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## Depoliticizing conflict in Sonora, Mexico: (II)legality, territory and the continuum of violence

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### Abstract

This article examines the complex (il)legal mediation of overlapping territorial claims and gold-mining rights in the region of Caborca, Sonora. Drawing on long-term ethnographic research and on documentary evidence, it places the ongoing, decades-long conflict between the ejido El Bajío and the Penmont mining company within a longer history, beginning with the rise of the *agrarista* movement in the 1970s which led to the creation of the ejidos in the region. It argues that the subsequent dismantling of agrarian organizations and parallel neoliberal privatization has given way to a depoliticization of local land disputes. Contemporary conflicts are now settled in the (il)legal arena characterized by the prominence of law-enforcement institutions highly articulated with illegal economies and violence. Lawyers have replaced agrarian leaders as intermediaries, and *sicarios*, armed gunmen with territorial power, have emerged both to protect extractive interests and extort a “rent” from illegal transnational trafficking, thus redistributing some of the local “spillover” of profits. The shift in local discourses renders these conflicts as “apolitical”, while criminalized and dispossessed *ejidatarios* attribute local violence directly to *la mina*. *Keywords*: legality, territorial conflicts, extractive industries, sicarios, Sonora.

Resumen: Despolitizando el conflicto en Sonora, Mexico: (I)legalidad, territorio y el continuo de violencia

Este artículo examina la compleja mediación (i)legal de reclamos territoriales superpuestos y derechos de extracción de oro en la región de Caborca, Sonora. Basándose en una investigación etnográfica a largo plazo y en pruebas documentales, ubica el conflicto en curso, de décadas de duración, entre el ejido El Bajío y la compañía minera Penmont dentro de una historia más larga, comenzando con el surgimiento del movimiento agrarista en la década de 1970 que condujo a la creación de los ejidos en la región. Argumenta que el posterior desmantelamiento de las organizaciones agrarias y la paralela privatización neoliberal ha dado paso a una despolitización de las disputas territoriales locales. Los conflictos contemporáneos ahora se resuelven en la arena (i)legal caracterizada por el protagonismo de las instituciones encargadas de hacer cumplir la ley altamente articuladas con las economías ilegales y la violencia. Los abogados han reemplazado a los líderes agrarios como intermediarios, y los sicarios, pistoleros armados con poder territorial, han surgido tanto para proteger los intere-

ses extractivos como para extorsionar una “renta” del tráfico transnacional ilegal, redistribuyendo así parte del “derrame” local de ganancias. El cambio en los discursos locales hace que estos conflictos sean “apolíticos”, mientras que los ejidatarios criminalizados y desposeídos atribuyen la violencia local directamente a la mina. *Palabras clave:* (i)legalidad, conflictos territoriales, industrias extractivas, sicarios, Sonora.

## Introduction

On April 12, 2016, a local judge issued arrest warrants against six *ejidatarios* of El Bajío, in the municipality of Caborca, Sonora, Mexico. The *ejidatarios* were accused of having stolen machinery and 460 million liters of a gold-rich cyanide solution belonging to the Penmont mining company. The *ejidatarios*, however, were on their own land guarding the open-pit and facilities from which the mining company had recently been evicted by an agrarian court judge. Interestingly, the lawsuit against the *ejidatarios* did not come directly from the company, but from a certain Rafael Pavlovich – uncle of Claudia Pavlovich who had just taken office as governor of Sonora – who manipulated documents and institutions to pass himself off as owner of part of the ejido. A few days later, more than one hundred members of the Sonora State Police and the Caborca Municipal Police entered El Bajío and, after beating and intimidating the *ejidatarios*, took six of them to the state prison located in Caborca. A few days later, the wives of the six men who were arrested and other members of the ejido returned to the area around the vacated mining pit. What they found bore the signs of a different type of violence. The thatch that the *ejidatarios* had built near the pit to keep watch had been razed to the ground, and a few steps away in a hole were the stiffened bodies of all their watchdogs. “All you could see were the legs sticking out and the flies”, said Erasmo’s wife (Interview with Margarita, 2021).<sup>1</sup> In the distance was a group of “hooded men with *cuernos* [AK 47s],” a distinctive sign that allowed the *ejidatarios* to identify them as *sicarios*, as the armed militias that control illicit economies are locally known.

This was the first in a series of violent episodes in a long conflict between Penmont, a subsidiary of Peñoles, one of the richest mining companies in the world, the *ejidatarios* of El Bajío, and the multiple groups of *sicarios* disputing the control of this strategic area adjacent to the United States border. Parallel to a complex legal process, there has been a violent struggle for control of the pit and facilities vacated by the mining company in 2014, which are exploited in an artisanal manner at a high profit. The *ejidatarios* were divided into a majority and a minority group, and for several years the majority group not only lost control of its land, where a clandestine operation was installed to exploit the pits, but also suffered torture, threats, arbitrary imprisonment and the forced disappearance of two members. In early 2020, the *ejidatarios* were able to regain control of their lands, and several are now engaged in artisanal gold mining. The conflict, however, has not ended, as in March 2021, two *ejidatarios*

were murdered, and a sign with the names of other members was left over their bodies. From the legal perspective, this conflict is unique because the ejido not only managed to get the mining company, referred to as *la mina* in all interviews, evicted from its lands in 2013, but also because an unprecedented court ruling in 2014 states that Penmont is responsible for the total restoration of the land, including the return of the gold extracted during its illegal occupation (Sentencia, 2014).

Taking this conflict as primary example, this article examines the complex system of (il)legal norms and practices that mediate competing territorial claims, over land, mineral resources and protection rackets. There is an increasingly codified territorial regime sustaining both extraction and the exaction of fees by criminal groups: a set of statuses, modalities and devices, which govern the delimitation, occupation and exploitation of the territory and its resources. Notions like concession and *plaza*<sup>2</sup> have more commonalities than is usually thought, as both entail temporary rights for the exploitation of a public good and enable the fictive decomposition of territories into discrete features to be capitalized separately as mineral resources, land or smuggling routes (Mendoza, 2018).

The main characteristic of this territorial regime is not the absence of regimentation, but rather the abundance and overlapping of multiple forms of property rights and jurisdiction with rival claims over the same space: private property, mining concessions, the “ownership” of smuggling routes, fishing permits, and so on. Following Nordstrom (2007), I call this regime (il)legal to stress the continuous and highly articulated nature of legal and illegal modalities. The overlapping of norms and codes of various natures and the opportunities for negotiation and profit that this regime opens up can also be understood as legal pluralism (Merry, 1988). Torres-Mazuera (2019) has shown that, even though the declared goal of the 1992 reform of the Article 27 of the Constitution was to secure and regularize ejido land tenure, in practice situations of irregularity and illegality around *ejidal* land tenure have multiplied since then. Increasingly, ejido land disputes operate in a legal pluralism that combines agrarian law, civil law, and appeals to indigenous law. In the case I recount here, there is an incipient articulation of the conflict in terms of an indigenous history, however, there is another layer of territorial codes and definitions that, following Weitzner’s concept, we might call “raw law”: “namely the norms, codes, sanctions of illegal armed actors who attempt to assert control over the raw economy and its flows, often in connivance or entanglement with state representatives” (2020: 142). While the law and its institutions are the central arena on which the conflict between the company and the ejido has unfolded, this has not excluded practices like arbitrary imprisonment or the use of gunmen for intimidation. This is a system in which a local boss’ claim to be “the owner of the *plaza*” can in practice have the same claim as a company’s to own mining rights.

The focus on drug-trafficking as the main driving force behind violence in Mexico has distracted most analyses from the larger economic context, in particular the effect of the neoliberal reforms and their ideological apparatus. In recent years, however, scholars have begun to inquire about the relationships between traffickers, *sicarios* and extractive economies (Correa-Cabrera, 2014). Paley (2015) looks critically at the War on Drugs as a neoliberal mechanism to open up new frontiers of extraction through terror and forced displacement. In such contexts, she argues, the killings of environmentalist and indigenous leaders are quickly dismissed and assumed to be linked to criminal activity. The case I analyse here confirms this hypothesis to some extent, but also allows for a more detailed description of the complex field of conflicting interests, traversed by the law and its institutions, in which the alignment between transnational capital and the action of armed groups is blurred.

The effects of neoliberalism, as an institutional and ideological project, can be seen not only in the privatization of the extractive industry and the attempt to subordinate social land tenure to the logic of the market, but also, importantly, in the depoliticization of social conflicts which are removed from the sphere of state intervention and represented as simple divergences in the economic interests of private individuals (Escalante, 2018). By placing the current conflict within the longer history of agrarian reform in the region, this article underscores the effects of the dismantling of formal political organizations and discourses, peasant unions in particular, which during the *agrarismo* era of the 1970s and '80s mediated between landed oligarchy and the ejidos, for instance. Seen from this perspective, "criminal" violence in contemporary Mexico is not apolitical in itself, as it is often argued, but rather has been depoliticized as a result of the parallel processes of criminalization and neoliberal privatization.

In order to uncover such processes, documentary evidence needs to be complemented through "slow ethnography" on the ground, as Rasch (2017) has argued. My fieldwork in the Sonora borderlands started in 2005 (Mendoza, 2017) and since 2017, I have been visiting El Bajío and conducting formal and informal interviews with ejido members involved in the long-term struggle, as well as lawyers, local journalists, and *sicarios*. Following practice in historical anthropology, I analyze this field data in the light of historical processes at a regional and national scale since 1972, when the ejido was founded, to the present day.

### **The political struggle for arid lands**

The extensive Caborca municipality limits with the Gulf of Cortés on the southwest and with the United States border on the northeast. In roughly fifty years, the coast of Caborca, vast and arid plains bearing the visible effects of drought and erosion, has been transformed by the confluence of agro-industry, large-scale mining and drug-trafficking. Although some of the richest mining companies and agro-industrial fields in Mexico are located in this region, the

landscape is best described as the ruins of the development projects of the previous decades. All ejidos of the era are similar in their basic layout, a geometric grid of six wide streets, houses fenced with barbed wire, and sometimes a school or an evangelical church. On the periphery of El Bajío, for example, the abandoned buildings of the *agrarista* era, with faded signs such as *Casino Campesino*, can still be seen.

Understanding this local struggle requires going back to the founding years of ejidos in the Northwest of Mexico. The most consequential step towards the encroachment and displacement of the O'odham people, who were the main inhabitants of this arid region until the 1940s, was the creation of the Altar Colonization District in 1949. Nearly sixty thousand hectares were converted into "national lands" (Castillo, 2012). The presidential agreement creating the colonization district states that the lands "were not properly exploited" and were therefore suitable for colonization and economic development (DOF, 1949). Here, as would be the case for the mining industry later on, nationalization and government investment paved the way for a highly profitable private exploitation (Sariego, 2009). During the 1950s and 1960s, a small number of families, many of whom remain to this day as part of the state's landed oligarchy, concentrated most land. By 1970, 16 percent of the agrarian population owned 84 percent of Sonora's agricultural land (Sanderson et al., 1979).

This situation led to the resurgence of agrarista movements and the eventual creation of hundreds of new ejidos in the 1970s. As Smith described for the neighbouring state of Sinaloa, the government's strategy was to mediate between conflicting interests by "combining populist pro-peasant demonstrations and occasional, targeted *agrarismo* with broad support for latifundista groups" (Smith, 2013: 139). Despite president Echeverría's support, the acceleration of agrarian reform was far from peaceful. The direct occupation of *afectables*, lands subject to distribution, became popular among some of the radical peasant organizations, and sources of the time speak of the "propensity of private landowners and political bosses to protect their lands with paid gunmen." Smith (2013: 131) also documents the use of private gunmen against the *agraristas* since the 1940s and 1950s in Sinaloa, where "lowland latifundista elites allied with highland ranchers to form heavily armed anti-agrarista groups." According to Smith (2013: 127), the state government's tolerance of opium cultivation and trafficking allowed the government to manage the agrarian conflict by "paying off the anti-agrarista ranchers and offering potentially radical peasants temporary labour and well-paid employment." The case of Sonora is different because at the time it was not a major drug cultivation area, but rather a trans-shipment zone where the social effects of drug trafficking took longer to spread to large sectors of the population.

This article seeks to underscore the strong political character maintained by the official management of the land conflict in the 1970s, in its language, public significance and forms of mediation. Although it was a populist veneer, it matters that official discourse legitimated *agrarismo* in terms of the revolu-

tion's legacy. A notable example are the events that followed the San Ignacio Río Muerto massacre. In October 1975, Governor Biebrich, under pressure from a landowners' organization, ordered the repression of peasants who had occupied land in San Ignacio Río Muerto. The *Policía Judicial del Estado* opened fire on the "invaders" led by Juan de Dios Terán, a local teacher; seven were killed and dozens more wounded. The press noted the presence of "white guards" at the service of the landowners (Sanderson et al., 1979). This event was not only widely criticized at the time, but it had such political significance that the young governor Biebrich was forced to resign a few days later. As detailed below, the contrast of this outcome with the sequels of the present-day conflict between El Bajío and the Penmont mining company is revealing, as while there has been no shortage of state and private violence, it has had no political consequences. The local press has paid no attention to the conflict, and its social significance has been completely diluted amid speculation about criminal conspiracies.

The agro-industrial boom of the 1950s and 1960s brought thousands of agricultural laborers from all over the country to the fields in the coastal area of Caborca. It was then that a new generation of agrarian leaders, referred to simply as *líderes* or *dirigentes*, founded their political power by promoting the demand for land distribution and managing the formation of ejidos through their political affiliations. They were thus acknowledged by the state as valid representatives of those who requested ejido lands in the district. With 45 ejidos, Caborca is the third municipality with the largest number and the vast majority are in the coastal region. What makes these different from those of other regions of Mexico is the fact that they were constituted in previously uninhabited lands and with people coming from all over Mexico willing to start a new life in the desert.

It was at this time, in 1972, that the ejido El Bajío was first constituted, however the lands had no water nor electricity, so the first group of *ejidatarios* was not able to settle there and ended up disbanding. A decade later, the Santiago family, which would later become a central player in the struggle against Penmont, fought for the reallocation of El Bajío to a second group of *ejidatarios*. Like hundreds of Mixteco families (Velasco Ortiz, 1995), don Simón Santiago, his wife, and their eight children left Oaxaca in the early 1980s to seek work in the agricultural fields of northern Mexico. They first settled near Mexicali, where parents and children worked harvesting crops for export. In 1984, they began traveling to the Caborca coast to harvest grapes. Erasmo Santiago, his son, remembers that his father used to say: "In the south we do not have much land left, during the Conquest people invaded our lands. So, the only way to recover some of what we have lost is settling here, because there is land here. What they stole from us over there, we are going to recover here" (Interview with Erasmo, 2021).

For these Mixteco families, the struggle for land distribution in Sonora was part of a much longer history of colonial dispossession and grievances. Histori-

cal restitution, however, meant organizing not only with other aspiring migrant workers from all over Mexico, but also with local *agrarista* leaders who followed their own logics and interests. Don Simón and his family joined a group of people who settled next to the railroad tracks and founded a small village called El Sahuaro. The occupation of this land had been orchestrated by Miguel de la O, an *agrarista* leader based in Mexicali. Erasmo recalls that Miguel de la O would visit El Sahuaro from time to time and collect a bunch of *cuotas* (fees) “for the school,” “for the teacher,” “for the ejido’s reallocation procedures,” among others. “He would place our fees in his pocket and then leave – recalls Erasmo – and we would not hear anything about the school or the paperwork until the next time he would come to collect more fees” (Interview with Erasmo, 2021). From the point of view of the landowning and agroindustrial elites, agrarian leaders were “communists” and “land invaders,” conflictive characters and social agitators capable of mobilizing their contacts and political affiliations to steal land. From the point of view of the *ejidatarios* and members of the organizations, however, leaders were not straightforward social justice fighters, but rather ambivalent intermediaries who, while sometime obtaining benefits, also stole fees, swindled and created conflict and division.

The leader Miguel de la O and his comrades were members of the Union General de Obreros y Campesinos de Mexico (UGOCM), a central union created in 1949 which, unlike the dominant CTM and CNC, maintained certain independence from the government and a comparatively radical discourse including the demand for a “complete agrarian reform.”<sup>3</sup> According to its own description, the UGOCM “led and executed the seizure of land in the 1970s to continue with the agrarian distribution throughout the country, even when its leaders suffered persecution, imprisonment and assassination, both by the government and by gunmen and white guards of the landowners.” In the mid-1970s, however, independent peasant organizations such as the UGOCM were incorporated through a series of alliances and compromises into the Ocampo Pact to form a single block around the PRI affiliated CNC, “so that the peasants would no longer fight over acronyms” (Montes de Oca, 1977: 69).

Without the precedent of the *agrarista* movements and negotiations of the 1970s, the *ejidatarios* of El Bajío would not have been able to obtain land. Interestingly, however, in their account of events, results were only achieved once they managed to circumvent the intermediation of Miguel de la O and the leaders of the time. According to Erasmo Santiago’s account, after several years of paying fees and not seeing results, Don Simón decided to go personally to the office of the Reforma Agraria in Hermosillo to inquire about the El Bajío lands, where an engineer told him: “Miguel de La O has not been here for two years. But if you go back and unite with the others, I myself will go and take the census.” Don Simón replied “We are already united, it is the leaders who are divided.” Soon after, the engineer arrived to draw up the new list of *ejidatarios*, giving priority to agricultural laborers and people who lived in the town of El Sahuaro. Thus in 1991, El Bajío was reconstituted with 71

members from several regions of the country, mainly Sinaloa, Michoacán, Nayarit, and Oaxaca – including five Mixteco families.

Some of the new *ejidatarios*, however, knew virtually nothing about the land, as they had been living in cities such as Mexicali and traveling to El Bajío only to attend meetings. One of them told me in 2017 that when she visited the ejido's land in 1992, she was not satisfied, as the plots were difficult to access and she in fact tried to change her parcel for one closer to the highway. Looking back, she exclaimed: "Who would have guessed back then that the lands had gold?"

### **The insertion of the mining company**

Even though artisanal mining and prospecting has existed in Caborca for centuries, the Herradura mining complex – made up of four large pits – is a relatively new project, which only became profitable with the development of large-scale open-pit mining technologies and cyanide leaching. The Penmont company was founded as a consortium between a United States-based company, Newmont, and Peñoles, the second largest mining corporation in Mexico, property of the wealthy Bailleres family. In 2014, when conflict with El Bajío reached its peak, Newmont withdrew and sold its share of the company to Peñoles. Thus, Penmont is now a fully Mexican-owned company, and even after its eviction from the Soledad-Dipolos pit, the one located in El Bajío, it continues to be Mexico's second largest gold producer.

According to the company's reports, exploration in the area started in 1988, the same year the Mexican government disincorporated 6.6 million hectares of mining reserves – equivalent to 98 percent of the country's total – to be opened to private concessions, and four years before the completion of mining deregulation in Mexico carried out by the 1992 Ley Minera (Sariego, 2009). By 1992, don Simón Santiago had managed to get the ejido El Bajío reassigned to the new group of *ejidatarios* and became the first president of the *comisariado ejidal*. The fact that it was possible for the same space to be granted at virtually the same time as an ejido to a group of people and as a mining concession to another is significant.

The Mexican mining law (Ley Minera, 1992), as those of many countries, distinguishes between surface land property and the ownership of 'underground' mining rights (*concessions*). This legal fiction decomposes territories into discrete elements to be exploited separately, and in this way, it opens up new layers for appropriation and enclosure in spaces already claimed or even occupied. In the same way that colonial expansion was based on the representation of the frontier as an open, empty and fully available space, state mining cartography creates the illusion of a space entirely available for exploitation, with no obstacles. In Mexico, mining and land cartographies are carried out by different administrative instances and no official maps shows how they overlap. Mining cartography, in charge of the Federal Secretary of Economy, only

indicates already assigned mining lots, and considers the totality of the national territory as *terreno libre* (free ground), with the exception of land already protected by “existing concessions or assignments” (Ley Minera, 1992, Art. 14). Furthermore, the limits and boundaries between mining lots are absolutely independent from those of surface property.

To understand the shape and consequences of neoliberal privatization and state dismantling in Mexico, it is essential to attend to the singularity of the legal mechanisms of concessions as distinct from those of private property. It was through concessions that most previously state-controlled industries were open to private exploitation, from railways to mines and telecommunications. Concessions are legally defined as the right conferred by the state to a private entity to exploit a public good or service for a limited duration of time. Unlike property, concessions are temporary rights, precisely because they usually apply to resources – like water, communication routes, or mining resources – which have been historically understood as public, common or strategic, and therefore are not subject to permanent property rights. Concessions thus enable the private exploitation of natural strategic resources without the need to define these as ordinary commodities and are therefore one of the most flexible mechanisms to open former public resources to the market while justifying on paper the expropriation of land in the name of “public interest”.

Article 27 of the Mexican Constitution kept, despite the reforms of 1992, a veneer of revolutionary nationalism by maintaining the politically charged principle that “the Nation retains the direct domain of all minerals or substances that, in veins, cloaks, masses or sites, form deposits whose nature is different from ground components, such as minerals from which metals and metalloids used in industry are extracted.”<sup>4</sup> Although the Constitution defines the national domain of mineral resources as “unalienable and inalienable”, in practice it facilitated the private exploitation of minerals, as it has freed resources from land ownership and enabled the federal government to manage rights over them. Since 1992, state-owned mining companies and new concessions were opened to private and foreign investment via temporary concessions (Sariago, 2009). By breaking up nature into elements artificially isolated one from another, concessions opened new frontiers of extraction and exploitation in spaces already owned or occupied. The 1992 Mining Law, however, clearly establishes the hierarchy between land property and mining concession; from the point of view of the state, exploration, exploitation, and the profit from mineral resources are priorities which are “of public utility and will have preference over any other use or profit of the land” (Ley Minera, 1992, Art. 6).

One of the most puzzling facts is that mining companies, despite the tremendous formal and informal advantages that the Mexican legal and political system offers them, choose to act illegally and refuse to offer anything remotely close to a fair payment to land-owners and communities. The example provided by Garibay based on public data from the El Peñasquito mine, owned by the Canadian mining company Goldcorp, is eloquent in this regard. The rent

that the company pays for the occupation of the land to the three adjacent communities is equivalent to 0.031 percent of its net profits and 0.047 percent of production costs (Garibay, 2010: 155).

Even though land ends up being so absurdly cheap for mining companies, the process of gaining access to it is far from straightforward. Peasant communities are increasingly aware of the damage caused by mining and often refuse to treat their land as a commodity (Torres-Mazuera, 2019). The similarities observed in the way mining companies, both Mexican and foreign, approach land-owning communities to gain access to the territory suggest that there is a deliberate method, a kind of manual for carrying out what Garibay calls “community capture”:

It all starts with a peasant community that is unaware of the scope and implications that corporate mining exploitation will have on their land. One day, a group of “engineers” arrives in the community [...] presenting a sweetened image of their activity. They tell them that [...] they will need people to work in the exploration; that the future will be promising if the mine is opened [...] And, by the way, they show a little bit of the violent side. They tell them that [...] in any case the company will enter to carry out the work because mining is a national priority” (Garibay 2010: 169. Author’s translation).

Among the alternatives available to the company, ranging from expropriation to sale-purchase, the least costly for a mining company is to convince the *ejidatarios* to sign a lease of their land. The rent they receive for this “temporary occupation prior to expropriation on the basis of public utility” is negligible and does not even remotely cover the damages that mining causes to the land, the aquifers, and people’s health. In addition to these temporary contracts, which are very often signed under deceit or veiled threats, a parallel system of “favours and benefits” is added, which includes such things as classrooms, water tanks or garbage cans that are not significant in monetary terms. Garibay considers this process as a way of hiding dispossession and subordination of *ejidatarios* to corporate interests.

In 1997, Penmont started the commercial exploitation of La Herradura, located in the territory of the Juan Álvarez ejido. Once the occupation of this strip was assured via such a lease, the company started to extend its operation to an area not covered by the legal concession which included the Dipolos mountain located at the north-western corner of El Bajío. That is, Penmont started operations in El Bajío with no legal document authorizing it to occupy this mountain. Exploration started around 1997 and *ejidatarios* completely lost access to that part of their land. It was not until 2002 that the company paid each *ejidatario* 16 thousand pesos [800 hundred US dollars] and convinced some of them, individually, to sign agreements of temporary occupation to conduct “exploration”. This is how Erasmo Santiago recalls the negotiation with the mining company:

Once they came to ask for a permit to explore and drill in the plot that belongs to us, to my dad and to me. They said: “we are going to give you an access road as a benefit.” So, I said, “if there is no economic benefit, why should I give you permission?” I spoke to my dad, who was in the south of the country: “Apá, Esparza sent an engineer with a document already written as if we had written it, and he just wants us to sign it. But I told him no, that if they do not pay us 150,000 pesos for each hole they are going to dig on the plot, we are not going to sign.” Fifteen days later *licenciado* Esparza came personally: “I am here to see what happened with my request for your plot to drill two or more wells.” “Listen, Mr. Esparza,” I told him, “you are not offering any benefit, and do you think it does not hurt us that they are digging holes in the land? The land is ours. If you help me with 150,000 pesos per well, we will do it.” “But look Erasmo [he replied], the access road that we are going to make is the benefit.” “If you are going to pay us as I am telling you, go ahead, if not, I am not going to sign the paper.” My dad said “how is a road going to benefit us, if I myself brought machinery from the federal government to make a road.” (Interview with Erasmo, 2021).

This is just one episode in a decade-long history of back-and-forth transactions between Penmont and the *ejidatarios* of El Bajío, but it conveys the overall tone. The company sends representatives to try to trick, intimidate, or convince the *ejidatarios* without offering a fair payment to the owners of the land. Attempting to use the access road that the company needs to build anyway as payment is tantamount to being unwilling to pay the landowners anything at all. It is significant that the response of Don Simón Santiago was that whereas roads are negotiated with the “federal government,” it was up to the mining company to offer monetary compensation.

In a recent interview included in the documentary *Tolvanera* (Melgoza, 2021), Manuel Loya, the magistrate who in 2013 issued the sentence obliging the company to vacate and restore the land, recalled that he tried to promote an agreement between the parties:

I summoned the parties to a conciliation, and the minutes of the hearing recorded that *la mina* [the mine] expressly said, “we are not interested in conciliation.” The *ejidatarios* always supported the possibility of conciliation [...] What happened in my presence is that the *ejidatarios* told the mine: “I want you to support me with something that will not even cost you money [...] some classrooms for the school, an ejido hall to hold the assemblies, and some help with the electrification process. And the rest does not cost you, because if you are contracting suppliers to provide you with a service, such as getting water, keeping the roads clean, or providing security for the mine, then just hire the *ejidatarios* instead, so that they have work, and you pay them right there. You just transfer what you are already paying to the other suppliers, and it will not cost you any additional money.” It seemed very viable to me. It was very convenient for the parties to recon-

cile. However, the mine always made it clear to me that it was not interested in conciliation.” (Author’s translation).

It is striking that the “benefits” the *ejidatarios* were willing to accept from the mining company at this point are identical to the ones previously granted to them by political intermediaries and the state: schools, halls, electricity, and jobs. However, at that time, political mediation, even if corrupt or predatory, demanded that leaders adhere to certain forms, adopt a particular language and above all mobilize collective organizations. In contrast, contemporary conflicts, in cases such as this one between extractive industry and landowners, are addressed in courts if at all.

### **Law in an (il)legal field**

The central arena on which Penmont and El Bajío have confronted each other has been a series of extremely complex legal proceedings. Obtaining the eviction order against Penmont, for instance, involved 67 identical lawsuits, one presented by each member of the ejido. Over the course of almost fifteen years, each side has produced an arsenal of legal arguments, documents, lawyers, agreements, injunctions, lawsuits, rulings, evictions and arrest warrants (Jones, 1998). All these legal artifacts, however, are deployed in an (il)legal field, that is, an arena characterized by a continuum of legal and illegal practices (Nordstrom, 2007). The repertoire of actions deployed during this conflict include things like the false imputation of crimes, arbitrary imprisonment, and influence peddling. Strictly speaking, these are not extra-legal practices, but (il)legal ones, as it is the law and its institutions that shape them. What is perhaps more striking is that despite the manipulation of legal institutions carried out by the mining company, in 2014 there was a judge at an agrarian court capable of issuing a sentence obligating it to vacate the mining pit.

Just as agrarian leaders once acted as gatekeepers of access to land, schools, and other government programs, lawyers are the key intermediaries in contemporary conflicts, not only in the case of El Bajío, but in most disputes between extractive industry and local communities. When the *ejidatarios* of El Bajío decided to take legal action against Penmont, the first problem they faced was the lack of a defense attorney. Time and again they found that the lawyers they had hired to sue the company had “betrayed” them, claiming that they had received money from the company to hinder the ejido’s case. In Erasmo’s account:

We went to the Comisión Nacional para el Desarrollo de Pueblos Indígenas, to the University of Sonora...there was no attorney available, they were all busy. Then I went back to see the magistrate and I told him: “magistrate, sorry to bother you again, but there is no lawyer.” He said, “Erasmo, be patient. Go to the agrarian prosecutor’s office and ask for a lawyer, there should be a lawyer there.” And we went, and there was one available. But

barely 15 days went by since we started working with him, when he sided with *la mina* (Interview with Erasmo, 2021).

Suspicion of lawyers, their interests and affiliations is a constant throughout the conflict, and its affects extend beyond the ejido. According some *ejidatarios*, at the beginning of the conflict it was the legal representatives of Penmont themselves who covertly directed the legal action of the ejido against company, with the aim of taking a part of the amount to be paid by the it to the *ejidatarios* as compensation. Coercion and manipulation, of course, does not end with lawyers, but includes judges, public attorneys and the entire judiciary structure.

In 2014, magistrate Manuel Loya of the Agrarian Court issued a ruling in favor of the ejido, ordering the retroactive payment of the rent and the “total restoration of the status quo ante” (Sentencia, 2014). This last point is a historical victory for ejidos in Mexico, as it indicates that the company shall restore the ecosystem, which includes “bringing back to the place all of the gold and other minerals extracted by virtue of the agreements here voided.” Magistrate Loya explained the legal reasons behind his ruling in the following terms:

There is a thesis of the Supreme Court, it's there written in the sentence, which says that minerals in the subsoil belong to the Nation *as long as they are in their natural state*, but that once it is extracted, it no longer belongs to the Nation but to whoever extracted it. Under that criterion, I said, well, then it is the mine that would be the owner of the gold, but if the effects of nullity [of the signed lease] are that things should return to the state they were in, then it is logical that you, mine, must return what you obtained with the acts that I am annulling. So that is how I realized that they would have to return the gold (Loya, interviewed in *Tolvanera*, Melgoza, 2021, Author's translation and emphasis).

However, not only was the sentence never enforced beyond the eviction from the pit, but magistrate Loya was removed from his post when President Enrique Peña Nieto and the Senate refused to ratify his appointment, clearly as punishment for the ruling against Penmont. The sum to be paid by Peñoles to the 71 members of the El Bajío for the value of the gold extracted amounts to more than 300 million dollars, without taking into account the cost and technical difficulty of restoring the ecosystem. Additionally, once the *ejidatarios* had the company evicted from the Soledad-Dipolos pit in 2013, the leaching ponds and ore-piles where all the material extracted from the pit was left waiting to be processed were exposed. Exploiting these gold reserves is relatively simple and profitable. At this point, the legal conflict between Penmont and El Bajío involved new actors and opportunities for profit. The *ejidatarios* split in two groups, each trying to collect the payment stipulated by the court ruling through various means. Additionally, they began to compete for the control of the ore-piles, having to deal with shady entrepreneurs with political connections, *sicarios*, and state forces.

In 2016, Rafael Pavlovich, uncle of Claudia Pavlovich, governor of the state of Sonora at the time, and member of the political and entrepreneurial elite of the state, signed an agreement with a group of five *ejidatarios* – who claimed to be the legitimate holders of the common areas where the pit is located. In this contract, Pavlovich committed to using his “human resources” to promote the enforcement of the 2014 court ruling, by claiming:

The client [the *ejidatarios*] states that he or she requires the services of the provider [Rafael Pavlovich] so that [...] attempts are made to collect the debt and the execution of the court’s ruling [...] The provider states that he has the capacity and the human resources needed to provide the service required by the client (Convenio, 2016, Author’s translation).

This agreement is an eloquent example of the (il)legal character of this field of confrontation. Signed by both parts before a *Notario*, the agreement is a legally binding document which, nevertheless, implicitly acknowledges that the Mexican justice system works through “human resources”; in other words, that enforcing a court ruling requires influence peddling. Making use of this agreement, Pavlovich began to act as owner of the common areas of the ejido, sued the *ejidatarios* of the majority group of *despojo* (plunder), and was able to get a judge from the First Instance of the Judicial District of Altar to issue an arrest warrant against them. On April 12, 2016, only two weeks after the complaint was filed – and only a few months after Claudia Pavlovich assumed office as governor –, members of the *Policía Estatal de Sonora y Policía Municipal de Caborca* beat and threatened five *ejidatarios* who were part of the majority group. Among those arrested were Erasmo and Bartolo, sons of don Simón Santiago, the founder of the ejido. The efficacy of law and legal institutions as a means of repression and criminalization of the poor is remarkable. Interestingly, criminalization works as a mirror, as when the *ejidatarios* were dispossessed of their land, they were accused and incarcerated for plunder; although they were threatened, killed and “disappeared”, they were also accused of murder. This is how Margarita, Erasmo’s wife, explained it to me:

Do you remember when some dead people appeared over there by the bridge, on the curve of highway 15? Well, they blamed us, said that it was us who killed people and then went to throw them there. And it was the mine! Well... they were fighting with each other, among the *locos*, they were fighting amongst themselves, they were fighting. And they blamed us even in the news. Oh no, I said, we cannot even kill a fly (Interview with Margarita, 2021).

Through this combination of legal resources and violence, the two groups of *ejidatarios*, Rafael Pavlovich, and different groups of *sicarios* have alternated in the control of the abandoned mining pit. During that time, a makeshift system to exploit ore reserves using a cyanide solution was built on site. Armed men, alternatively referred to as private security, *sicarios*, or guards, defended

the facilities. Explanations for their presence there and their role in clandestine gold extraction vary.

### **The rise of *sicarios* and the depoliticization of violence**

The term *sicario* only entered common use in Sonora around 2010, and it does not refer to an individual contract assassin exclusively engaged to kill and torture, as it does in other regions. *Sicarios* – also referred to gunmen by some people – are armed militias which control territories and exploit its illegal markets by charging fees. In this sense, *sicarios* are closer to the classical model of the mafia as a criminal organization engaged in protection rackets, rather than to drug cartels primarily engaged in smuggling. Other local and common ways of referring to them is *la mafia* or *los malandros*. Virtually the entire state of Sonora is divided into small territories or *plazas* controlled by one of these militias. Boundaries between territories are increasingly strict and subject to careful surveillance, and in some cases they have begun to affect the daily lives of people not involved in illegal economies.

Although these *sicarios* started off as the armed protection of drug-trafficking organizations, they have ventured into other economic activities and have grown increasingly self-sufficient. They control retail drug trade, gambling, prostitution, clandestine alcohol sales, and undocumented migration, but have also dabbled in extractive economies such as fishery, mining and logging. In the Sonora borderlands, *sicarios*' most reliable and profitable business is the circulation of undocumented people and criminalized commodities, which they exploit by establishing and enforcing an invisible boundary around their territory and charging for the right of way. Charging fees to the thousands of Mexican and Central American undocumented migrants headed to the border with the United States, for instance, has provided resources to arm and support a structure of roughly three hundred people, known as the *Cazadores*, in the region of Altar (Mendoza, 2018). The territorial organizations of extraction and extortion have some common features, beginning with the fact that both exploit commodities or activities previously considered public, communal or national. It could be said that the *sicarios* hold the concession of a *plaza* or own the right to operate filters in the circulation of certain commodities and thus collect dues. The owners of the *plaza* are thus sort of informal concessionaires who in turn pay a “rent” to state agencies and to the larger criminal organizations that sponsor them, such as the various branches of the Sinaloa cartel.

The groups of *sicarios* that dispute the territory around this mining concession – known as the *Ruma de la Costa*, the *Cazadores de Altar*, the *Barredora* or the *Paez de Caborca*, and another group from Puerto Peñasco – are mostly led by and made up of local youth of limited means, who through their affiliation with these organizations receive a salary, cars and above all the power to carry a gun. Local accounts refer to at least four ways in which *sicarios* have been involved in mining and gold-trade: charging “protection” to mining com-

panies, stealing gold, charging fees to clandestine gold miners, and directly participating in clandestine gold mining. Virtually everything that is said both locally and nationally about the *sicarios*, their alliances, sense of belonging, confrontations and activities, involves some degree of speculation and fantasy. However, in the Caborca region, even more phantasmagoric than the presence of the *sicarios* is that of *la mina*, as the owners of the mining company are as alien and spectral, not only locally but nationally, as the heads of any cartel, and rarely explicitly represented in legal negotiations. Depending on who is describing their involvement, the *sicarios* may appear either as fully subordinate to the company, or as having their own interests and claims, which would turn their actions into a violent mechanism of local distribution, one that increases the local economic spillover of transnational flows, albeit at a very high cost in terms of bodies.

The majority group of *ejidatarios* of El Bajío leans towards the first interpretation. To them, criminal violence is part of a continuum of repression. Unlike people from the towns of Altar and Caborca, they do not have detailed knowledge of the *sicarios* and their various affiliations. Whether confronted with *sicarios* or police brutality, the *ejidatarios* of El Bajío see *la mina* as the only real agent and enemy. During the first appearances of the *sicarios* in El Bajío, the local guess was that they were the Ruma, a group led by three brothers from Sinaloa, based in the nearby ejido El Ultimo Esfuerzo. Locally, the Ruma are portrayed as a rather minor group, which, aside from controlling drug retail in the agricultural fields, intervene in seafood commercialization by forcing local fishermen to sell them their product at a lower than normal price. Following this interpretation, their involvement in El Bajío's conflict would have been as paid gunmen at the orders of Rafael Pavlovich. In their description of how they were kidnapped and tortured, Erasmo and Margarita confirm this hypothesis:

We do not really know these people [the *sicarios*]. When they picked us up, we looked at their *cuernos de chivo* [AK 47s], and it seemed strange to us because the police do not use many of those. But yes, when they picked us up, they threw us beyond la Y Griega, which means they were the ones from that side [namely, the Ruma]. Then they told us to get out of the ejido. "My boss wants all of this, and he does not want the *ejidatarios* here. If you do not get out, we are going to come back again." But they must be *gente conocida* (known people) because one of them said: "You guys were doing well at El Sahuaro, what are you doing here? That is when I said: "No, these people know us." (Interview with Erasmo and Margarita, 2021).

What distinguishes *sicarios* from the police is the type of weapons they carry and the way they speak, but also the fact that, despite having their faces covered, they reveal their knowledge of local people, so they most likely are *gente conocida*. This is a significant detail because it places the *sicarios* within the same social sector as the *ejidatarios*. In fact, an alternative interpretation, pro-

moted mostly by the minority group of *ejidatarios* who allied themselves with Rafael Pavlovich, was that armed men were kin of some *ejidatarios* who were claiming their own right to participate in clandestine gold exploitation at El Bajío. Rather than establishing the truth of either interpretation, what matters for my argument is the fact that in certain accounts of the conflict, the action of the *sicarios* may not appear as fully determined by and aligned with the interests of the mining company or a shady entrepreneur exploiting his kinship relation with the governor, such as Rafael Pavlovich.

The relationship between mine assaults and protection rackets is equally ambiguous. In November 2019, a truck transporting 45 gold ingots property of Penmont mining was stolen on the Caborca-Sonoyta international highway. This was the third of three major robberies to Penmont in less than ten years. Interestingly, the robbery was attributed in local accounts to the *sicarios* of Paez Quintero. A few months later, in March 2020, a war broke out between the Altar and Caborca groups of *sicarios* which has left close to a hundred dead and missing, many of whom were identified as young men involved in illicit activities. In the local and national press, the dispute between these groups was explained as a fight over smuggling routes and drug sales. According to local explanations, however, the conflict between these antagonistic groups of *sicarios* had more to do with the “protection” of the mining company. The group from Altar claimed to have entered Caborca to “clean up” the area, arguing that the Paez Quintero band had “broken the agreement that there would be no extortion of businessmen or robberies to the mines” (Anonymous interview, 2020).

This highly popular discourse of protection and not extortion of the agricultural and mining industry promoted by criminal organizations is also symptomatic of neoliberal depoliticization. Clearly, in the local balance of power, the mining company is far above both organized crime and the municipal and state governments. Even so, *sicarios*, lawyers, and political intermediaries manage for short periods of time to position themselves on an intermediate scale and obtain a slightly higher distribution of economic benefits from the mining company – through robberies, clandestine exploitation, or collection of fees. Unlike the *ejidatarios*, however, these actors do not articulate their actions in a political manner as a defense of the land or of local appropriation of profits, but rather as protection of the interests of the industry and participation in a continuum of state-criminal repression against the *ejidatarios*.

## Conclusions

Situating the conflict between the ejido El Bajío and Penmont within the longer history of the *agrарista* movement in the region of Caborca underscores one of the effects of neoliberal privatization, the dismantling of the political intermediaries of the 1970s, in particular peasant unions, whose leaders used their political leverage to mediate between agrarian landowners, ejidos and the govern-

ing agencies. During the past three decades, conflicts have been depoliticized and transferred to the judicial sphere, where (il)legal practices have assured that corporate interests prevail. While *agrarista* leaders have disappeared in contemporary conflicts, lawyers have become the central intermediaries between *ejidatarios* and state institutions, mainly the judiciary. This is not just a substitution, the nature of mediation and the discourses were also transformed, privatized and depoliticized. In the first case, the conflict was articulated in terms of social rights and the Revolution's legacy; in the second, it is recast in terms of the laws that defend the "public utility" of natural resources over any other claim, and is dealt with through entangled judicial procedures. Conflicts between social sectors, such as agrarian communities and the extractive industry, are thus removed from the sphere of formal political mediation either through unions or parties, disregarded by the press, and relocated in the domain of private legal negotiations, or even conflated with criminal activity. In that sense, it is quite telling that the conflict at El Bajío, and the deaths and disappearances resulting from it, had no political cost for the state government or political elite.

Another effect of this depoliticization is manifested in the method mining companies follow when inserting themselves into a community, by means of deception and refusing to pay a remotely fair price for the exploitation of the land. There seems to be no ideological or political apparatus imposing such an obligation or limit to extractive interest. There is no sense of a public or common good to mediate between the extractive industry and the people. This is where the effects of the neoliberal reforms can be seen most blatantly, not only in the institutional dismantling of political mediation, but also in the fading of the notion of the public good as the market and economic interests come to the fore (Brown, 2017).

Something similar happens with the violence exercised by *sicarios* which, despite the massive body count, is systematically represented in the official discourse as apolitical. Unlike the stereotypical narrative that invariably resorts to the image of illegal drug trafficking against the "rule of law", the local interpretations of these armed groups' actions is fully susceptible to a political reading, just as the paid gunmen hired by the oligarchs in the 1970s were seen as repressors of social movements rather than "criminals." Moreover, in some ways, these armed groups use their capital of violence to increase the local economic spillover of transnational flows, from migration to mining. The cost in human terms, however, is extremely high, and to a large extent it is the same for the ejidos and the local youth who join the mafias and thus become agents of their own destruction.

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## Notes

- 1 All interviews were in Spanish, and quotes were translated by the author.
- 2 In most of Mexico, *plaza* designates the territory in which exclusive rights to illicit economies and protection rackets are claimed by a particular mafia or group of *sicarios*.
- 3 The citations are taken from the brief history of the union on the UGOCM webpage: Unión General de Obreros y Campesinos de México, Semblanza. <https://ugocm.org/semblanza>. Consulted on 15 of Dec. 2021. Author's translation.
- 4 Mexican Constitution, Article 27. <https://mexico.justia.com/federales/constitucion-politica-de-los-estados-unidos-mexicanos/titulo-primero/capitulo-i/#articulo-27>, on 20 November, 2020. All citations are translations from the Spanish original by the author.

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