

Neoliberal reform, contestation and relations of power in mining: Observations from Guinea and Mongolia

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Abstract: Drawing on contributions from heterodox international political economy, this paper uses the notions of structural power and modes of governance to analyze the conditions that help explain emerging trends in the reform of extractive governance. Based on case studies of governance reform dynamics in Guinea and Mongolia, the article argues that, in certain cases, the possibility of change exists in the modes of governance and that with these changes, the shifting of relations of power among the actors concerned can begin.

The paper is divided into four main sections. After a brief outline of its theoretical framing, the next section explores the legacy of the far-reaching liberalization reforms that have been introduced into the mining sectors in mineral-rich countries across the Global South. The following two sections examine the contestation of this legacy at various levels and in various arenas, based on two case studies, Guinea and Mongolia. The paper's final section contrasts these experiences of contestation and reflects on the meaning of these changes in terms of contestation, political settlements, modes of governance, and the beginning of the shift in relations of power among the actors concerned.*

Key words: Contestation; Extractive Industries; Governance; Guinea; Mongolia.

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1. Introduction

This paper makes the case for the use of the concepts of structural power and modes of governance to understand the conditions that help explain emerging trends relating to the reform of extractive governance. Drawing on contributions from heterodox international political economy, the paper argues that in certain cases it is possible to see changes in a country's modes of governance and, with these changes, the beginning of a shifting in relations of power among the actors concerned.

The arguments guiding this paper are illustrated via two case studies: Guinea and Mongolia. Both countries are rich in natural resources, where neoliberal restructuring of the mining sector successfully attracted massive investment. However, these reforms have also caused significant social and environmental costs yet have done little to improve living conditions. The resource booms led to pressure from civil society for a new wave of reform and measures that would bring more equitable returns, contribute to local development, and be more respectful of the environment. In turn, these developmental reforms were met with counter-reform pressures designed to dilute or neutralize civil society efforts. The counter-reform measures have been, in part, successful in Guinea and more so in Mongolia.

Situations vary significantly over time, from country to country. and from site to site, However, the two cases analyzed in this paper help illustrate the fact that, in certain contexts, there is evidence to suggest that new dynamics are at play, whether resulting from regulatory changes, social pressures, or a combination of the two. These experiences show that in certain cases and under specific circumstances (which deserve examination), contestation is taking place within a continuum of interconnected arenas and has entailed the beginning of a redefinition of relations of power and influence among actors.

The paper is divided into four main sections. After a brief outline of its theoretical framing and the legacy of far-reaching liberalizing reforms in the first section, the next two sections illustrate the contestation of this legacy in two countries: Guinea and

Mongolia. The final section of the paper briefly contrasts these experiences and reflects on the usefulness of the concepts of modes of governance and structural power, the beginning of shifts in relations of power among the actors concerned.

2. Context and theoretical framing

Under the auspices of international financial institutions (IFIs) in the 1980s and 1990s, an overwhelming majority of governments in resource-rich countries across the Global South introduced liberalized mining regimes, ostensibly to spur development in their mineral-rich but indebted countries. The IFIs recommended the introduction of successive generations of far-reaching liberalization measures aimed at specifically attracting foreign direct investments in an increasingly privatized large-scale mining sector. This occurred in conjunction with reforms calling for the strong retrenchment of the state from the mining sector. Over time, the IFIs encouraged countries to align their mining legislation with the most liberalized mining codes. This led to a cumulative process of liberalization that aimed to create an environment that was as attractive as possible to private investment (Campbell, 2004, 2009b; Hatcher, 2014; World Bank, 1992). In other words, the measures promoted by IFIs created regional and continental dynamics whereby individual countries were encouraged to compete in creating the most liberalized mining regime.

While these reforms have been quite successful in attracting foreign direct investment, they have also radically shifted power and authority from state to private actors, thereby redefining relations between elites and communities. These shifts have contributed to a reduced institutional capacity to enforce regulations and, consequently, the norms essential for developing and protecting the environment have also weakened. In many cases, the institutionalization of particular modes of reproduction of power relations has also occurred. Similar to the experience of petroleum-rich countries, notably Nigeria, where Obi (2001; 2004) has identified and analyzed a “politics of oil,” the “politics of mining” that has emerged and been perpetuated in the Global South is often severely lacking in transparency and accountability in spite of the close involvement of IFIs in the

introduction and overview of mining sector reforms and the norms that underpin them. At the center of these norms are the following¹ (Gagné-Ouellet, 2013: 52):

- Priority given to the private sector for mining activities;
- Priority given to mining over other types of land use;
- Priority given to an exportable resource (i.e., gold) over other mineral resources;
- Priority given to the industrial mining sector over artisanal and small-scale mines;
- Guarantees protecting industrial-sector mining rights; and
- Calculation of the mining sector's primary contribution to the national economy in terms of tax revenues.

Across the Global South, the legacy of these neoliberal reforms has raised wide-ranging and important concerns about the severe economic and socio-environmental impacts of the expansion of the mining frontier.² In recent years, the legacy of the reforms and the norms embedded in the resulting regulatory frameworks have increasingly been contested by countless entities at multiple levels (local (via community struggles), national, and regional) and in many arenas.

Consequently, scholars have been attempting to understand why, despite such an outcry, changes in neoliberal norms have seldom materialized across the Global South.

Significant attention has been focused on Latin America, where several governments have embraced “neo-extractivist” modes of mining exploitation, whereby the continued support for extractive industries by governments is wrapped into a discourse of social justice and poverty reduction (Acosta, 2013; Bebbington et al., 2008; Bebbington, 2012; Arrellano Yaguas, 2011; Gudynas, 2010). However, certain analysts, including Gudynas (2010) and Acosta (2013), have suggested that the central characteristics of the model have remained unchanged under neo-extractivism, including the enclave nature of the sector, its orientation to foreign market demand, the lack of domestic processing, and large environmental and social costs (Szablowski and Zalik, 2014: 2).

This paper seeks to contribute to the ongoing and rich discussion around the possibility of change in the neoliberal modes of governance of countries that are well-endowed with

natural resources. Drawing on contributions from heterodox international political economy, the paper makes the case for using the notion of structural relations of power to examine the conditions that point toward the possibility of change in the modes of governance of a given country and, with them, the beginning of a shifting of relations of power among actors concerned. The term “structural relations of power” refers to the ability to create essential rules, norms, and modes of operation for various dimensions of a particular system, whether national or international.

The analysis of power and the distinction between relational and structural power, in particular, was at the center of most of Susan Strange’s later writings about the global political economy (1994; 1996; Stopford, Strange, and Henley, 1991). She believed that structural power is more important than relational power in the contemporary world, describing it as:

the power to shape and determine the structures of the global political economy within which other states, their political institutions, their economic enterprises, and (not least) their scientists and other professional people have to operate; structural power, in short, confers the power to decide how things shall be done, the power to shape frameworks within which states relate to each other, relate to people, or relate to corporate enterprises. (1994: 24–25)

In using the notion of structural power as proposed by Susan Strange, we recognize that this concept has been the subject of a considerable amount of debate.³ For example, as noted by Palan, Strange’s concept of structural power is not so much a theory as it is a heuristic tool (Palan, 1999: 128). Indeed, Strange has been criticized for her lack of engagement with various power theorists (Palan, 1999: 128), a criticism that leads Cohen to suggest that her understanding of power was incomplete (Cohen, 2016: 114).

However, her aim was not “to develop a full theory of IPE [international political economy], but a way of thinking, a framework for thinking” (Tooze and May, 2002: 15, cited in Cohen, 2016: 112). With these critiques in mind, we believe that Strange’s identification of power is particularly useful when applied to the extractive sector “as a type of causation derived from the structures of relationships among actors” (Cohen,

2016: 114). In this regard, regulatory frameworks in the mining sector can be understood as the expression of structural power relations and, at the same time, a key instrument contributing to the reproduction of such power relations that link powerful external actors (corporate, financial, diplomatic) to powerful internal ones, or that influence the relations of local communities affected by mining activities to powerful internal actors. Research carried out by the Groupe de recherche sur les activités minières en Afrique also allows us to analyze mining regimes not only as a regulatory framework but, above all, as a key part of the power structure that conditions relations among actors within the sector.⁴

This analysis further relies on the concept of modes of governance in the mining sector. This concept refers to the sum of the forms of regulation for each of the related dimensions (economic, social, political and environmental) that determine, in any given period or place, the conditions of exploitation of mining resources (Belem, 2009a, Campbell, 2013). These forms are multi-scalar and include both national and transnational forms of regulation. The concept is intended to help analysts focus on the specific social relations at the root of institutional arrangements, as well as the role of actors involved in the decision-making processes that emanate from these arrangements. It also highlights the need to take account of how forms of regulation interact as well to institutional arrangements, relations of power, and influence.

Structural relations of power and modes of governance also help highlight the existence of shifts in practice and, as a consequence, the possible formation of new political spaces. In other words, these shifts, which take place in specific circumstances, have entailed new political settlements involving political elites and other constituencies and that, consequently, suggest the possibility of changes in the modes of governance and, with these changes, the beginning of the shifting of relations of power among the actors concerned. As the paper illustrates, it is important to make the distinction between these two concepts and the manner in which they interact.

Building on elements of heterodox international political economy, this paper adopts a historical, in-depth comparative approach to illuminate the transformations through

which, under specific circumstances, political processes may cause shifts in structural power. While a case for the comparative analysis of a large pool of countries can easily be argued, we believe that there is merit in studying just two cases as a way to exemplify the processes resulting in shifts of structural power, processes that we believe need to be nuanced and as such, can be better illustrated by in-depth analysis. Guinea and Mongolia are relevant examples, as they are two of the world's most richly endowed countries in natural resources and are geographically suitable countries through which—albeit cautiously—we can point toward broader regional trends that may help to explain the context in which shifts in structural power have taken place. However, it is also important to note that the study of these two countries is in no way representative of the diversity of experiences elsewhere in these regions. This analysis attempts to synthesize data collected from the rich array of available desk studies and the authors' previous work in both regions, including, in the case of Mongolia, extensive field research.⁵

3. Reform and counter-reform in Guinea (1984–2013)

Guinea is among the most richly endowed countries in the African continent, possessing the world's largest reserves of high-grade bauxite, more than 20 billion tons of high-grade iron ore, significant diamond and gold deposits, and undetermined quantities of uranium (Global Investment Center, 2015: 34). Guinea also ranks among the lowest countries on the Human Development Index, at 175 out of 189 countries in 2017 (United Nations Development Programme [UNDP], 2018: 2). Although Guinea is a very interesting case study, the country's experience is not meant to be representative of the diversity of the African continent.

During the Second Republic (1984–1995), which began with a bloodless coup after the death of Sékou Touré that placed General Lansana Conté in power, a period of structural adjustment and a significant downturn in the contribution of the rich mining sector to the country's economy began. This was due, among other reasons, in large part to Guinea's very unfavorable bauxite price negotiations (Campbell, 2013: 279-286). The World Bank responded by recommending a new and very liberalized mining code in 1995 that redefined the role and functions of the state in the sector and that introduced new

incentives and tax concessions in order to attract investment. As a result, each company established in Guinea had a specific legal and tax agreement set out in annexes “protected by business secrecy” (Campbell, 2013: 288), which, consequently, did not have to be approved by the Guinean National Assembly. As is now publicly recognized, notably by the former Minister of Mines, Kerfalla Yansané, each company had contracts drawn up in advance; these agreements rarely adhered to the Code and, indeed, worked very much to the companies’ advantage (Camara, 2014).

This situation dominated when three new bauxite megaprojects were negotiated in 2004–2005. One of these negotiations merits special attention. In October 2004, Guinea’s Minister of Mines and Geology signed an agreement with Global Alumina Corporation (the Global Agreement) providing for the construction of facilities to permit bauxite to be processed locally. This agreement⁶ was unanimously ratified by Guinea’s National Assembly and then adopted two months later by presidential decree (Global Alumina Corporation, 2005: 1). The amended agreement has been examined by James Otto (2005), who concluded that the fiscal terms of the initial agreement, before amendment, were so much in favor of the investor that it was doubtful whether future politicians would honor them. In the context of global best practices, he noted, the agreement clearly did not provide a “fair” share to government. Otto also underlined that, although the 2005 amendments were an improvement, the lavishness of the terms obtained would be a dangerous precedent, since future investors would demand similar treatment. (Otto, 2005: 9, cited in Campbell, 2009a: 105-106).

In terms of the history of ministerial discretion over the sharing of tax revenues, James Otto notes that:

Guinea currently allows the Minister of Mines and the Minister of Finance to specify which taxes and fees, or portions of them, go to the government, local groups and funds. A matter as important as tax revenue distribution is in almost all nations specified by law and not left to the discretion of politically appointed ministers. It is recommended that the law be amended to clearly identify which taxes are to be distributed to whom and at what percentages. A dedicated percentage of royalty

should be set aside for affected communities. (Otto, 2005: 59, cited in Campbell, 2009a: 104-105)

As argued in an in-depth case study of Guinea (Campbell, 2009a: 66-118), in parallel with these on-going non-transparent processes in the country's rich mining sector, widespread popular discontent had been on the rise for many years. This was due in part to the enormous hardship inflicted on the population by the lack of employment opportunities and soaring prices for essential goods (Keita, 2007). Two important labor union federations, the Confédération nationale des travailleurs de Guinée and the Union Syndicale des Travailleurs de Guinée (USTG), as well as other groups such as student associations, spearheaded the mobilization. President Lansana Conté responded to the popular uprising with violent repression meted out by the police and the presidential guard. For the first time in the country's history, a popular uprising threatened the regime and paralyzed the state's operations. The regime therefore had no choice but to negotiate with the unions. The outcome was an agreement that included the nomination of a prime minister, Lansana Kouyaté, favored by the unions. Significantly, the negotiations led to the announcement in April 2007 that the mining contracts that the government had signed with foreign companies would be revisited.

Many Guineans welcomed the introduction of the new Mining Code, which was adopted in 2011 (Government of Guinea, 2011). The new Code proposed several innovative measures aimed at ensuring that the rich mining sector would begin to contribute to resolving the enormous challenges facing the country. However, the fate of the Code depended on the redefinition of the structural relations linking powerful external actors (both individuals and mining interests) and internal decision-makers. As noted, these relations have, in the past, been strikingly lacking in transparency. Within two years, by 2013, the 2011 Code was amended to bring it more in line with the positions defended by the mining sector. Although certain key aspects were withdrawn, as noted below, not all were.

The initial changes introduced in the 2011 Code are illustrative of recent trends in many countries of Africa that have attempted to revise the norms on which past regulatory

frameworks for mining had been based, and which still are (this fact is discussed later in the paper). In Guinea, these changes were embodied in the 1995 Code introduced under the auspices of the IFIs.

3.1 Civil society mobilization in Guinea and the introduction of mining reforms

The 2011 Mining Code resulted from a long process involving popular uprisings, such as those of 2007 led by unions and civil society organizations, that paralyzed the state's operations and the economy. In Guinea, the unions (notably the USTG) acted as a spearhead in this area. The USTG had initially supported demands concerning the improvement of relations between communities and mining companies, but soon also became outspoken about the unfair contracts that had been signed by the companies. Indeed, it was the union movement even more so than the political opposition of the time of the Condé regime (1984-2008) that made this area a feature of national politics. The USTG, which represented workers at all mining sites except Fria,⁷ effectively brought the question of the revised mining contracts to the forefront of the political debate.

The Guinean Federation of Unions (*Inter Centrale CNTG (Confédération Nationale des Travailleurs de Guinée)-USTG*) also played an important role in formulating demands in the wake of the 2007 uprising. The ensuing social upheaval successfully led to the creation of a new government based on a larger consensus and headed by a new prime minister. As revealed by the January 27, 2007, tripartite agreement, which put an end to the general strike and permitted a return to calm, it was specified that certain mining contracts that the government had signed with foreign companies were to be revisited.⁸ These demands, which linked social and political issues to economic reforms, may be seen as a manifestation of the awareness among the population of the profound difficulties characterizing the governance of the country's rich mining sector.

The critically important role the unions were able to play at the end of the Condé presidency needs to be resituated within a particular context. On the one hand, the regime was severely weakened by a succession of corruption scandals and the prolonged ill health of the president. On the other hand, the demands from unions and civil society

organizations were taken up by the newly elected president; he recognized that they were shared by the vast majority of Guineans, who wanted to ensure that mining companies contributed to a more equitable distribution of the country's wealth.

The revised 2011 Code introduced key measures to encourage the development of the country's resources in a way that would benefit the economy and its population, as well as strengthened provisions to improve the transparency and accountability of the sector. These provisions included articles that encouraged that preference be given to the use of local goods and services, that set out a minimal quota system for hiring practices to ensure the employment of Guineans, and that called for training programs for the benefit of local firms and Guinean personnel. As well, given the legacy of a mining sector that had been characterized by a tendency to privilege the export of unprocessed raw ore, a critically important inclusion in the Code was an article that called on investors to refine transform minerals locally and introduced incentives to encourage this. The Code also spelled out clear and detailed obligations with regard to social and environmental impact assessments. These included obliging companies to assume financial responsibility for the displacement and resettlement of affected populations.

In view of the historic lack of transparency in the sector, the new Code also included reforms designed to make mining companies and government regulators accountable to the Guinean public by introducing mechanisms to ensure reporting, access and verification of information, adherence to measures of transparency, and remedial measures. For example, on the issue of disclosure, the commitment to publish all mining contracts was—and indeed remains—a critical precondition to ensure transparency. As the Revenue Watch Institute noted, it will allow the Guinean government and population to analyze the impacts of past contracts, and where necessary, review contracts that have not provided an equitable return to the country. Moreover:

Contract transparency will also reinforce the incentives for the government to make itself accountable to the population and to sign agreements that comply with the law, generate strong returns and protect the rights of citizens. Finally, contract transparency will greatly aid the effective enforcement of contracts: Where the

obligations of the state and the private sector are known to all, a larger and more focused set of eyes can monitor compliance and support effective administration. To put this provision into action, the government will need to create a dedicated Internet site linked to the Ministry of Mines and includes copies of all the agreements. (Revenue Watch Institute, 2011)

Several other measures also merit attention. The procedures for the award, renewal, transfer, and cancellation of mining titles were clarified in the measures set out in Articles 19 to 157. These provisions reduce the risk of arbitrary procedures in the award of contracts, for example, as regulators had been using their authority over regulatory approvals to elicit bribes from the industry, a feature that had been so prevalent in the sector in the past.

Companies are also required to sign a code of good conduct in which they publicly commit not to engage in corrupt practices or those that hinder accountability. Additionally, Extractive Industries Transparency Initiative (EITI) rules and processes are now mandatory for all firms (even non-signatories). EITI is a voluntary initiative meant to encourage the transparency and disclosure of revenues and requires signatory governments to supply information along the extractive industry value chain from the point of extraction concerning how revenue makes its way from industry to the governments of resource-rich countries.

As the Revenue Watch Institute (2011) noted:

The corruption monitoring plan that every company will be required to develop in collaboration with the government can help ensure follow-through on the commitment to prevent corruption. It will require companies to remain vigilant against corrupt acts by their staffs and agents, to report and take steps to mitigate any suspicious activities, to cooperate with the government in any investigations of suspected corruption, and to take proactive measures such as training personnel in how to avoid corruption. It also sends a strong signal that the government recognizes

that corruption has played a powerful and unfortunate role in the management of the sector and that Guinea seeks to change the culture of doing business in mining.

The new Code introduced other far-reaching reforms that were met with opposition. Among the important measures that signaled an attempt to redefine relations in the sector were the provisions to increase public participation. Article 150 in Chapter IX stipulates that the state may acquire a 15% participation in shares of mining companies and the possibility of an additional 20%, depending on the ore. Participation in share capital can be seen as an important way to ensure oversight of the implementation of the codes of good conduct or the EITI principles to which companies agree to sign on. It is a potentially important condition to ensure that those who are responsible for the management of the sector will be held accountable to the Guinean population.

3.2 Counter-reforms yet lasting innovative measures

Little time had passed after the 2011 Code was enacted by the Guinean Parliament before strong pressures to amend it, notably from certain key mining companies and financial institutions, became apparent.⁹ Consequently, the new Code was amended in April 2013, and while some important aspects were modified (Reuters, 2013), other innovative clauses remained. For example, the changes introduced a decrease in mining-profit taxes to 30% from 35%, and a reduction in the tax on bauxite to 0.15% of the international market price for aluminium, from 0.55%. Other changes introduced in 2013 included an increase in the number of mining licenses a single company could hold to five from three, a boost to the land area covered by exploration permits, and a lower minimum investment required for certain types of concessions. However, the 2013 Code retained a controversial clause giving the state a free 15% stake in mining projects—as well as the option of purchasing an additional 20%—although it stipulated that contracts signed before 2011 would be exempt from this provision (Reuters, 2013).

Other important forward-looking measures remained in the 2013 amended Code, including those dealing with local processing of mineral, the training of personnel, and the protection of the environment. These measures, while innovative, have already seen setbacks. Two clauses stand out because of their potential for contributing to conditions

permitting the redefinition of relations among the actors concerned by the sector. The first example is a clause in Article 130, which sets out, and consequently regulates, the relations and contributions of mining title holders to local communities.¹⁰ The second innovative clause concerns the obligation to publish all title holdings and contracts. To this end, Article 217, Régimes applicable aux titres antérieurs, stipulates the following:

All Mining Titles, as well as any Mining Agreement, are published in the Official Gazette and on the official website of the Ministry in charge of Mines, or any other site designated by the Minister. Any confidentiality clause in a Mining Agreement which prohibits the publication of a Mining Agreement is null and void. (Translation by the author).

It is clear that these provisions represent important gains; however, these need to be set within a more dynamic and historical context.

The profound problems of political will and institutional capacity faced by Guinea can be attributed at least in part to the neoliberal reform process of the 1980s and 1990s, which resulted in a strong retrenchment of the state from the mining sector, accompanied by parallel processes that redefined its role while reducing state sovereignty. These processes contributed to the state's reduced autonomy and authority as well as to its reduced capacity to influence the evolution of its own structures (Campbell, 2010: 207). As has been the case in a number of other African countries where mineral resources are plentiful, the narrowing of the margin of manoeuvre of mineral-rich states such as Guinea and of their policy space in the context of an externally driven reform process has, in certain circumstances, been accompanied by the institutionalization of a particular mode of reproducing domestic power relations or a particular "politics of mining."

In a way that also clearly resonates in Mongolia, the reforms that brought about the neoliberal structuring of the mining sector in Guinea had several consequences that help explain the resilience of the mining regime that had been in place for two decades. The reforms diminished state power and capacity in Guinea by reducing both resources and institutional capacity. The measures also reinforced pre-existing structural relations in

which Guinean political elites and decision processes depend on links with powerful foreign actors (corporate, financial, and diplomatic). Finally, they reduced domestic power/resilience and created structural dependencies of elites on foreign actors.

While strong civil society pressures (union protests, student demonstrations, public opinion) in favor of national economic reform did succeed in bringing in the new 2011 mining code, these counter-forces were not in a position to effectively protect all aspects of the reforms. Clearly, the nature of the historical and political relations that provide the background for analyzing the links between the legacy of structural relations and the reform process remain largely in place and of key importance. However, the potential of recent reforms to contribute to the ongoing process of the reshaping of policy space in Guinea and the conditions that would permit this to happen also merit close attention.

4. Reform and counter-reform in Mongolia (1997–2013)

As with the liberalization process that took place on the African continent in the early 1980s, albeit over a decade later, the IFIs, especially the World Bank, began to pressure mineral-rich countries in the Asian region to further liberalize their mining industry. As such, by the turn of the century, all major nonfuel mineral producers in the region had passed new regulations aimed at attracting a greater share of foreign investments (Naito et al., 1998: 92). As in the African continent, these neoliberal regimes have increasingly fed local tensions. Over the course of the following decade, this process of contestation, which emerged in multiple arenas and took a number of forms, led to important shifts in practice and, consequently, to the formation of new political spaces. While several Asian cases resonate with such trends,¹¹ this paper focuses on the case of Mongolia. As outlined above in the analysis of Guinea, the situation in Mongolia is by no means representative of the complexity of the entire region. However, given its importance in terms of mineral reserves and production in the region, the case of Mongolia does allow for relevant observations vis-à-vis broader trends.

Mongolia sits on 6,000 deposits comprising 80 different minerals, notably coal, copper, gold, rare earth, and iron ore.¹² Its staggering reserves are valued at approximately

US\$1.3 trillion. Although industrial mining has taken place across Mongolia throughout its 70-year socialist regime, Mongolia has only recently begun to position itself as one of the world's key mineral producers. Mining contributed 13% to the country's gross domestic product (GDP) in 2002, but quickly became key to the country's economy, accounting for 30% of its GDP in 2012 (Mendoza, et al., 2012). Indeed, the brisk expansion of the country's mining sector made Mongolia the fastest-growing economy in the world in 2011 (Langfitt, 2012).¹³ In the Gobi Desert, the Tavan Tolgoi mine is projected to become the world's largest coal mine, and Oyu Tolgoi (OT) is on track to become the third-largest copper and gold mine in the world. By 2016, the sector accounted for 18.6% of total government revenues and 86% of total exports in Mongolia (EITI Mongolia, 2018).

In 1997, with IFIs' guidance, Mongolia adopted one of Asia's most attractive mining laws for foreign investors (Connors, 2011; USAID, 2011: 2). The World Bank's influence over the country's extractive industry has been—and remains—pivotal (Hatcher, 2014; McMahon, 2010; World Bank, 2008). The Bank itself noted that:

The Bank has been supporting and nurturing the development of the regulatory framework for private sector led mining sector exploration and development for more than 10 years. During this time the focus of activities has been on establishing the legislative and fiscal regimes to apply to mining.... This work culminated in the passing of the 1997 Mineral Law and adoption of a reasonably competitive fiscal regime for the sector. (World Bank, 2008: 3)

Although it successfully attracted foreign investors, the law also fed internal tensions arising from the mining sector's severe socio-environmental outcomes, as well as the resultant increase in income inequalities in the country. Summarizing the processes of contestation in Mongolia is a monumental task, given the importance of the sector for the country's economy and the scale and pace of the sector's development. With this in mind, some of the more significant challenges to the most liberal norms embedded in the 1997 mining laws are summarized in the following section.

4.1 Civil society mobilization in Mongolia and the introduction of mining reforms

The 1997 Mining Code saw a significant transfer of land rights to mining corporations and away from local nomadic people.¹⁴ In Mongolia, agriculture accounts for a minimal portion of land use (approximately 1%); livestock grazing accounts for the overwhelming share (Lahiri-Dutt and Dondov, 2016: 5). Yet despite the importance of nomadism for the livelihood of herders, who represent approximately 30% of the population, the new regulatory framework expressly privileged large-scale mining over any other type of territorial use.¹⁵ The fast pace of mining expansion in the country, as well as the importance of the sector for Mongolia's population of only three million people, have made it a pivotal issue for public debate.

With the increasing environmental footprint of the mining sector, civil society mobilization in Mongolia first began around environmental issues. Spearheaded by the 1997 liberal regime, the country witnessed an exponential multiplication of mining licenses and activities, a process that was not accompanied by tightened socio-environmental monitoring capacities.

The first sizeable wave of mobilization is best illustrated by the successes of the Ongi River Movements. The first of these began in 2001, when Lake Ulaan, at the mouth of the Ongi River—the only river flowing through the Gobi Desert—dried up following the fast-paced development of gold-mining activities in the region. Using a wide range of mobilization and protest techniques—such as sponsoring environmental studies, petitions, organizing a protest march along the Ongi River, and holding public meetings and rallies—the movement was highly successful in bringing the country's attention to the environmental ramifications of unrestrained mining activities (Byambajav, 2015: 94; Fish and Seeberg, 2017: 137-8). It also led to the establishment of the Land of My Mongolia Coalition, which in turn, began to advocate for better environmental standards and responsible mining initiatives, and to promote multi-stakeholder dialogue. Namkhajantsan (2009: 61) observes that: “This was the first time discussions of this sort were organized around the mining sector, and came about at the height of civil society activism on mining issues.”

One of the most emblematic results of this mobilization was the adoption in 2009 of the Law to Prohibit Mineral Exploration and Mining Operations at the Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas, commonly known as the “Law with the Long Name” (LLN)¹⁶—legislation that was meant to protect nomadic herders’ lands and watersheds from industrial contamination, the diversion of rivers, and land grabbing by mining companies. The law has been credited with helping reduce pollution in water systems, particularly from mining activities.

Transparency was another initiative that rallied civil society working on mining-related issues. This mobilization led to Mongolia’s adherence to EITI in early 2006. The initiative provided civil society with “the opportunity to engage in a dialogue with the government and companies over substantive issues in the mining sector” (Namkhajantsan, 2009: 62).

It is worth noting that, while mining has been a socio-environmental issue across the country, it is the OT project that has galvanized discussions around mining in recent years—with an initial investment of US\$4.6 billion, the copper–gold mine was by far the largest project in the country’s history. OT’s investment agreement was signed in October 2009 following years of heated debates. In a study that looked at the contract negotiations for OT, Combellick-Bidney (2012) shows that a diverse range of actors in the society—whether businesses, NGOs, or grassroots anti-mining movements—were actively engaged in questioning the legitimacy of mining “as a means of economic development” (Combellick-Bidney, 2012: 272). This mobilization movement across the country, in conjunction with the high commodity prices, helped pressure the government to amend some of the most liberal provisions embedded in the 1997 Mining Code. The amendments, which took place in 2006, introduced special provisions for minerals labeled “of strategic importance,”¹⁷ increased fiscal rates, and adopted a windfall profits tax on gold and copper that was the highest in the world (Pistilli, 2012). The purpose of the tax was to encourage mining companies to process the minerals within the country, in

which case they would be exempt from the tax. Additional revenues from the tax were to be earmarked for social programs (USAID, 2011: 2).¹⁸

Another significant change to the country's regime came a month before the 2012 parliamentary elections, when the government approved an investment law that limited foreign ownership to a maximum of 49% in "strategic" sectors such as mining, finance, media, and telecommunication.¹⁹ After the election, about a quarter of the seats in the new Parliament went to "resource nationalists,"²⁰ who called for mining reform that would challenge some of the mining regime's most liberal norms. In response, President Elbegdorj of the Democratic Party²¹ who was elected for a second term in June 2013, adopted measures to curb the fast-expanding sector. In 2010, his administration had also been responsible for the suspension of new mining and exploration licenses—a decision later confirmed in Parliament in December 2012.

It is further illustrative to note that soon after its re-election for a second term, in 2013, the government attempted to renegotiate OT's investment agreement. While the dispute included a list of 22 points drawn up by the government and addressed to OT's foreign investors,²² it focused overwhelmingly on taxes and the costs associated to the mine. OT's initial investment agreement, which, notably, was developed with a World Bank technical assistance project (World Bank 2009), was quite generous to investors. For example, taxes were stabilized for a period of 30 years and, as such, no fiscal or regulatory changes can be imposed unless they are more favorable to the investors; government shares were locked at 34% and the company received a 10% investment tax credit on all capital expenditures and investments made throughout OT's construction period.²³ Amid the dispute, the mining company Rio Tinto²⁴ accused the government of a possible breach of contract and, in a highly mediated show of force, proceeded to halt the second, underground construction phase of its mine, which contained approximately 80% of the mine's total value. During the dispute, the company laid off 1,700 workers, a considerable number in light of the country's small population.

4.2 Counter-reforms yet lasting innovative measures

In Mongolia, as in Guinea, reforms were met with a series of counter-reforms. Perhaps more successfully than in the case of Guinea, the pro-mining lobby was very, though not completely, successful in countering the reforms.

Over the decade of counter-reform efforts, local and international pro-mining interests were quick to see any attempt to step away from the most neoliberal provisions in the mining regime as a display of “resource nationalism,” “populism,” or “statism.”²⁵

Headlines from the international and business press at the time are illustrative:

“Resource-rich Mongolia plays populist card in run-up to polls,” wrote *Reuters* (2012b); while *Asia Miner* warned about “Uncertain times for mining in Mongolia” (Miller, 2012). Referring to the 2006 amendments to the 1997 Mining Code, the World Bank observed that the reforms embodied a “pushback by the state on private sector led development,” a move perceived by the multilateral institution as leaving the country’s minerals sector in a state of uncertainty and a weak regulatory setting (2009: vi). More recently, in reference to the new Investment Law, which was adopted in 2012, Jim Dwyer, the executive director of the Business Council of Mongolia, observed that the initial version of the law’s bill triggered “an overwhelming coming together of the business community” (cited in Reuters, 2012a). Crucially, with the amendment of the Foreign Investment Law as well as the attempts to revisit OT’s investment agreement happening in the background, foreign investors have been putting up a show of force by shunning the country—from a peak of US\$4.5 billion in 2012, foreign investments in Mongolia fell to about US\$400 million in 2014 (Kohn, 2015), leaving the country in a severe economic crisis.

In the wake of this crisis, and bowing to local and international pressure, the government quickly reversed several of the recent changes to the country’s regulatory regime. For example, during the negotiations for OT’s investment agreement, the government agreed to cancel the windfall profits tax, which had been introduced in 2006 (World Bank, 2009: 15). As well, in October 2013, the government ratified a new version of the Investment Law, in order to reassure foreign investors, and, in 2015, it reached a settlement between OT’s foreign investors that marked the end of the two-year-long disagreement over taxes.

It called for an emergency session of Parliament and, in a move designed to appease Rio Tinto (Reuters, 2013), fired the head of Erdenes MGL LLC, the government-owned mining company that controls the public stake in the OT mine. In December 2015, a US\$5.3 billion deal was signed, launching construction of the second phase of the mine.²⁶

Finally, in 2015, Parliament attempted to pass damaging changes to the LLN, the country's environmental law and the product of more than a decade of grassroots activism in Mongolia. While the proposed amendments were unsuccessful, it had become apparent by then that the enforcement of the LLN had always been quite weak. Mining in areas theoretically protected by the law had continued in secret, resulting in conflicts between miners and pastoralist communities, further pollution, and mass protests. The environmental activist Tsetsegee Munkhbayar²⁷ and five of his colleagues received a prison sentence of 21 years and six months in the aftermath of one of these protests that were organized to deliver a petition to Parliament to stop the amendment of the LLN, during which a firearm accidentally discharged.

The multiplication of mobilization strategies and to some extent a radicalization of such strategies are illustrative of the larger issue of neoliberal norms embedded in the country's mining regime. Enkhbat Toochoog of the Southern Mongolian Human Rights Information Center notes that Munkhbayar's actions "highlighted the desperation of helpless Mongolian pastoralists who had no choice but to resort to an unconventional approach to defend their land, rights and way of life after exhausting all other means" (cited in Tolson, 2014).

The above-noted examples of counter-reforms in Mongolia are significant. However, as in Guinea, some innovative gains resisted counter-reform. For example, in the settlement that ended the dispute between Rio Tinto and the government, the company agreed to base its 5% sales royalty on gross revenue, cut its management fees in half, and give up a smelter royalty. However, one of the more persistent aspects of the reform process in Mongolia can be seen through the continued mobilization of civil society over mining-related issues. Mass demonstrations, hunger strikes, direct attacks against mining sites,

and the increasing use of international grievance mechanisms have all taken place. Indeed, in May 2017, one of the cases filed against OT reached two agreements (Edwards, 2017). Although other cases in several other arenas were filed, the case filed with the Compliance Advisor Ombudsman, the independent recourse mechanism for the International Financial Corporation and the Multilateral Investment Guarantee Agency, led to two agreements that address some of the herders' most pressing concerns, particularly water access, mitigating mining's impact on pasturelands, and supporting and diversifying local economic activities (Accountability Counsel, 2017; Edwards, 2017).

As noted, the rapid expansion of mining in Mongolia, the significance of the sector for the country's population, and the tremendous economic benefits at stake help explain, on the one hand, the rapid rise and far-reaching political support of the contestation process and, on the other, the strength of efforts to suppress this process.

5. Contrasting Experiences of Contestation

As the case studies of Guinea and Mongolia demonstrate, as of the 2000s, among responses to the neoliberal reforms embedded in mining regimes, initiatives aimed at redefining the relations among actors emerged at various levels. In this section, we compare the contexts that gave rise to these initiatives.

First, clear and important country-specific differences help explain why the contestation of neoliberal reforms led to quite different results in the two countries. In Guinea, for example, trade unions appeared to play a key role; this was much less the case in Mongolia. In that country, the geopolitical proximity to China, and the resulting fear of that superpower's influence, fed (and continues to feed, as illustrated by the campaign platforms that led to the election of Khaltmaagiin Battulga in 2017) contestation over some of the neoliberal norms embedded in the mining regime, notably the focus on foreign investments.²⁸

The issue of timing is also a key point to underline in both countries. In Guinea, contestation had been stirring for a long time. It came to a head, and coincided with,

internal political changes that took place during the mining boom of 2002–2012. High commodity prices also played a key role in shaping Mongolia’s mining regime; OT was just beginning production as the international mining boom ended. Since that time, Mongolia has become so indebted that it does not have the ability to negotiate with its mining sector players. Indeed, in 2017, the International Monetary Fund stepped in to bail out Mongolia, which was drowning under a total external debt of US\$26 billion, more than twice the country’s GDP (Kiezebrink, Ahlers, and Sukhgerel, 2018: 8). In return, Mongolia accepted a set of budgetary reforms that included a number of severe austerity measures.

In addition, the situation in Guinea points toward a cumulative pattern in which formal statements by regional bodies have in fact been accompanied by important changes in national mining regimes. This suggests, at least in the case of certain African countries, that changes demanded at the continental and national levels have been spurred, in a growing number of cases, by the demands of local communities and workers affected by the mining sector. For example, at the continental level in the 2000s, many African political leaders became increasingly disillusioned as a result of the very disappointing contribution of the extractive sector to local development, as well as ongoing problems with heavy environmental and social impacts and the absence of measures to ensure more transparent and equitable negotiation of regimes and contracts. The opening phrase of the “Addis Ababa Declaration on Development and Management of Africa’s Mineral Resources,” adopted in 2008 by the First African Union Conference of Ministers Responsible for Mineral Resources Development, notes that the ministers are “deeply concerned about the high incidence of poverty and underdevelopment in Africa in—spite of its abundant endowment of mineral resources” (African Union [AU], 2008: 2). This statement makes clear that the tone had evolved significantly and was quite different from that used to characterize the sector just a decade before. The document goes on to explicitly address issues of policy space and the nature of relations among actors:

Convinced that Africa needs policy space, and *Recognizing* in this regard, the importance of a pro-active development state to achieve fair and equitable fiscal and

investment regimes and to maximize the benefits derivable from mineral resources exploitation....(African Union [AU], 2008: 2).

The ministers called on the African Development Bank to “strengthen the capacity of African member states to negotiate better mineral contracts” (AU, 2008: 4). The declaration led to the adoption of a key political statement by the heads of states and of governments of the African Union in 2009, the African Mining Vision (AU, 2009). In this context of demand for reform, documents produced at the regional level by the United Nations Economic Commission for Africa (UNECA) argue that several important dimensions need to be addressed (UNECA and AU, 2011; AU, 2009). First, a “developmental perspective” needs to be adopted, one that involves development from the perspective of the countries concerned as opposed to one which presumes that development will necessarily flow from the presence of foreign investment in the extractive sector. Second, the adoption of a developmental perspective requires reinforcing rather than weakening the institutional and negotiating capacity of governments of mineral-rich countries, as well as beginning to correct information asymmetries. This translates into a series of specific recommendations that were assembled in a 12-chapter report, including building local linkages, the local processing transformation of minerals, boosting local employment, diversifying the minerals extracted, creating industrial corridors, improving small-scale mining, and building infrastructure from a developmental and regional perspective (UNECA and AU, 2011).²⁹

There is reason to believe that the role played by UNECA has given legitimacy to the call for revisiting neoliberal regulations. At the national level, and as illustrated by the case of Guinea, these concerns led to numerous cases of the renegotiation of mining contracts and codes. By 2008, in fact, 11 African countries (South Africa, Ghana, Guinea, Liberia, Madagascar, Niger, Nigeria, the Democratic Republic of Congo, Sierra Leone, Tanzania, and Zambia³⁰) had decided to reopen contracts that tied them to mining companies. Since then, this movement has continued and even intensified. Over the same period, and again as illustrated by the Guinean case study, an extensive process of the revision of mining codes took place in, among other countries, Liberia, Zambia, and Tanzania, with a view to bringing these regulatory frameworks more in line with the needs of the countries

concerned (Maury, 2008: 84-86; Custers, 2008: 12-13). More generally, the move for reform has spread throughout the continent, as many mineral-rich countries had, by 2018, systematically incorporated the African Mining Vision into their mining legislation (UNECA and AU, 2011). Guinea is a particularly interesting case in this regard, not only because it is illustrative of what is happening elsewhere on the continent but because it represents a story of ambitious reform enabled by popular uprisings in spite of a context of strong repression that has accompanied extreme potential mineral wealth, very high stakes, and external pressures. The counter-reforms of 2013 and the challenges that will have to be faced in the future to ensure the actual implementation of the innovative measures serve as a reminder of Guinea's deeply rooted problems of regulatory capacity, which are part of the very common legacy of the neoliberal reform process.

In contrast, in Asia, regional initiatives aiming at redefining relations among actors have not materialized. The failure to organize at the regional level may help to explain why the Asian region shows fewer signs of reform. For example, while the Asian Development Bank does recognize, in its *Long-Term Strategic Framework 2008–2020*, that the Bank's future projects will be dedicated to inclusive and environmentally sustainable growth, it remains silent on an actual approach to the extractive industries (ADB, 2008). Similarly, and limited to the region of Southeast Asia, the Association of Southeast Asian Nations³¹ has historically been one of the key actors promoting neoliberal norms in the sector. Lastly, but crucially, China's far-reaching Belt and Road Initiative is expected to feed into the mining potential of resource-rich countries across the region, including Central Asia, a process that does not appear to challenge in any form the neoliberal norms embedded in the region's mining regimes.

An additional point to emphasize is the fact that both case studies clearly demonstrate the importance of examining multiple dimensions of the processes of contestation that unfold in multiple arenas, notably arenas other than those responsible for institutional and regulatory changes. In addition to the clear example of the legitimacy provided by the leadership taken by the UNECA, calls for greater transparency from international bodies such as EITI and the involvement of international NGOs have been pivotal in both cases.

For example, pressures from civil society, including the strong support of the union movement as well some technical expertise from abroad (e.g., the Revenue Watch Institute), have resulted in Guinea being one of the first countries to oblige all companies operating within it to publish all contracts,³² as well as to have regulations that define in specific percentage terms and as a proportion of total sales revenue, depending on the mineral mined, the contribution a company will make to local communities. This type of regulated disclosure ensures the availability of information and consequently permits monitoring of the amounts actually distributed. It should be underlined that gains such as these with regard to information about revenue flows are part of a much broader pattern in the sub-region.³³ The capacity of countries to monitor the enforcement of these new measures remains an issue that will need to be monitored closely in the future, however.

6. Conclusion

In our analysis of these two cases of mineral-rich countries, Guinea and Mongolia, we did not intend to suggest that a linear and self-sustaining process of contestation has redefined asymmetrical relations and opened up new political spaces. Rather, we have simply tried to understand the conditions that contribute to the possibility of change in the distribution of authority and influence. It was argued that these processes can be conceptualized and theorized by drawing on two notions introduced earlier in this paper: structural relations of power and modes of governance. The decision to deal with each of these concepts separately has allowed us to track a deeper dynamic in the struggles that are taking place in the contestations over extractive governance. In general, analysts and scholars focus on struggles over modes of governance—that is, the existing regulatory frameworks and institutional arrangements that govern mining. However, as argued in this paper, the truly important struggle going on in these conflicts is about structural power: the ability to shape the rules over the long term.

The neoliberal reforms of the 1990s and 2000s changed the modes of governance in ways that not only favored the economic interests of transnational mining firms, but also allowed mining enterprises to reproduce and protect their structural power vis-à-vis states such as Guinea and Mongolia. In turn, this helps to explain why civil society mobilization for reform in these countries has been only partially successful and why the changes

achieved fell short of shifts that significantly affect structural power relations. In other words, such mobilizations have not been able to bring about the kinds of reforms that would allow civil society actors to use the modes of governance as leverage to increase their structural power. As a result, extractive firms were able to use their structural power (which largely remained intact) to reverse the modes of governance in a process of counter-reform.

While our analysis of multiple forms of contestation in Guinea and Mongolia does not lead us to suggest that these represent fundamental changes of regime, it does point toward the emergence of a continuum of interconnected arenas of contestation that have entailed, in some instances, shifts in the relations of power and influence among actors. In Mongolia, the introduction of special provisions for minerals labeled “of strategic importance,” which increased fiscal rates imposed on the sector, the adoption of the windfall profits tax, as well as tighter environmental legislations, are all examples of initiatives to redefine the neoliberal norms favoring state withdrawal and the unimpeded activities of private operators embodied in the reformed regulatory frameworks of the 1990s. While in Mongolia, most of these counter-reforms were challenged and later reversed, in Guinea, some of the initial changes introduced as new requirements in the 2011 Guinean Mining Code were maintained in the 2013 amendments to the Code, particularly in regard to the legislated requirements of local transformation and state participation.³⁴ In short, the fact that civil society reforms have not been completely reversed suggests that a slight shift in structural power relations has indeed taken place. Presumably, it is too politically dangerous for the stability of the current regime in either Mongolia or Guinea to completely undo the reforms promised to civil society actors, begging the question of whether these slight shifts are simply the price of legitimacy or if they signal a potential for more important changes in the future.

To the extent that the notion of structural relations of power refers to the capability to create essential rules, norms, and modes of operation for various dimensions of a particular system, whether national or international, we conclude that at the time these reforms were introduced, a partial shift had taken place in the structural relations of

power within the existing regime, which continued to remain dominant. The case studies examined in this paper point to the importance of examining the multiple dimensions of these processes that unfold in different arenas, and notably arenas other than those responsible for institutional and regulatory changes, but which are intimately interconnected with such regulatory changes. In short, any analysis of conflicts over extractive governance needs to consider how struggles over modes of governance influence the greater game of struggles over structural power.

The trends we have documented underline the usefulness of the suggestion that: “Ascertaining how reform efforts are being pursued in different parts of the world provides an opportunity to think critically about what is central to extractivism, and to identify the significant differences between these national or regional projects” (Szablowski and Zalik, 2014: 2-3). Research that pays close attention to the methodological approaches adopted and their capacity to identify and analyze such shifting power relations will, in the future, help better characterize the kinds of new directions being taken. Such approaches are all the more important given that deep neoliberal reforms are self-reproducing, changing structural relations of power in today’s neoliberal global political economy. In short, these kinds of methodological approaches suggest that when reforms have indeed begun to take place, civil society actors need to press for changes in the modes of governance that can affect the distribution of structural power, as less substantial changes are vulnerable to being reversed.

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unpublished.

¹ These norms are also characteristic of the “free mining” regimes that exist in Canada today. See Campbell (2010).

² While such impacts are increasingly documented, it is worth noting that some of the environmental challenges linked to large-scale mining activities include the destruction of natural habitats, soil degradation and chemical contamination, toxic air emissions, and water pollution–related issues. The mining industry’s environmental impacts extend well beyond the duration of its mines’ activities and as such, mine closure is a highly sensitive issue. In addition, communities living within the vicinity of a mine often bear an overwhelming share of the negative impacts linked to large-scale mining activities. As well, mining activities continue to be associated with serious cases of human rights abuses (see Belem, 2009b; Kemp and Owen, 2017; Sawyer and Gomez, 2012; FIAN 2017; Yameogo and Kabore, 2014). Also see the Human Rights Watch reports on oil, mining, and natural resources at www.hrw.org/topic/business/oil-mining-and-natural-resources.

³ Among criticisms one can note and as summarized by Tooze is her unwillingness to give primacy to the knowledge structure, her not escaping as completely as she might have the “state centrism” of the orthodoxy, and her falling short of constructing a truly integrated study of political economy. See Tooze, 2000: 287–288.

⁴ See Campbell (2010) and Campbell and Laforce (2010).

⁵ The Guinean case study is based on a synthesis of more than 30 years of research using the *filière* approach to understanding the key bauxite-alumina sector, informed by insights gained from international heterodox political economy, and complemented by a focus on the processes of regulatory reform over the last 20 years. The study on Mongolia relies on desk studies, field research, and interviews undertaken between 2013 and 2017.

⁶ As modified by an amendment negotiated in May 2005.

⁷ The Confédération Nationale des Travailleurs de Guinée (CNTG) was more active in Fria.

⁸ Signed on January 27, 2007, the agreement between the Inter Centrale CNTG-Union Syndicale des Travailleurs de Guinée (USTG), the Conseil National du Patronat Guinéen, and the Guinean Government of Général Lansana Conté, which put an end to the general strike, included, among other clauses, the creation of a government based on a large consensus headed by the new prime minister; respect for the principle enshrined in the constitution of the separation of powers; support for the purchasing power of the population and a reduction in gas prices; an end to the export of food, fish, and forest products; a reduction in the price of 50-kg bags of rice; the revision of certain contracts of the mining, fishing, and forest industries; repatriation of foreign currency of companies including mining companies; increased social protection for workers; and increased employment and job opportunities for youth. The Organisation Nationale des Syndicats Libres de Guinée and the Union Démocratique des Travailleurs de Guinée joined the CNTG/USTG in demanding that past mining contracts be revisited until the new Mining Code was introduced in 2011.

⁹ In a press release published in the fall of 2011, the government noted that there had been discussions with certain mining companies and financial institutions concerning royalty rates, customs or import duties, taxes, and other fiscal charges. In order to make the country’s mineral resources as competitive as possible compared with those of other countries, it announced that changes were to be brought in by decree to the new (2011) Code’s fiscal measures.

¹⁰ English translation of the 2011 Mining Code’s Article 130: Development of the Local Community:

The holder of a Mining Operation Title must enter into a Local Development Agreement (LDA) with the Local Community residing on or in the immediate vicinity of its Mining Operation Title. The terms for

drafting these agreements are set out in a joint order of the Minister in charge of Mines and the Minister in charge of Decentralization.

The purpose of the Local Development Agreement is to establish conditions that are conducive to the efficient and transparent management of the Contribution to Local Development paid by the holder of the Mining Operation Permit, and to strengthen the capacities of the Local Community in the planning and implementation of the community development program.

The Local Development Agreement must include, among other things, provisions for training the Local Community and, more generally, Guineans, environmental protection and health measures for the Local Community, and processes for the development of social projects. Principles of transparency and consultation will be applied to the management of the Local Economic Development Fund and to any Local Development Agreement, which will be published and made available to the Local Community.

The amount of the Contribution to Local Development, the financial contribution of the holder of a Mining Operation Title to the development of the Local Community, is fixed at zero point five percent (0.5%) of the turnover of the company made on a Mining Title of a zone for category 1 mine substances and one percent (1%) for other mine substances.

A Local Development Fund (LDF) is created which will be financed by this Contribution to Local Development from the holder of the Mining Title from the Date of First Commercial Production. The terms for using this Contribution to Local Development and the rules for the operation and management of the Local Development Fund are set out by decree of the President of the Republic.

¹¹ Several country case studies examine the liberalization process of mining sectors across the region, although most of these use a neoliberal framework. Several critical international political economy are also available, however. For example, in the Philippines, one of Asia's richest countries in terms of its natural resources, see Bello et al. (2004), Hatcher (2012; 2014), Nettleton et al. (2004) and Rovillos et al. (2003). Another example is Laos (Hatcher, 2015).

¹² In addition to these minerals, Mongolia is believed to have reserves of asbestos, bismuth, clay, copper, diamonds, gemstones, graphite, gypsum, lead, limestone, magnesium, molybdenum, nickel, petroleum, phosphate, platinum-group metals, rare earths, salt, sand and gravel, silica, talc, tin, tungsten, uranium, zeolite, and zinc (USGS, 1999: 15.1).

¹³ Although it was expected to further accelerate to a staggering 20% in 2012 (Pilling, 2012), it fell significantly short of expectations and dropped to 12%. This was linked to falling commodity prices and an economic slowdown in China (Economist, 2013: 29).

¹⁴ For a thorough analysis, see Hatcher (2014) and Lander (2017).

¹⁵ For a discussion over the politics of small-scale mining in the country, see Hatcher (2016a).

¹⁶ The lawsuit was filed in 2010 and, in October 2011, the country's Supreme Court found the government guilty and ordered it to enforce its environmental laws.

¹⁷ "Strategic importance" is defined as: "a deposit [with size] that may have a potential impact on national security, economic and social development of the country at the national and regional levels or that is producing or has a potential of producing more than five (5) per cent of total Gross Domestic Product in a given year" (Article 4.1.11).

¹⁸ In 2008, Mongolia also equipped itself with a Human Development Fund (HDF) fed by mining revenues. Authorized by Parliament in 2008, the HDF's objective was to distribute wealth generated by the country's mining projects to all Mongolians. In 2010, 16% of Mongolia's budget was allocated to the HDF (UN, 2012), which is entirely financed with OT's tax revenues.

¹⁹ Unless granted prior government approval. The law was approved on May 17, 2012.

²⁰ The coalition, at times portrayed as nationalistic, was formed when the Democratic Party retained only 31 of the legislature's 76 seats.

²¹ President Elbegdorj was first elected in May 2009.

²² Amongst the president's concerns were issues relating to OT's management costs, particularly the fact that 6% of the investment would be used to pay the salaries of OT's managers. Additionally, the president wanted all financial transactions of the project to be processed through Mongolian banks, and for OT to further address issues relating to the environmental aftermath of the mine, the transportation of its minerals, and the project's power supply, which is currently fed via a temporary contract with China. The president also wanted a power station to be built in Mongolia, in addition to the promised copper factory. See Khash-Erdene (2013).

²³ Although there is an optional provision for an additional 16% government purchase of OT at the end of the initial 30-year term of the agreement.

²⁴ Rio Tinto is the largest shareholder in Turquoise Hill Resources, which owns 66% of OT's shares; the Government of Mongolia owns the remaining 34%.

²⁵ The frosty reception from the pro-mining lobbies was mostly a result of the law's provisions relating to state ownership. In a controversial move, the new version of the law stipulates that in cases of exploitation of minerals labeled of strategic importance, the state may now claim up to 34% when non-state funding sources are used to determine proven reserves (Article 5.5). The law further instructs holders of a mining license for a mineral deposit of strategic importance to trade no less than 10% of its shares on the Mongolian Stock Exchange (Article 5.6).

²⁶ The World Bank Group announced that it would inject a total of US\$2.2 billion in debt and guarantees for the development of the second phase of the mine, the underground stage. Alongside several international private banks, the International Financial Corporation (IFC) is now providing a total loan facility of US\$1,221 million to the project, and the Multilateral Investment Guarantee Agency is providing up to US\$1 billion in loan guarantees. See IFC (2015).

²⁷ Munkhbayar is the founder of the environmental organization United Movement of Mongolian Rivers and Lakes. He was awarded the prestigious Goldman Environmental Prize in 2007 for his environmental activism.

²⁸ On the so-called rise of resource nationalism in Mongolia, see Hatcher (2016b); on China specifically, see Jackson and Dear (2016).

²⁹ See AU (2009). Such strategies resonate with the recommendations of the Africa Mining Vision, which called for a "transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development." The proposals are summarized in *Minerals and Africa's Development: A Report of the International Study Group on Africa's Mineral Regimes* (UNECA and AU, 2011).

³⁰ The role of civil society organizations in bringing about the reopening of mining contracts in Africa can be documented in each case and is illustrated here using the case of Zambia. (Dymond, 2007):

Vedanta undermining development in Zambia - Zambian workers are getting an unfair deal: ACTSA in partnership with SCIAF and Christian Aid, with the support of Zambian civil society, have just published a major report—Undermining Development?—on why Zambia fails to derive the benefits that it should from its enormous copper reserves. The focus of the report is KCM, Zambia's biggest copper company—majority-owned by a UK-based company, Vedanta Resources. We have found disturbing evidence of contracts signed under pressure from international donors, environmental agreements that allow

multinationals to bypass local laws and workers who receive little reward for grueling hours of physical labor. The Zambian Government is renegotiating contracts with the major mining companies.

³¹ Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.

³² Under Article 217 of the 2013 Mining Code, Régimes applicable aux titre antérieurs, both current and past contracts are to be published in the *Journal Officiel* and posted on the official website of the Ministère en charges des mines.

³³ In Ghana, for example, the growing recognition of the need to ensure citizen oversight is illustrated in the petroleum sector by the Public Interest and Accountability Committee (PIAC), created under section 51 of the *Petroleum Revenue Management Act, 2011* (Act 815) (Ghana, 2011). For the case of Mali, see Keita (2016).

³⁴ As noted, the 2013 Code retains a controversial clause giving the state a free 15% stake in mining projects—as well as the option of purchasing an additional 20%—but makes clear that contracts signed before 2011 will be exempt. Other forward-looking measures that remain in the 2013 Code include those concerning local processing of mineral, the publication of all mining contracts, the training of personnel, and protection of the environment.