delineation of public policy and the deliberation of political controversies (Blichner and Molander, 2008; Eckert et al., 2012; Sieder, 2020). A somewhat loose term, juridification denotes an increased presence and density of law and an intensification of its uses by a range of social actors (Blichner and Molander, 2008). When initiated by citizens, juridification may nonetheless end up involving state institutions and actors, as was the case with El Salvador's citizen-led ban which was eventually made law by the Legislative Assembly.

As I have argued elsewhere, forms of juridification that oppose extractivism, referred to herein as 'post-extractive juridification', are unique because they introduce and uphold notions of development, territory, sovereignty, and rights that are vital to indigenous and rural lifeworlds (Montoya, 2021; Montoya et al., 2022). They do so by appropriating for their own purposes and manipulating forms of rights that, even when hollowed out by neoliberal logics, they infuse with alternative meanings or values. Juridification thus carries a potential for worldmaking, and this is evident when indigenous actors introduce alternative onto-epistemologies. Yet, even when non-indigenous peasant and rural populations are involved in challenges to hegemonic forms of law, these populations likewise bring to the fore perspectives and moral values rooted in the memories, positionalities, experiences, and emotions of inhabiting a territory (Montoya, 2021). The transformative potential of such an approach may, however, be hindered by the persistence of colonial concepts and mechanisms and the legal orthodoxies thereof. In the following sections, I discuss the return of mining that occurred in El Salvador at the end of the twentieth century and the law drafting undertaken by citizens to challenge and transform the neoliberal ethos underpinning the country's mining regulations.

## 3. The Roots of the Ban

El Salvador, like other Latin American countries, has a history of colonial mining but its mineral reserves are comparatively limited in size and their extraction has been episodic and small-scale. It was in the second half of the 20th century that mining intensified (Maldonado Tejada et al., 2010: 22). The country's main mineral deposits lie within the so-called Central American 'Gold Belt' that covers the mountainous range that begins in northwestern Guatemala, crosses northern El Salvador, southern Honduras, and Nicaragua, and ends at the northern

border of Costa Rica. This is where El Dorado, El Salvador's most notorious mining project and the closest to being exploited, was located. It sat 65 km northeast of San Salvador, near the municipality of San Isidro, in El Salvador's northern Cabañas Department. Estimates suggest that El Dorado's reservoir contains more than 1.4 million ounces of gold and 9.4 million ounces of silver (Ristorcelli and Ronning, 2008: 153). When an international corporation became interested in this reservoir in the 2000s, Salvadorans for the first time entered into public discussions about the governance of metals in their country.

El Dorado's exploitation, which had ceased by the end of the 19th century, was revived from 1948 to 1953 by the US and Honduran Rosario Resources Corporation through its subsidiary New York and El Salvador Mining Company. The mine's eventual shutdown in 1953 was likely due to a lack of financial resources and the low price of gold (Ristorcelli and Ronning, 2008: 25). In the late 1970s and early 1980s, when the global price of metals had rebounded dramatically, El Salvador was in the midst of a civil war. By the end of the century, however, with its devastating civil war behind it and governed by the elite-led ARENA party, El Salvador offered business and industry a relatively secure and welcoming environment, from both a financial and legal perspective. As mentioned above, ARENA had conducted an overhaul of the country's legal architecture to attract foreign direct investment in mining, among other economic sectors. Within this context, several international corporations demonstrated an interest in extracting metals from El Salvador's northern mountain range.

Drilling in northern El Salvador recommenced in the mid-1990s with the goal of verifying the size of its gold deposits and the feasibility of their extraction (Steiner, 2010). El Dorado was one of more than 20 exploration projects initiated then. In 2002, the mine, which had changed hands twice since the mid-1970s, was finally acquired by Pacific Rim Corp—a corporation headquartered in Canada—with exploration starting that same year through its subsidiary Pac Rim Cayman (Ristorcelli and Ronning, 2008: 25-26). In 2004, having verified the project's feasibility and invested in it, Pac Rim Cayman (henceforth Pac Rim) submitted its Environmental Impact Assessment (EIA) and applied for an exploitation concession from El Salvador's Ministry of Economy. Estimated as a 10-year project, El Dorado was to be mostly an underground mine, though some of its deposits could have required open-pit extraction. It would have relied on the cyanide leaching of gold—a particularly toxic means of separating the ore from the rock (OCMAL, 2010). However, as recounted by members of El Salvador's Ministry of Economy whom I interviewed, the company's application for an environmental permit prior to the exploitation concession was never granted on the grounds that Pac Rim had not fulfilled certain requirements of El Salvador's Mining Law, including a financial feasibility report and credentials demonstrating ownership of or permission to use the land where the mine was located.<sup>8</sup>

In 2006, the ARENA government changed course and established a de facto moratorium on all permits for exploration and exploitation of El Salvador's metals—a move emphatically justified by the party in its run-up to the 2009 presidential election (Cartagena, 2009: 502). In February, one month before the election, President Elías Antonio Saca declared to reporters: 'The country has every right to grant or deny mining permits.'<sup>9</sup> The two successive FMLN governments—the Mauricio Funes-led administration elected in March 2009 and the one headed by former guerrilla commander Salvador Sánchez Cerén elected in March 2014—maintained this moratorium. These governments remained resolute even in the face of a lawsuit initiated by Pac Rim against the Salvadoran state on 30 April 2009 via the ICSID.<sup>10</sup> Pac Rim alleged that,

despite its having complied with all legal requirements, El Salvador had arbitrarily denied the company an exploitation concession, thereby transgressing Salvadoran mining legislation and the CAFTA-DR (Collins, 2009). The company initially demanded a USD77 million compensation for the expenses it had incurred in drilling in the area and building and developing the project. As hearings took place and time elapsed, Pac Rim increased its demand to USD315 million to cover not just its investment loss during the exploratory stage but also the profits it would not be reaping.

El Salvador's moratorium on mining cannot be understood without addressing the key role of grassroots mobilization. Mobilization against mining began simultaneously though independently in Cabañas and Chalatenango in 2005 (Cartagena, 2009: 498). Both regions had been greatly impacted by the civil war and were still marked by wartime reverberations. While a conservative department, Cabañas has pockets of territory repopulated by war refugees who have maintained the collective values and political and communal organizing principles they developed during wartime. This partly explains the widespread mobilization against mining that emerged there (Spalding, 2014b: 315-317; Montoya, 2021). Concerned about the looming exploitation of El Dorado in this region, an array of local actors educated themselves about mining and played a key role in raising awareness about its deleterious impacts.

Through their transnational networks, they engaged with Central American organizations devoted to the issue and, at the invitation of the Honduran Siria Valley Environmental Committee, visited the area surrounding Honduras's San Martín mine. With the mining project at an advanced stage of development, the visit alarmed them about the potential impacts of mining on both the environment and public health.<sup>11</sup> Indeed, the San Martín mining project in the Siria Valley has emerged in the narrative of many NGO members and local populations throughout El Salvador and Guatemala as an eye opener, that is, a tangible expression of the dramatic social, health, and environmental problems they could face should mining take root in their territories.

In 2005 the National Roundtable Against Metallic Mining (henceforth Mesa Nacional as per its original name) was founded in El Salvador as an amalgam of local, regional, and national organisations that opposed mining operations in Cabañas, neighbouring Chalatenango, and elsewhere in the country. Composed of a wide range of Salvadoran organisations—human rights, faith-based, political, and research-driven—Mesa Nacional scaled up local efforts and enabled action on multiple fronts. It clearly stated its anti-mining stance and immediately embarked on the development of political-legal strategies, including drafts of a permanent mining ban to be considered by the Legislative Assembly (see Spalding, 2018; Montoya, 2021). Its anti-mining endeavours garnered public attention and support not just throughout El Salvador's 'Gold Belt' but even internationally (Spalding, 2014b). Water was soon made the focus of anti-mining political-legal mobilization as a means of bridging alliances beyond ideological divides (Broad and Cavanagh, 2021; Artiga-Purcell, 2022).

#### 4. Citizen Lawmaking

In 2017 my attempt to track citizen lawmaking began at the entrance of the Legislative Assembly in San Salvador. On the morning of 7 February, members of the NGO Association for the Development of El Salvador (CRIPDES), part of Mesa Nacional, and mayors of municipalities of the northern Chalatenango Department, together with a few locals from those municipalities, gathered at the entrance of the Legislative Assembly to request that deputies pass a mining ban. In contrast to the multitude and mainstream media personnel that had gathered the previous day to receive the San Salvador Archbishop when he arrived at the Legislative Assembly with a ban draft, only about a couple dozen people and a few left-leaning media outfits such as Maya Visión and

<sup>8</sup> Interview with members of the Directorate General of Hydrocarbons and Mines, Ministry of Economy, San Salvador, 17 February 2014.

<sup>9</sup> 'Government's mining double talk', *Latinamerica Press / Noticias Aliadas*, 3 December 2009.

<sup>10</sup> For details on this lawsuit, see Broad, 2015; Montoya et al., 2020a.

<sup>11</sup> For a report on the impacts of this mine, see IDAMHO and OXFAM (2013).

Telesur were present. CRIPDES members displayed a large banner that read: ‘*Diputad@s: Aprueben la Ley de Prohibición de la Minería Metálica YA*’ (Deputies: Pass the Ban on Metallic Mining NOW). Drawn on the left-hand side were a skull and a couple of gold bars; the words gold/death/destruction/pollution appeared on various sides of the bars to denote the intimate material association of gold with deleterious socio-environmental and public health impacts. While they awaited the deputies and parliamentary media, the mayor of San José Las Flores explained to me that the high levels of active opposition to mining in the municipalities of Chalatenango could be attributed to the historically high levels of political organization in that region, where the war had devastated local populations supportive of the guerrillas.<sup>12</sup>

The mayors of the four municipalities that had by then held popular consultations in El Salvador and declared their territories free of mining via a municipal ordinance, had all signed a petition requesting of deputies that the piece of legislation delivered by the Archbishop the day before be discussed by the legislative Commission on the Environment and Climate Change. The petition additionally requested that CRIPDES leaders and the mayors of the mining-free municipalities be invited to the Commission to share their views on mining. In contrast to the previous day, when deputies of different parties welcomed the Archbishop, the Chalatenango mayors and CRIPDES members were able to speak to only a few FMLN deputies, led by Guillermo Mata, then head of the Commission on the Environment and Climate Change. Their visit to the Legislative Assembly was one of multiple episodes in a 12-year process of political-legal mobilization involving citizens participating in grassroots organizations and leading NGOs that sought to ban mining in Salvadoran territory.

Soon after the Mesa Nacional coalition was formed, its members focused on the drafting and promotion of a mining ban as their central aim.<sup>13</sup> The Foundation for the Study of the Application of Law (FESPAD), a human rights NGO composed of lawyers and part of Mesa Nacional, was charged with translating the coalition’s proposal into a ban draft. In 2006, drawing on comparative law and a similar legislative initiative in Honduras, and in consultation with various grassroots organizations and NGOs, FESPAD members drafted a 72-provision ‘Law for the Regulation of Mining Activity in the Country’ that proposed to ban the extraction of metals and strongly regulate non-metallic mining. In my 2017 interview with Luis,<sup>14</sup> a Mesa Nacional representative and head of FESPAD, he described the process: ‘After Mesa [Nacional] approves the proposal, we present it to the Legislative Assembly. We seek the support of the deputies to make it a legislative initiative and we present it and start disseminating it.’<sup>15</sup> He continued:

‘It was well received in the Legislative Assembly, but not by everyone. We must say that the process here is that one seeks the *apadrinamiento* (sponsorship) of a deputy to give the proposal the status of legislative initiative because, following the constitution, only the deputies, or the relevant ministers, can put forth a legislative initiative. That is, here the minister of the environment could present law proposals in their area, but we as citizens seek the sponsorship of deputies.’

Popular legislative initiatives entitle citizens to propose laws to be discussed in parliament, thereby allowing them to become involved in lawmaking activities usually circumscribed to deputies and thereby

<sup>12</sup> Popular consultations held in four Chalatenango municipalities from 2014 overwhelmingly declared these “mining-free territories”. For details, see Montoya et al., 2020b.

<sup>13</sup> For a comprehensive description of this process and to consult the drafts produced, see Montoya et al., 2020c.

<sup>14</sup> Names (aside from those of public figures) have been changed or omitted to guarantee anonymity.

<sup>15</sup> Interview with Luis, FESPAD and Mesa Nacional, San Salvador, 17 February 2017.

exercise popular sovereignty. They are direct democracy mechanisms which, together with citizen consultations and the ability to revoke a mandate, were included in the constitutions of various Latin American countries in the 1980s and 1990s as part of regional post-authoritarian reforms and in response to increasing political disaffection (Hevia de la Jara, 2010: 156–157). As Luis mentioned, popular legislative initiatives are not officially sanctioned in El Salvador’s Constitution; Mesa Nacional members had to approach a deputy sympathetic to their cause and willing to exercise her entitlement as an elected representative to activate a legislative initiative process. The Mesa Nacional legislative proposal was first submitted in 2006, but due to inaction at the Legislative Assembly was resubmitted several times thereafter (Spalding, 2018: 60). In all instances, they requested that an FMLN deputy officially submit their proposal.

‘With the deputies of the FMLN we had a great rapprochement’, Luis affirmed in our interview. The relationship between the FMLN and social movements has historically been a close one, with many social movements acting as the FMLN’s social and political base and a source of recruitment during the war (Sprenkels, 2018; Almeida, 2006, 2015). After the end of war, grassroots and social movements constituted one of FMLN’s main pool of votes. Almeida (2006, 2015) called this nexus ‘social movement partyism’ to denote their continuing links and affinities through a good part of the postwar era. Luis characterized the relationship as one based on a moral debt:

‘One of the complaints that, when possible, we make to the [FMLN] comrades ... is that we haven’t got a leftist government for the first time as a result of their work alone; it is a society that historically struggled for a leftist party to come to power and we expect a different change.’

While Mesa Nacional’s 2006 law draft was discussed by El Salvador’s Commission on Environment and Climate Change, it never made it to a plenary session of the Legislative Assembly. The same occurred with a 2007 legislative initiative, submitted by then-deputy of the National Conciliation Party (PCN) Orlando Arévalo, which Mesa Nacional identified as a Pac Rim-promoted proposal as it had been discussed with the company’s lawyers (Spalding, 2018: 60).

In 2010 the FMLN-led Salvadoran government, via a public bid, commissioned an external strategic environmental assessment of the country’s mining sector from the Spanish consultancy firm TAU Consultores that was to serve as a solid technical basis for the design of a metal governance policy (Bebbington, 2015). The strategic environmental assessment determined that a mining ban—or at least strong regulation of the mining industry so as to manage its socio-environmental risks—was appropriate under the existing social, political and legal circumstances in El Salvador.<sup>16</sup> In 2012, based on this assessment, the FMLN through its ministers of Economy and Environment and Natural Resources proposed a law that would suspend mining permits: the ‘Special Law for the Suspension of Mining-Related Administrative Procedures’. It encountered opposition from across the political spectrum, including Mesa Nacional, whose member organizations denounced the FMLN’s lack of consultation with them as well as the initiative’s proposal to form an advisory board which included business representatives.<sup>17</sup> Discussion of the FMLN proposed law by the Commission on Environment and Climate Change was eventually abandoned.

A year after the FMLN’s legislative initiative, Mesa Nacional produced a new iteration of its law draft, slimmed down to five provisions focusing on the main goal of banning metallic mining. ‘We named it “Special Law for the Prohibition of Metallic Mining”’, said Luis. ‘Six [sic]

<sup>16</sup> The assessment report is available at <https://ilas.sas.ac.uk/taxonomy/term/20246>.

<sup>17</sup> Interview with Luis, FESPAD and Mesa Nacional, San Salvador, 17 February 2017.

articles; the concluding enunciative articles (*artículos de forma*), some recitals and we also took up elements of that strategic environmental study, because that strategic environmental study was not in vain. Its entire contextual part elucidates the environmental conditions of the country with scientifically-proven data.<sup>18</sup> As Luis explained in our interview, the ‘special’ character of the law guaranteed that it would supersede any other national law contradicting anything regulated by the ban. However, given the established legal hierarchy, the Constitution’s attribution of subsoil ownership and management to the state would prevail and potentially serve to enable mining again.

In my interviews with Mesa Nacional representatives, they all underscored that the ultimate aim of a mining ban was to transform the neoliberal ethos of El Salvador’s legal architecture. Luis explained, ‘it is a problem of the economic model. The neoliberal model seeks legal deregulation, the dismantling of controls, the non-existence of law.’<sup>19</sup> Marcos, CEICOM member and Mesa Nacional representative, elaborated on the implications of the neoliberal model: ‘If you take a look at the mining law in the country, the human person barely appears there, environmental issues barely appear, etc. What there is in the law is a precise and clear orientation to grant companies the right to exploit the natural resources of the people. So in this sense, it is necessary, I believe, to clearly establish that the legal framework, as a whole, is not effectively thought out and does not necessarily incorporate human rights, environmental perspectives, etc.’<sup>20</sup> The privileging of economic considerations over environmental and human rights in the mining law was also highlighted by Luis, who explained this was reflected in the country’s institutionality: ‘The 1995 mining law gave powers primarily to the Ministry of Economy. In other words, mining is seen here primarily as an economic activity, and environmental issues are secondary.’<sup>21</sup>

More important for the argument here, Marcos highlighted the constraints to popular sovereignty that arise when a private company is granted ‘the right to exploit the natural resources of the people’. Yet neither he nor other Mesa Nacional members I interviewed acknowledged the state’s constitutional right to license the subsoil to private actors for this very purpose. Instead, Mesa Nacional members tended to attribute challenges to popular sovereignty to Pac Rim and institutions like the ICSID, as demonstrated by marches before the World Bank offices in El Salvador and Washington, DC in 2014 and the legal argument made by the *amicus curiae* submitted by Mesa Nacional members before the ICSID.

Given the lack of attention received by any of the Mesa Nacional drafts in the Legislative Assembly and fearing an ICSID arbitral award favourable to Pac Rim, in 2016 Mesa Nacional drafted an executive decree and lobbied Salvador Sánchez Cerén to encourage him to pass it while awaiting a more receptive climate for an actual ban in the Legislative Assembly. After the ICSID award favourable to the Salvadoran state later that year, however, hopes arose again that deputies might consider a popular legislative initiative to ban mining. Andres McKinley, a researcher at the Jesuit UCA university and a leading voice in the opposition to mining, told me just a month before the ban was finally passed: ‘With the current situation, with the ICSID victory, right? the Mesa’s analysis has been we must take advantage of this to prohibit metallic mining.’ He went on to note a crucial distinction between metallic and non-metallic mining in El Salvador: ‘In non-metallic mining

there are national interests, whereas in metallic mining there are more foreign interests, so it is easier [to get deputies to endorse the ban].’<sup>22</sup> He continued: ‘If we submit a law, a new mining law that includes non-metallic mining, it implies an endless discussion in the Legislative Assembly, right?’.

With these words, McKinley acknowledged the limited scope of the mining ban passed in 2017. It was a limitation that opponents to mining accepted, aware as they were of how difficult it would be for a ban with a broader scope to be endorsed in the Legislative Assembly given the involvement of domestic political elites in extractive activities other than metal mining, namely non-metal mining and sugarcane monoculture (see Artiga-Purcell, 2022). It is to the window of opportunity that opened to get these elites to endorse the ban that I now turn.

## 5. A Window of Opportunity

ARENA publicly reaffirmed the moratorium on mining permits in the run-up to El Salvador’s 2009 presidential election. The FMLN had won the majority of parliamentary seats in 2003 and obtained a growing share of electoral support in the 2004 presidential election, and polls indicated the increasing likelihood of an FMLN victory in 2009, as ended up happening.<sup>23</sup> When faced with the increasing erosion of its electoral hegemony, ARENA must have judged it more advantageous to capitalize on the expanding anti-mining movement than to support an economic activity in which local elites had not yet developed vested interests. Opposition to mining from grassroots movements and civil society organizations had grown steadily since the mid-2000s, with a 2007 survey by the country’s Jesuit university revealing that 62.5 percent of the population of 24 municipalities in which exploration licenses had been granted believed that El Salvador was not an appropriate country for mining (IUDOP, 2007). A follow-up survey-eight years later saw this percentage increase to 79.5 percent (IUDOP, 2015).

As noted earlier, although Cabañas is a largely conservative department, some pockets of its population have been politically active for decades, supporting FMLN guerrillas during the armed struggle of the 1980s or developing social movements and NGOs during and after the war. The support for the FMLN among Chalatenango populations is even more solid since the department was an FMLN stronghold during the war and has remained one of the FMLN’s main pools of votes throughout the postwar era. Salvadorans opposed to mining have largely sided with the FMLN in post-war elections, given their historical relationship with the party. This intimate link enabled Mesa Nacional to seek and obtain a public and signed endorsement of the already existing moratorium from FMLN candidate Funes during the electoral campaign for the 2009 presidential election. The FMLN victory in March 2009 was followed by Pac Rim’s lawsuit before the ICSID in April as well as months of intensified division in Cabañas and the assassination of several local anti-mining activists. Even as Mesa Nacional organizations sided with the Salvadoran government in the ICSID lawsuit via two *amicus curiae*, they complained in my interviews that the government had disregarded their claims. The FMLN’s timidity to enact a ban stemmed partly from concern that the ban could negatively affect the Salvadoran state in the ICSID arbitration case (Bebbington et al., 2015: 199-200), as well as from an awareness that mining corporations had acquired certain rights under the existing legislation that could not be easily dismissed.

Especially indicative of the wide support garnered by the mining ban is that El Salvador’s Bishop Conference (CEDES)—an institution dominated by the Catholic Church’s conservative wing and which enjoys wide public leverage among Salvadorans—publicly condemned

<sup>18</sup> Interview with Luis, FESPAD and Mesa Nacional, San Salvador, 17 February 2017.

<sup>19</sup> Interview with Luis, FESPAD and Mesa Nacional, San Salvador, 17 February 2017.

<sup>20</sup> Interview with Marcos, CEICOM and Mesa Nacional, San Salvador, 10 February 2017.

<sup>21</sup> Interview with Luis, FESPAD and Mesa Nacional, San Salvador, 17 February 2017.

<sup>22</sup> Interview with Andres McKinley, UCA researcher, San Salvador, 16 February 2017.

<sup>23</sup> To view the evolution of the vote in El Salvador’s elections, see <https://pdba.georgetown.edu/Elecdata/ElSal/elsal.html>.

industrial mining from the outset and thus positioned the issue beyond political ideology. In 2007 and 2010, CEDES issued public statements against mining in El Salvador rooted in the eco-theological perspectives of Popes John Paul II and Benedict XVI and eventually supported by the emphatic ecological message of Pope Francis' 2015 *Laudato Si'* encyclical (Nadelman, 2015; Montoya, 2021). Following the ICSID's final arbitral award in favour of El Salvador in 2016 and most evidently since early 2017, Archbishop José Luis Escobar Alas—who had been appointed in 2009—took a decisively proactive public stance in support of a mining ban, due largely to the strong lobby by Catholic-aligned actors and NGOs. He did so by embracing the legislative initiative drafted by El Salvador's Catholic sectors that built upon the law drafting experience of Mesa Nacional (Montoya, 2021).

Over the long decade of opposition to mining, rumor had it that political elites of various parties had their own private interests when it came to mining, hence the difficulty of passing a permanent *de jure* ban. Some rumours claimed that certain ARENA members harboured ambitions of pursuing mining themselves, while others insinuated that this party's members saw mining as a threat to the country's overstretched freshwater sources so necessary for their own agro-export businesses, especially sugarcane, and the soda and bottled water industries (see also Nadelman, 2015: 12; Artiga-Purcell, 2022; Edenhofer, 2022: 263-264). Whether or not these rumours were founded, El Salvador's elites, unlike those in other Central American countries, had not developed vested interests in the metallic mining industry by the time the ban was approved. This activity was thus not crucial to their dynamics of capital accumulation; nor were any large transnational corporations involved in El Salvador's mining sector, but only junior ones (Bebbington et al., 2019). Salvadoran elites have been however reluctant to expanding post-extractive measures that would protect El Salvador's main water sources, such as banning the use of toxic substances key to sugarcane cultivation (Artiga-Purcell, 2022: 101).

The National Association of Private Enterprise (ANEP), El Salvador's main business organization, did not make any public pronouncements against the ban. Yet it was not particularly supportive of it either. When I interviewed ANEP economic manager Waldo Jiménez before the ban was passed, he stated bluntly that in his opinion the ban could potentially 'be a project that would contradict the Republic's Constitution, which has economic freedom as one of its principles.'<sup>24</sup> In other words, El Salvador's business sector was not keen on a law that could set a precedent for the curtailment of economic activity, regardless of the nature of that activity. Overall, however, in light of the widespread opposition to mining in El Salvador from sectors including the Catholic Church, it became exceedingly difficult for the political class across the right-left spectrum to dismiss anti-mining claims.

While the mining ban was a remarkable milestone on the path toward a post-extractive agenda, it did not stem from an emphasis on essential rights over economic performance. This is evidenced by the government's failure to fully implement the 2017 mining ban and its rules of procedure (*reglamento*), a claim that Mesa Nacional—which has shifted its focus to monitor the implementation of the ban—has made repeatedly, first to Sánchez Cerén's government and more recently to Nayib Bukele's. As denounced by Mesa Nacional, these consecutive governments have pursued neither the technical closure of the artisanal mines in eastern El Salvador nor any socio-environmental remediation of the area and have failed to offer economic alternatives to local families that still live off of small-scale mining—a lack of compliance with the ban's Articles 2 and 6 respectively. Adding to this, the incumbent administration has demonstrated little regard for environmental issues, easing applications for environmental permits by different industries and reducing the Ministry of the Environment and Natural Resources's budget (Amaya, 2020).

## 6. Conclusion

El Salvador's mining-free agenda was pushed through chiefly by grassroots and civil society organizations and sectors of the Catholic Church. Given mining's record of environmental degradation and human rights violations, El Salvador took an unprecedented step when it banned all forms of metal mining in its territory in 2017. This step derived from the convergence of a number of factors. Mesa Nacional had led sustained juridification efforts for over a decade; the Catholic Church, although dominated by conservative sectors, coalesced with progressive sectors on environmental issues; the FMLN government remained indebted to its longtime constituencies in northern El Salvador, where much of the country's mining would occur; and local elites were not yet involved in mining, with some convinced that this activity could affect their own interests and those linked to ARENA concerned about their eroding political hegemony.

A focus on lawmaking is vital in view of the limited success of litigation to halt undesired or unfettered extractivism in Latin America. Scholars attribute this limited success to the colonial roots of the region's legal architecture, which has played a critical role in enabling extractivism and placing it over basic human and environmental rights (González-Serrano et al., 2022). In El Salvador, citizens pursued legal innovations, drafting several iterations of mining bans which were then taken forward by the country's religious sector and eventually the Legislative Assembly. Their efforts can be considered part of a wider juridification trend throughout Latin America, which is not limited to litigation and law enforcement but also includes uses of law beyond the courts (Sieder, 2020: 3; Montoya, 2021: 299). The legal mobilization undertaken by Salvadoran citizens has focused on undoing the neoliberal underpinnings of their country's legal architecture but has left untouched the colonial legacy that regards the subsoil as state-owned and -managed, regardless of who owns the soil above it, and subsoil materials as exploitable for the ostensible public good. Whereas Salvadoran citizens opposed to mining have raised a critique of the lack of popular sovereignty resulting from neoliberal reforms, they have not expanded this critique to the colonial roots of the country's constitution.

El Salvador's citizen-led juridification efforts to transcend extractive-based development are not an exception. Throughout Latin America, local populations with the support of human rights lawyers and NGOs have increasingly pursued their claims through legal routes—most often without success or, when successful, without any guarantee that rulings will be respected by authorities. There are thus clear limitations to the opportunities that juridification processes offer for citizens to assert their rights. More importantly, given that ownership of the subsoil is constitutionally granted to the state in El Salvador and in most of the region, governments can legislate the extraction of subsoil materials and deactivate prior citizen-led efforts towards mining-free futures, all the while justifying extraction as being pursued for the public good.

### Declaration of Competing Interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

### Data availability

This article is based on a combination of confidential and non-confidential data. Some of the non-confidential data is available on The Legal Cultures of the Subsoil Database.

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<sup>24</sup> Interview with Waldo Jiménez, ANEP President, San Salvador, 13 February 2017.



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