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Shifting sands: Legal dispossession of small-scale miners in an extractivist era

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ABSTRACT

This article argues that the entanglements of a growing global demand for construction material and neoliberal resource governance result in an incremental and piecemeal form of dispossession. While mining in Colombia has been broadly researched, little has been said about sand extraction and the challenges small-scale artisanal miners face when trying to formalise their activities. This article seeks to fill this gap by following a group of *areneros* (manual sand extractors) who attempt to defend their right to sand extraction against a competing mining claim. Drawn into the domain of the state, the areneros navigate a changing institutional setup and a complex legislation that favours the wealthy, the lettered and the connected. Political-economic interests are masked behind procedures, symbols and legal-administrative means, which create a 'state effect' and result in a subtle form of legal dispossession. The article points towards a *scalar model* of dispossession, in which small-scale mining activities pass through 'small-scale intermediaries' to end up in the hands of private corporate actors with capital and technical expertise to conduct large-scale extraction. The article adds to the limited literature on sand extraction and challenges the view that the activity is merely conducted by criminal actors; yet, it argues that subsistence mining is under threat by government and corporate interests, positioning sand extraction as a new resource frontier. As small-scale miners find themselves in the conflict between two competing rights regimes and two competing production logics, they are doubly stretched between proletarianization and eviction, criminalisation and self-erosion.

1. Introduction

It is a dusty Friday afternoon. The sun has heated up the sand-loading terraces next to the river, and most of the *areneros*, the artisanal sand extractors, have finished for the day. People gather on the bridge and in the shade under the tree next to it; most of them reside in the village of Brisas del Frayle, but people from surrounding villages have turned up to show their support as well. Juan[3] ties barricade tape across the road, demarcating the line which the villagers do not want the police to cross. Dorany, Cathy and Celina are manning a makeshift 'negotiation table' in the shade on the outer side of the barricade tape. People carry chairs from the community hall to the table. Celina arrives with a folder containing letters and resolutions, documenting the correspondence between the villagers and the statutory institutions. Tania distributes small white flags of fragile tissue paper to show that it is a peaceful protest. Yohana holds up a poster: "We are the areneros of conservation and democracy! Democracy is the power *of* the people, *for* the people and *with* the people." With these different symbols of a peaceful protest, the villagers prepare for a meeting with the National Mining Agency (ANM, for its acronym in Spanish), which they fear will be an eviction from their subsistence livelihoods. A competing mining claimant has been granted the licence to extract sand in the very location where the areneros from Brisas del Frayle work, in effect privatising what has until now been considered a collective right. On the one hand, the villagers gather in protest to show that they will not let this privatisation happen. On the other hand, they set up a negotiation table to stretch out a hand to the statutory institutions; an invitation for collaboration and a call for recognition of their right to extraction.

With more than 50% of the global population living in cities, the demand for construction materials for housing is growing worldwide

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[3] All names of persons have been pseudonymised, while names of institutions and geographical locations have been kept.

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(Beiser, 2018). Sand is a central component in concrete and cement, and therefore its extraction is increasingly subject to 'frontier moments' (cf. Rasmussen and Lund, 2018). Sand extraction has for a long time gone unnoticed in many countries, largely due to the apparent abundance of the resource. As a result, there has been limited research, registration and targeted legislation in the area (Bisht and Gerber, 2017; Peduzzi, 2014). While this is also the case in Colombia, a rough estimate is that sand extraction amounts to 19% of mining operations.[4] Yet, this does not say much about the size of the operations, the number of people engaged in the activity, nor their methods of extraction. While the limited research on sand extraction often portrays the activity as related to environmental degradation, crime and 'sand mafias' (Beiser, 2018; Bisht and Gerber, 2017; Global Witness, 2010; Peduzzi, 2014; Torres et al., 2017), this ethnographic study adds to the literature by illustrating that sand extraction is also a subsistence activity, sustaining rural livelihoods and conserving cultural practices. In this way, sand extraction constitutes an 'awkward zone of engagement' (cf. Tsing, 2005) in which artisanal miners are connected to global production trends through the circulation of the resource in regional construction markets, the marked-oriented neoliberal governance, and the encroachment of transnational corporations into the supply chain.

Mining in Colombia has been broadly researched, and studies have often focussed on the social and environmental impacts of large-scale mining, conflicts between mining concerns and local populations, and the lack of prior consultation (see e.g. Castillo-Ospina, 2013; Fierro Morales, 2012; McNeish, 2016, 2017). When attention has been given to small-scale miners, it has often focused on their perceived need to formalise their activities as a way to enter market relations, improve their productivity, and reduce environmental impacts (see e.g. Defensoría del Pueblo, 2010; Güiza-Suárez, 2014; Urán, 2013). With a few exceptions (Vélez-Torres, 2016; Weitzner, 2017), little attention has been given to the challenges small-scale miners face when seeking to formalise their activities to defend their livelihoods against competing mining claims. This article aims to fill this gap by following the areneros[5] in Brisas del Frayle as they struggle for their right to sand extraction against an external claimant.

To defend their resource right, the areneros are drawn into the domain of the state and have to navigate a changing institutional setup as well as a complex legal framework, shaped by an underlying rationale of capitalist accumulation, efficiency and growth (McNeish, 2017; Vélez-Torres, 2014). This stands in contrast to the practices of the areneros who work manually and collectively, adjusting their extraction to the ecological cycles. The areneros may shy away from the institutions, and prefer to maintain their activity in informality, where they can control the rhythm of extraction and do not have to comply with the logic of efficiency, profit and growth. However, when faced with a competing mining claim, formalisation[6] is often people's only means of protection (Platteau, 1996). Forced into structures of state authority, the areneros experience the inherent ambivalence of formalisation: seeking recognition to secure their rights, they recognise state authority to grant rights as well as to *deny* rights; thus, they run the risk of rejection (cf. Lund, 2016). The article illustrates how procedures and technologies of governance mask and facilitate a piecemeal dispossession. This takes place in everyday engagements between the villagers and statutory institutions, such as the verification visit described above and the folder of documents that Celina carries to the negotiation table. In the following, we outline the notion of 'encounters' and the mutual constitutive dynamics of authority, rights and recognition, as lenses through which these engagements can be analysed.

The term 'encounters' has been used to analyse meetings and interactions between people from different cultures and societies. Asad (1973) and Escobar (1995) highlighted the historical legacy and unequal power relations in colonial and development encounters, respectively, and how (anthropological) knowledge production has actively been used in the domination and structuring of the world. Other scholars have built on this critique, drawing attention to the encounter as an open event to which the outcome is not given on the onset allowing for a certain degree of agency on the part of the 'globally disadvantaged' (Babb, 2010; Bebbington, 2000; Faier and Rofel, 2014). Building on this, we conceptualise the meetings between the villagers and statutory institutions, such as the verification visit depicted above, as *government encounters*. The interactions between the villagers and the legal, lettered and connected world are, to some extent, encounters between people from different cultures. They are saturated by unequal power relations, but the outcomes are not given on beforehand, which makes room for a certain degree of agency on part of both actors.

Furthermore, following Lovell's (2006) study of civil rights claims, we conceptualise the documents exchanged between the areneros in Brisas del Frayle and the statutory institutions as a series of written political encounters. *Encounters,* because they concern interactions that show how people present themselves as well as how institutions respond, and *political*, because, as rights claims, they represent a fundamental form of political participation, and, additionally, because the replies from the statutory institutions are politically informed (Lovell, 2006). Like the physical encounters, the written encounters are saturated by asymmetric power relations but also open for a certain degree of agency on both sides. While government functionaries employ legal rhetoric to assert their authority, the villagers are not put off by the functionaries' legal rhetoric; on the contrary, they employ legal discourse to challenge claims made by legal officials and justify their demands, while they articulate their own conceptualisations of rights, justice and democracy (cf. Lovell, 2006; Thomas and Galemba, 2013).

Yet, despite bridging the rural and the legal worlds, the folder with the documents exchanged composes an asymmetric relation (cf. de la Cadena, 2015): by requiring literacy and legal rhetoric, the folder favours the connected and lettered population. With the folder as site of encounter, the areneros use the language of the lettered world and enter the state domain. 'The state' is not a coherent and logic entity, carrying out the 'will of the people', but rather a number of institutions making up a state-as-system (Abrams, 1988; Platteau, 1996). These institutions are not neutral and independent from wider society but influenced by dominant private economic and political interests (Li, 2007; Mitchell, 1991; Platteau, 1996). Statutory institutions do not necessarily align their legislation and decision-making processes but compete vertically and horizontally over mandates and jurisdictions (Lund, 2016). These interinstitutional struggles and power relations may translate into a complex legal-administrative framework, with inconsistent and competing legislation, procedures and institutional decisions. Yet, statutory institutions are exceptionally effective in presenting themselves as neutral and fair: through symbols, procedures and government techniques they manage to create a 'state effect' (Abrams, 1988; Mitchell, 1991; Trouillot, 2001).

In this article we investigate how small-scale sand miners are dispossessed – not through violent means, but subtly and incrementally through legal-administrative means –, creating a 'state effect' that is partly upheld by the villagers' own institutional navigation and partly

[4] According to the mining census for 2010–2011, 47% of the mining operations in Colombia concern non-metallic resources; 94% of these are for construction materials, of which sand amounts to 44% (MinMinas, 2012).

[5] Most of the villagers are related to the sand extraction – either by depending on it as a full-time, temporary or complementary income, being a household member to an arenero, or supporting the legalisation process actively. Thus, there is no clear line between 'areneros' and 'villagers', reason why we use the terms interchangeably.

[6] While 'legalisation' can be understood as the titling of an activity currently not covered by a title, 'formalisation' has been taken to mean a wider socio-politico-economic process including incorporating mining operations into the 'formal' economy, complying with standards for labour, environment, health and insurance, etc. (Echavarria, 2014; Güiza-Suárez, 2014). In the literature the two terms have been used loosely, why we use them interchangeably, primarily referring to the legalisation aspect.

by the neoliberal normative framework and bureaucracies. This legal dispossession takes place in a 'zone of awkward engagements' (cf. Tsing, 2005) resulting from the neoliberal governance of natural resources that facilitates capitalist accumulation in a global value chain of construction developments, and placing sand extractors at the 'bottom' of this constellation of actors and relationships. The entanglements of corporate interests, resource governance, state authority and citizenship create an exclusionary process of state formation, in which differentiated rights and ethnic recognition offer only an illusory framework of justice.

The article is based on ethnographic fieldwork, conducted over two periods of time for a total of ten months in 2016–2018. During this time, first author lived in the village for two months, and visited the village two-three times a week the remaining time. Second author has had a prolonged engagement and continous contact with the villagers. Data construction methods include participatory observation, informal conversations, audio-visual methods, document reviews, 40 semi-structured interviews with villagers and public functionaries, and attendance to 13 institutional and community meetings. Many of the documents reviewed derive from a copy of the Community Council's folder documenting the correspondence between the areneros and the statutory institutions. Further, as part of negotiating access and constructing data, we engaged in collaborative research with the Community Council in Brisas del Frayle by conducting a household survey and accompanying the villagers in their encounters with the statutory institutions. This form of engaged research seeks to "affirm a political alignment with an organized group of people in struggle" (Hale, 2006), and co-create research products that can allow critical scholarly production and benefit the people involved. As the written and physical encounters have been our entrance points to the case, we will describe the case as it appears in the folder, how it was conveyed in narratives of the Community Council, and how we experienced it in encounters with statutory institutions.

Below, the article is organised as follows: First we draw out the context of the mining sector in Colombia, including the institutional and legislative framework, before we introduce the case of sand extraction in Brisas del Frayle. We then unpack the empirical material in the form of government encounters between the areneros and the statutory institutions, as the areneros seek to formalise their activity and defend their rights to extraction. By way of conclusion, we reflect on the effect and outcomes of these encounters and point to wider implications of our analysis.

2. The mining locomotive

Over the last decades, the extractive economy in Colombia has been promoted as the engine for economic growth. In the neoliberal 1990s, the mining and energy sector was positioned as the key site for attracting foreign direct investments (FDI), and, since the early 2000s, exports from this sector have risen exponentially (Castillo-Ospina, 2013; Echavarria, 2014; McNeish, 2016; Vélez-Torres, 2014). In the National Development Plan 2010–2014, the extractive sector was framed as the 'mining-energy locomotive' (DNP, 2011), which translated into a surge in the number of mining concessions; by 2012, "over one-third of Colombia's landmass was either issued in mining titles, requested in concessions, or destined for mining through nationally designated strategic mining areas" (Weitzner, 2017, p. 1198). With mining accounting for 70% of total exports (of which between a third and a half corresponds to oil and oil derivatives) and 55% of FDI, Colombia writes itself into the history of Latin American countries pursuing a neo-extractivist model of development (Aguilar-Støen and Bull, 2016; Himley, 2013; McNeish, 2016, 2017; Urkidi and Walter, 2011; Vélez-Torres, 2014, 2016).

While the discourse of the mining locomotive favours large-scale concessions and aims to attract FDI, small-scale mining has not received the same praise – even though small-scale mining according to the Ministry of Mining and Energy's own figures, represents the large majority, 72%, of all mining operations in the country (MinMinas, 2012). It is widely recognised that small-scale, artisanal and manual mining[7] are important forms of subsistence in rural areas, often combined with agricultural activities (Álvarez, 2016; Defensoría del Pueblo, 2010; Echavarria, 2014; Güiza-Suárez, 2014; Vélez-Torres, 2016). Nonetheless, small-scale mining is often framed as inefficient, irrational, unprofitable, non-competitive and environmentally damaging (see e.g. Defensoría del Pueblo, 2010). This accusation is evidently contradictory since it is usually corporate mining companies that have the technical capacity and the economic interests in using mountaintop removal and similar environmentally damaging practices. In public discourse, small-scale mining is often linked to informal mining, meaning mining conducted without a mining concession title or other forms of formal authorisation. Overall, 63% of mining operations in Colombia are informal, while the figure for small-scale operations alone is 66% (MinMinas, 2012). This vague 'over-representation' of small-scale mining among informal operations has translated into a discourse that criminalises small-scale mining by equalising operations taking place outside formal institutions with criminal endeavours, often linking small-scale mining to drug-trafficking, armed actors and criminal groups (Álvarez, 2016; Echavarria, 2014; Vélez-Torres, 2016; Weitzner, 2017). This is seen in the way the mining glossary of the Ministry of Mining and Energy (2012) categorises artisanal and informal mining *per definition* as illegal. In contrast, medium and large-scale mining operations are *per definition* excluded from the category of illegal mining, even though 17% of the censused mining operations with more than 100 people employed do not have a mining title (MinMinas, 2012). Despite accusation of corruption, fraud, money laundering, armed group financing, and tax evasion, as well as severe social and environmental impacts (Castillo-Ospina, 2013; Fierro Morales, 2012; McNeish, 2016; Vélez-Torres, 2014; Weitzner, 2017), large-scale mining is still portrayed as the economic muscle and development hope of the country.

This illustrates how dominant legal discourse can be used to illegalise some "people and practices, excluding them from the moral-legal community" (Thomas and Galemba, 2013, p. 211). Criminalisation serves to maintain specific power relations, delegitimise small-scale miners and exclude them from the political community – even framing them as "enemies of the state" (Vélez-Torres, 2014, p. 73). A particular nexus is established between statutory institutions, foreign investors, and large-scale mining companies, illustrated by high-level functionaries presenting themselves not as representatives of the government but of the corporate mining sector (Fierro Morales, 2012). Thus, corporate actors have managed to inject their interests into the development discourse and the political system (cf. Aguilar-Støen and Bull, 2016; Li, 2007; Mitchell, 1991, 2002), shaping the institutional setup and the legislative framework in a way that favours their economic interests.

2.1. Complex legislation and entangled institutions

This is for instance illustrated by the complex institutional matrix governing sand extraction, which has changed at least five times since the 1980s. First, sand was considered a renewable resource, falling under the jurisdiction of the National Institute for Renewable Resources (INDERENA, for its acronym in Spanish). However, when the first Mining Code was established in 1988, sand was categorised as a construction material and incorporated into the mining legislation, falling under the mandate of the national mining company in charge of

[7] Small-scale and artisanal mining are often collapsed into one category (Güiza-Suárez, 2014). Vélez-Torres (2016) further distinguishes between *mechanised* small-scale mining and *ancestral* mining, the latter being mining developed by ethnic groups in their traditional territories.

exploiting mining resources in the country, Minercol (Fierro Morales, 2012). But Minercol was not *de facto* in charge until 1995; until then, it was the regional environmental agencies (CARs, for their acronym in Spanish), which are mandated to manage natural resources and promote sustainable development within their area of jurisdiction. With the new Mining Code in 2001, Minercol was closed and the jurisdiction was transferred to the newly created Institute for Geology and Mining (INGEOMINAS, for its acronym in Spanish). In 2011, the institutional setup was 'modernised' and the authority over mining and mining titles shifted to the National Mining Agency (ANM, for its acronym in Spanish), which is still in charge today. Along with it, a number of governmental entities are involved in the process: CARs are responsible for supervising the environmental assessment; the Office of Ethnic Affairs and the Office of Prior Consultation in the Ministry of the Interior are involved when mining claims concern ethnic groups or ethnic territories; and, when miners are working informally, the Ministry of Labour and the municipalities are involved.

The complex and changing institutional setup has created overlaps and vacuums as well as competition over jurisdictions that results in poor inter-institutional coordination, bureaucratic incompetence and corruption (Echavarria, 2014; Fierro Morales, 2012; McNeish, 2016). As papers and cases move from one entity to another, some might get lost; the process can be frozen for years, forgotten or randomly retaken as new claims or documents emerge. Such non-transparent institutional setup favours the lettered and connected population who has the means and capacities to navigate the system. Small-scale and artisanal miners, who are geographically far from the central offices and who do not have connections in the system, are largely disadvantaged.

Concurrently with the institutional alterations, the legal framework has changed as well. While the first Mining Code (1988) allowed for subsistence mining to be undertaken without concessions (Echavarria, 2014), the neoliberal turn during the 1990s generated growing political interest in establishing mining as the motor for economic growth, and created a push for formalisation to make resources 'legible' (cf. Scott, 1998) and thus exploitable. When Minercol was closed, all extraction was privatised, and direct state revenues were limited to royalties, based on the market value and the quantity of material extracted (Fierro Morales, 2012). Thus, mining resources were conceptualised as commodities that required expertise and technical capital to become available as state assets, and the legislation came to reflect the policy preference for large-scale mining and foreign investment (Álvarez, 2016; Echavarria, 2014; Vélez-Torres, 2014, 2016). While the Mining Code from 2001 is still the main legal document regulating the mining sector, at least 17 decrees and resolutions were issued between 2001 and 2014 to complement the law.[8] This has created a complex, fragmented, ambiguous and contradictory legislation with legal voids and overlaps (Echavarria, 2014; McNeish, 2016). A changing legal framework requires constant attention to new regulation, a high level of legal literacy, or the economic muscle to purchase legal support. This puts the wealthy, connected and lettered population at an advantage, while small-scale and artisanal miners with little economic means, low levels of education and few connections find it difficult to navigate the changing legal framework. Thus, they may give up the quest for formalisation and eventually become subject to the criminalising discourse.

Adding to this, small-scale and artisanal miners are disadvantaged by the undifferentiated requirements for small- and large-scale operations in the formalisation process. While large-scale operations have the economic means, systems and infrastructure to document previous activities, develop surveys and maps, apply online, and pay the high fees, artisanal and small-scale miners have difficulties meeting the requirements (Defensoría del Pueblo, 2010; Echavarria, 2014). Though the Mining Code allows for the legalisation of 'traditional miners' who can prove that they were working before 2001, it is very difficult for informal miners, without invoices, accounting and taxation receipts, to fulfil the requirements and prove their traditionality. Their unfavourable position is further exacerbated by the 'first in time, first in right'-principle. According to Echavarria (2014), it was earlier enshrined in policy that whoever finds minerals has the right to exploit them. However, in the 2001 Mining Code, the 'first in time, first in right' principle was interpreted as 'first in time to make a formal request' for mining concession (Echavarria, 2014). This meant that people who knew about the new opportunity, who had connections in the central administration, or who in other ways were well informed about activities in the mining sector were greatly favoured (Vélez-Torres, 2014). The new interpretation of the 'first in time'-principle created, quoting Scott (1998: 78) from another context, "new positional advantages for those at the apex who have the knowledge and access to easily decipher the new state-created format". With this change in the mining legislation, informal miners who relied on the original first-in-time principle lost ground and saw their rights disappear. As will be illustrated in the following, this is to a large extent what happened to the areneros in Brisas del Frayle.

2.2. Sand extraction in Brisas del Frayle

The village Brisas del Frayle is situated on the shores of the Frayle River in the municipality of Candelaria in the Valle del Cauca department in western Colombia. The village consists of approx. 105 households, located along one side of an old national road. According to a household survey conducted in 2017, 61% of the approx. 400 inhabitants recognise themselves as Black, Mulatto or Afro-descendant, while 14% recognise themselves as Mestizo, 9% as Indigenous, and 6% as White. While this indicates a multi-ethnic population, the villagers have formed a Community Council, which is the legal administrative entity for Afro-descendant communities, established under Law 70 (1993), which, with reference to the 1991 Constitution and the International Labour Organisation (ILO) Convention 169 (1989), recognises Afro-descendant communities as ethnic groups.[9]

The village Brisas del Frayle was established in the late-1970s when people started settling along what was then the main road between the towns Candelaria, in the Valle del Cauca department, and Puerto Tejada, in the Cauca department. The first families were migrants from the neighbouring regions of Cauca, Nariño and Chocó, forced to leave the homelands due to a combination of internal armed conflict and capitalist expansion (cf. Achinte, 1999). Along the old national road, the villagers managed to carve out a minimum of land to build makeshift houses and construct their livelihoods. Similarly to other communities in the region (Vélez-Torres and Varela, 2014), they combined wage-labour on the nearby haciendas or small-scale farms, which had a high demand for manual labour for food crop production, with fishing and sand extraction from the Frayle River. Some had come to the region specifically to work in the growing sugarcane industry, which gradually absorbed labour and replaced the multiproduct haciendas. Yet, the increasing mechanisation of the sugarcane sector soon made labour redundant (Achinte, 1999; Knight, 1972), and most of the villagers in Brisas del Frayle could no longer count on the industry as a source of wage-labour. Surrounded by sugarcane plantations, they had no

[8] Among these, Law 1382 (2010), concerning legalisation of traditional miners, was abrogated by the Constitutional Court since a process of free, prior and informed consent with ethnic groups was not conducted in the development of the law. Further, the law was severely critiqued for high requirements for legalisation (Echavarria, 2014).

[9] Ethnic recognition is a political construction in part intended to compensate for historical injustices through the granting of special rights (Ng'weno, 2007a; Povinelli, 2002, see also footnote 12). As will be described in this article, ethnic recognition has for the villagers in Brisas del Frayle not resulted in privileged access to natural resources and territory.

available land to grow food; thus, they were pushed into the river to extract sand from the riverbed. While sand extraction has traditionally been one among many practices in the multiproduct Afro-campesino system (Vélez-Torres and Varela, 2014), it now became the main livelihood activity in Brisas del Frayle.

Today, more than half of the households are directly engaged in the sand extraction, and it is considered a fundamental social and economic pillar in the village. In contrast to the large majority of sand extraction sites in the Valle del Cauca which are operated by machines (CVC, 2008), the areneros in Brisas del Frayle work manually with self-crafted tools.[10] They work collectively and in teams of four to six people and adjust their extraction to the flows of the river and the regenerative cycles of the sand deposits. Since these independent livelihoods take place in the location where people reside, the areneros can engage in what Millar (2015) refers to as 'woven time'; interlacing work activities with leisure, socialisation and community obligations. This flexibility of the work allows people to attend to other aspects of life, and through this form of 'relational autonomy' (Millar, 2014), collective artisanal sand extraction becomes a way of constructing community in the village. This is not to imply an essentialised notion of community, as various scholars have warned against (see e.g. Agrawal and Gibson, 1999; Appadurai, 1988; Gupta and Ferguson, 1992; Malkki, 1992). Instead we consider the community as continually constructed through relationships of people, nature and legal encounters. There might be internal differences and occasional tensions and tiffs, yet small-scale and artisanal sand extraction forms the basis for the construction of community in Brisas del Frayle. The activity connects the villagers to each other and to the environment around them, and it unites the villagers in the struggle for legal recognition – as sand extractors and as Afro-descendant community.

While sand extraction has long been accepted or tolerated in its informal state in Colombia, once 'discovered', it has fallen under mining legislation, and manual sand miners have had to comply with the same requirements as very different materials and forms of extraction involving chemicals and heavy machinery. Given the increasing attention to the scarcity of sand on a global scale and its fundamental importance for the construction industry, sand extraction for subsistence, as practiced in Brisas del Frayle, is under threat from capitalist interests. The difficulty for artisanal miners to navigate the changing institutional setup and comply with the high requirements for mining operations will be explored in the following.

3. Resource rights and recognition in the government encounter

The areneros in Brisas del Frayle have since the early 1990s sought to formalise their activity. While sand extraction officially fell under Minercol, it was managed by the regional environmental agency for the Valle del Cauca (CVC, for its acronym in Spanish).[11] In 1992 and 1993, some of the areneros in Brisas del Frayle were granted permission by the CVC to extract sand in the Frayle river, while they paid taxes to the same institution. Being the regional environmental authority, the CVC was also in charge of river management, and it had thus managed to position itself as the relevant authority to govern the extraction of sand from the riverbed. With this local-regional authorisation from the CVC, the areneros felt on safe ground, while they could simultaneously go 'under the radar' of the central statutory institutions.

However, the 2001 Mining Code challenged the authority of the CVC as well as the 'safe invisibility' of the areneros. With the new rights regime, informal miners were given three years to legalise their activity. Accordingly, areneros from Brisas del Frayle applied for formalisation in INGEOMINAS in late 2004. INGEOMINAS did not reply until almost a year later in October 2005, requiring extra documentation to complement the application, including a technical map, a declaration of ethnic groups, a clarification of who the applicants were, copies of their ID-cards, and proof of traditionality (i.e. proof that they had been working in the river before the adoption of the Mining Code in 2001). The areneros were given 30 days to submit this documentation. Given their limited schooling and restricted economic capacity, the areneros were unable to submit the requested documentation in such a short timeframe, and in February 2006 they were informed by INGEOMINAS that their application had been rejected for the lack of response. They were given five days to appeal the rejection. Two months later, in April 2006, the areneros appealed the case to INGEOMINAS and submitted maps, copies of ID-cards and a letter of support from the municipal environmental secretary. In their appeal, they argued that they had not been able to submit the documentation earlier due to their low level of education, their precarious economic situation, and their dependence on the sand extraction for their subsistence. Nevertheless, INGEOMINAS rejected the appeal, informing them that the case had been closed.

After the rejection in 2006, the areneros 'let time pass', as the president of the Community Council says. Instead of insisting on formalising their sand extraction, they decided to continue to work more or less under the radar of the national government, while the CVC silently approved their activities. However, one day in 2012, a woman external to the village, but known by the areneros from previous commercial relations, showed up at the river shore. She claimed that she had obtained permission to extract sand in the river and demanded that the areneros cease their activity. She had brought a fiscal officer and a group of police officers along to show that she had institutional backing and the law on her side, insinuating that the areneros were criminals. We never got to know the competing claimant, but through documents and the villagers' description of her, we understood that she was a lettered and connected person who had taken advantage of the villagers' hospitality and the informal regulation of their sand extraction. As the 2001 Mining Code opened for legalisation under the 'first in time to request a title'-principle, she applied in December 2002 to INGEOMINAS for formalisation of the extraction site in Brisas del Frayle.

While the application of the areneros was rejected within a year and a half, that of the competing claimant lingered in the system. After five years, INGEOMINAS approved the judicial-technical aspects of the application and passed the case on to the CVC. After conducting a technical visit to the area, the CVC recommended in March 2008 the development of a Works and Operations Programme (PTO, for its acronym in Spanish) and an Environmental Management Plan (PMA, for its acronym in Spanish). The PTO was approved by INGEOMINAS in July 2009, and in September the same year the competing claimant was given two months to accept the plan – otherwise, the case would be rejected. For unknown reasons, the PTO was reiterated in November 2009, effectively giving the claimant four extra months to react. In January 2010, the accepted PTO was delivered to her. While it did not constitute a final licence, it was with this approval that she sought to evict the areneros in 2012. It is striking that while the areneros in Brisas del Frayle were immediately rejected for not complying with deadlines, the competing claimant was leniently treated and given remarkable leeway. In the following years, the areneros were to experience many more such inconsistencies and injustices in their encounters with the statutory institutions.

[10] These include the *pandonga* – a bucket cut in half on the high end, rounded off to facilitate the uptake of sand – and the *balde*, a bucket with holes for the water to filter through while the sand remains in bucket.

[11] The CVC was established by influential sugarcane entrepreneurs in 1954 as a means to govern the landscape and resources through damming, irrigation and flood control in the departments of Cauca, Valle del Cauca and Caldas (CVC, 2004, p. 68). With the establishment of the regional environmental agencies (CARs) at national level in 1993, the CVC kept its acronym, but its mandate was limited to the administrative unit of the Valle del Cauca department.

3.1. Routes to formalisation

In response to the eviction attempt in 2012, the areneros were drawn into the domain of the central state. After a period of lingering semi-informally under the radar, they now needed to go public: they needed to 'be seen' (cf. Honneth, 2001). The villagers started mobilising in the legal-administrative way by sending letters to a number of public institutions, asking for accompaniment and guidance as to how to formalise, and how to defend themselves against eviction. They sent letters to INGEOMINAS, the CVC, the Ministry of the Interior, different offices within ANM, and several other state institutions including the regional and municipal ombudsperson. Moreover, the villagers reached out to build alliances and seek support from the neighbouring community councils, and from activists, as well as from an Afro-descendants' rights lawyer.

As described above, the setup of the mining institutions underwent constant changes in these years, and the villagers were tossed between one entity and another. In their written government encounters, the villagers emphasised the socio-economic aspects of the village, including their low level of education, their limited economic means, and their dependence on the sand extraction as their main source of income, as well as the limited environmental impact of their manual work. They employed legal rhetoric by referring to their Constitutional rights and the right to work; in this way they were not put off by the legal rhetoric of the statutory institutions, but spoke back to the state (cf. Lovell, 2006). Further, by using terms as 'solidarity', 'social cohesion' and 'symbolic universe', the villagers framed their claims according to their own understandings of value, legitimacy and justice (cf. Lovell, 2006; Thomas and Galemba, 2013). Moreover, by referring to their rights as Afro-descendants, their collective rights and sand extraction as an ancestral practice, the villagers framed themselves as an ethnic community and sought to evoke the legislation on ethnic recognition in order to secure their resource rights.

Recognised as a Community Council and an ethnic group, the villagers would be protected under the ILO Convention 169, and, against the competing mining claim, they would have the right to prior consultation, priority right to extraction within their territory, and the right to establish a Black Community Mining Zone. However, ethnic recognition and these subsequent rights have in practice been contingent on the existence of collective property (Vélez-Torres, 2016). As for many other community councils (Oslender, 2002), the granting of collective property was a cumbersome process for the Community Council in Brisas del Frayle.[12] While the Community Council managed to be recognised locally in the municipality of Candelaria in 2013 and figured in CVC's regional registry of Afro-descendant communities, it did not appear in the national Registry of Black Communities, which is what ANM and CVC consult when managing mining applications. To determine whether there was a need for consultation of ethnic groups, or if a claim to an ethnic mining zone lies within a collective title, the ANM and CVC merely checked the maps and registries for spatial overlap. This procedure goes against Constitutional Court rulings T-422/1996 and T-1045A/2010, which both state that Afro-descendants are protected even without the existence of collective title (see Ng'weno, 2007b; Vélez-Torres, 2014). Yet, decisions from the Constitutional Court are contested within the state and by corporate interests, and while the Constitutional Court has been critical at advancing the recognition of marginalised and vulnerable social groups, many decisions stand unaccomplished (McNeish, 2017; Weitzner, 2017). Thus, while the CVC had (a) granted the areneros permission to extract sand in the 1990s, (b) confirmed that the Community Council existed in the institution's own registry of Afro-descendant communities, and (c) invited the Community Council to roundtable meetings for Afro-descendant communities in the region, the entity was now forced to ignore its own institutional knowledge of the existence of the areneros and the Community Council and blindly trust the national maps and registries; in essence developing a 'cartographic blindness' (cf. Haraway, 1988; Moore, 2005; Scott, 1998). Thus, not having collective property, and not figuring in the Registry of Black Communities, the Community Council was in effect 'invisible' and 'illegible' to the institutions (cf. Honneth, 2001; Scott, 1998), and could not be a base through which the areneros could secure their resource rights.

Another route to formalisation was for the areneros to register as *traditional miners*; a legalisation mode available to those who can prove a mining activity prior to 2001. In November 2014, the areneros applied to the ANM for legalisation as traditional miners, and for the establishment of a corresponding Special Reserve Area. After having submitted additional information upon request from the ANM, the areneros received a reply in March 2015 stating that the application showed traditionality, and that, once the ANM had contracted new staff, the institution would conduct a verification visit to the area. This gave the villagers hope that they were on the right track. Meanwhile, during the months from November 2014 to June 2015, the ANM, CVC and the Ministry of the Interior were discussing whether the area of the competing mining claimant overlapped with a territory of an ethnic community. They concluded that there was *no* ethnic community in the area, *despite* the institutional knowledge in the CVC and the ANM of the Community Council in Brisas del Frayle. Even in June 2015, when the villagers, harassed by a criminalisation discourse and threats of eviction by the municipal administration and local police, requested an update about the pending verification visit, the ANM replied that they were still in the process of contracting people to conduct the visit. Yet, only a few weeks later, the ANM rejected the areneros' application for a Special Reserve Area. They argued that the area solicited had a 99.8% overlap with the competing mining claim, which was further ahead in the legalisation process. The areneros appealed the decision but were again rejected. For half a year, the ANM had given the areneros the false hope that they were just about to get their rights secured, and the rejection highlighted the lack of inter- and intra-institutional coordination and the absurd inconsistencies.

3.2. Defending livelihoods

In May 2016, the CVC approved the competing mining claimant's PMA in a report soaked with contradictions, inconsistencies and a fraudulent consultation process. In October 2016, this was followed by another eviction attempt, as the police tried to enforce an administrative protection (*amparo administrativo*), which the competing claimant had petitioned. In response, the villagers called for support from various actors, including the ombudsperson institutions, the United Nations High Commissioner for Refugees (UNHCR), lawyers, academics, activists and other community councils. Moreover, they occupied the town hall in Candelaria to make the mayor protect the areneros against eviction and revoke the competing mining claim. While these mobilisations may seem to pose a challenge to the statutory institutions, the villagers were still compelled to operate within the letter of the law. They did not challenge the *authority* of the institutions but sought formalisation within given structures. By claiming rights to extraction in the ANM, the villagers had not only recognised the authority of the institutions to grant rights, but also to *deny* rights (cf. Lund, 2016). Hence, the villagers found themselves in the tension between recognition and autonomy. On the one hand, they had, by remaining 'invisible'

[12] The legislation recognising Afro-descendant ethnicity and granting collective rights in Colombia has a long and complex history of social mobilisation, regional racialisation, capitalist interests and government hesitation. This has shaped the opportunities for Afro-descendant recognition, largely restricting recognition and collective titling to communities in the Pacific region. A review of these historical antecedents is outside the scope of this paper, see instead Asher (2009), Escobar (2008), Ng'weno (2007a,b), Offen (2003), Oslender (2002) and Wade (1995, 1993).

most of the time, been able to continue working below the radar during many years. On the other, they had to become 'visible' to the institutions to secure their right to resources, which would, however, also expose their informality and make them susceptible to the criminalising discourse.

In October 2017, the competing mining claimant was granted a mining license for 23 years to the area where the areneros from Brisas del Frayle work. Yet, it was not until three months later, when the deadline for appealing the case had run out, that the villagers by coincidence became aware of the granted license through the public notification of an upcoming verification visit by the ANM. Based on their prior encounters with the statutory institutions, the villagers feared that the verification visit would be another eviction attempt. In response, the Community Council sent a Constitutional suit (*acción de tutela*) to the municipal and regional courts to revoke the mining license, explaining their case and referring to their Constitutional rights, their rights under the ILO Convention 169 and to a preceding similar case from the Cauca region settled by the Constitutional Court (T-1045A/2010) (see Vélez-Torres, 2014). The verification visit (depicted in the introduction) ended without an eviction – probably due to the massive support from lawyers, academics, activists, and neighbouring communities. However, the Constitutional suit was rejected. The judge argued that it was a case of two competing economic interests, and that, as such, the areneros should have appealed the granted license within three months of its issue. In his statement, the judge did not comment on the numerous instances of neglect, the absurdities and omissions in the case, the villagers' appeal to their rights as an ethnic group, nor on their reference to decision T-1045A/2010. A few weeks earlier, a functionary from the regional ombudsperson institution had promised that, if rejected by the regional court, the institution would help the villagers appeal the decision at the next level, the national court. However, he now had to withdraw his offer of accompaniment; the ombudsperson institution had officially supported the judge's rejection of the Constitutional suit, and the institution could not change position. The intra-institutional inconsistencies once again disfavoured the areneros in Brisas del Frayle.

3.3. Proletarianization

Yet the villagers' government encounters did not end here. A few weeks after the rejection by the court, the areneros were invited to participate in a project on 'subsistence mining' – independent from the legalisation process. Basically, the project aimed at registering all small-scale informal miners in an Integrated System for Mining Management (SI.MINERO, for its acronym in Spanish). To encourage miners to register, the Ministry of Mining and Energy and the regional government organised a competition, in which the winning community of subsistence miners could get a complimentary 'productive project', such as the production and commercialisation of river shrimps, chicken eggs or personal hygiene products. Given their recent encounters with the mining agencies, the villagers received the project with suspicion. Moreover, the project tasted strangely of capitalist developmentalism (cf. Li, 2007); the element of competition made the project fall in a bizarre intersection of development project, capitalist entrepreneurship, governance technique and hazardous gambling. While the chances to win the productive project were low, the gains of the government were high. By making subsistence miners voluntarily register in the system, the institutions would, at a relatively low cost, get the full overview of the sector: i.e. making it 'legible' (cf. Scott, 1998). Yet, at the time of writing this article, being registered in the SI.MINERO would not secure the subsistence miners' right to resources. In the subsistence mining system, it is the *miner* as labourer that is formalised, not the *resource* or the mining site. Since an existing concession title to an area overrides a subsistence miner's permission to work, being registered in SI.MINERO would, in the case of the areneros in Brisas del Frayle, not assure the right to resources or protect them against eviction. In this way, the subsistence mining project appeared as another legal-administrative tool that with its minimal prospects of gains added insult to injury.

Thus, if the areneros would register in SI.MINERO, the best they could hope for was to strike an agreement with the competing mining claimant. She had earlier conducted a so-called 'mediation meeting' where she had offered to employ the areneros once she had gained the mining title. However, her offer was not well received by the areneros: the salary she was offering (approx. two dollars per cubic meter of sand), was less than half their current earnings, which is already just around the minimum wage in Colombia. If they did not accept the salary, they risked losing their livelihoods, and be replaced by labourers willing to accept a lower pay. Yet, accepting the offer would not only force the earnings of the areneros below a living wage, it would also be a recognition of the competing claimant's right to the resource. It would be a proletarianization of their independent livelihoods and a loss of their artisanal form of extraction: working in teams with a relational autonomy and consideration of the ecological cycles of the river.

4. Conclusions and perspectives

This article illustrates how the entanglements of small-scale sand extraction, corporate interests, neoliberal resource governance and a regional construction market reflecting the global construction boom form a 'zone of awkward engagements' (cf. Tsing, 2005) and conjure up in dispossession of small-scale miners. It follows the areneros in Brisas del Frayle in their encounters with the statutory institutions as they seek to defend their right to sand extraction against a competing mining claim. While the two claims may appear equal on paper, they are inflected by unequal power relations, in which the areneros have the lower hand in terms of access to economic capital, digital infrastructure, literacy as well as legal and administrative support. Drawn into the domain of the state, the areneros navigate a changing institutional setup and a complex legal framework, which is shaped by an underlying rationale of capitalist accumulation, efficiency, and growth. As encounters, the meetings are marked by power asymmetries, yet the outcomes are not given on beforehand. Building alliances with community councils, activists and lawyers, the villagers employ legal rhetoric, appeal to their Constitutional and ethnic rights, and frame their own understandings of value, legitimacy and justice. However, while the folder with the documents presents itself as a tool of defence against eviction, it is located in the domain of the lettered world. Seeking rights within the existing system, the villagers recognise the authority of the statutory institutions to grant rights, as well as to *deny* rights (cf. Lund, 2016). While the villagers' navigation between different bureaucratic avenues indicate an awareness of the contradictory and disaggregated character of 'the state', they are left with no other choice than to appeal to these entities. Through formal procedure and practices, the institutions manage to create a 'state effect' (Abrams, 1988; Lund, 2006; Trouillot, 2001) which in part emerge through the villagers own engagement with these institutions. The state effect masks the underlying political and economic interests and renders the piecemeal dispossession of villagers in Brisas del Frayle merely a technical matter. This confines the areneros to look for a wage-labour agreement with the external claimant, which will reduce their already minimal income and deprive them from their independent livelihoods. Thus, the competing mining claim has forced the villagers to move from the invisible and informal into the legible and formal. Yet, since their rights claims are still ignored, formalisation has effectively meant the choice between two evils: proletarianization or eviction.

The case of Brisas del Frayle illustrates the conflict between two competing rights regimes: formal and informal governance of mining resources, where the latter is being absorbed by the former. Moreover, it illustrates two competing production logics: capitalist and subsistence mining. The article adds to the limited literature on sand extraction by challenging the view that the activity is merely conducted by criminal

actors with no concerns of environmental or social impacts. However, it also illustrates that subsistence mining is under threat – not by criminal activities, but by corporate interests supported by government institutions. While sand extraction until recently has been largely overlooked and allowed to happen informally without the control of the central state, the increasing scarcity of sand on a global scale positions sand extraction as a new resource frontier, reconfiguring existing resource governance structures (cf. Rasmussen and Lund, 2018) and threatening the livelihoods of manual subsistence miners. Even if the areneros in Brisas del Frayle had managed to legalise their activities and gain resource control – either as traditional miners or through a Black Community Mining Zone – they would have been under a concession contract with the Colombian state, directed by the large-scale extraction rationale of the mining locomotive. As such, the areneros would not have been able to control the resource, but would have been forced to extract materials at a certain rate, open their territory for external mining companies, or enter into partnerships with foreign investors (Echavarria, 2014; Vélez-Torres, 2016). This would force them to extract more than is naturally replenished, which would eventually deplete the resource and undermine their own existence. Thus, once they have moved from the invisible to the legible, staying informal would mean criminalisation, and formalising would effectively mean self-erosion.

Thus, the areneros in Brisas del Frayle write themselves into a history of small-scale and artisanal miners who have sought to legalise their traditional activity, only to see their sand formally granted to an external claimant (Echavarria, 2014; Ng'weno, 2007a; Vélez-Torres, 2014, 2016). The latest rumours in the village say that the competing claimant has sold her mining title to a multinational mining company. The company has already entered into extraction rights agreements with a community council in a neighbouring region, and representatives from the company have allegedly visited the extraction site in Brisas del Frayle. If these rumours are true, the case is not just about two small-scale mining claims (a community and an individual actor) competing; rather, the large-scale multinational operations are sneaking in through the backdoor. Thus, in conversation with existing literature in the area (Álvarez, 2016; Echavarria, 2014; Sierra Camargo, 2014; Vélez-Torres, 2016; Weitzner, 2017), we point to a *scalar model* of dispossession. In light of the neoliberal turn with the 2001 Mining Code, Weitzner (2017) argues that the criminalisation of small-scale informal miners and the subsequent push for legalisation is a policy instrument to reap the benefits from the current clandestine export of, for instance, gold. Yet, compared to the tax exemptions enjoyed by the mining sector, it is marginal what state coffers actually gain in mining royalties (Fierro Morales, 2012). Moreover, attempts to legalise small-scale miners do not seem genuine: as this case shows, small-scale miners *are* seeking formalisation, but are being rejected.

Rather, the push for legalisation seem to be a way to shift small-scale activities into the hands of private companies with the technical and capital expertise to conduct large-scale extraction. This appears to happen through a scalar model, in which individuals (or companies) apply for a mining license in ethnic collective territories, or in areas where traditional miners already work (Echavarria, 2014; Vélez-Torres, 2014, 2016). Unknowing of the pending license request, small-scale miners may operate without formal title, or are perhaps in the process of acquiring one; however, when they are notified of the competing claimant, it is too late. While small-scale miners may protest and conflicts arise, at the end of the day, the external claimant is backed by the law. To avoid direct confrontation, external claimants may sell the concession right to a multinational; alternatively, concessions are granted directly to large-scale mining companies. Against such claims, small-scale miners and ethnic groups have little option but to accept and enter agreements with multinational companies – as proletarised workers, or through royalty agreements (cf. Anthias, 2018; Echavarria, 2014; Himley, 2013). With the capacity and incentive to move on once the resource is exhausted, the external claimant sets the pace of extraction according to profit motives; meanwhile the prior miners are left dispossessed of their subsistence livelihoods.

Hence, this article points, in conversation with existing literature, to a *scalar model* of dispossession. Legal-administrative means – laws, resolutions, reports, registers, maps, meetings, verification visits – evoke a 'state effect', while the political and economic interests behind the appropriation are masked. This indicates an exclusionary process of state formation where non-white, rural, ethnic, and illiterate subjects are left out of the national government imaginary. Even appeals to ethnic protection are either ignored or put under the neoliberal extractivist logic which challenges the resource autonomy of ethnic groups. Further, the case exposes how differentiated rights can play out against the subjects that these rights were supposed to protect; revealing multicultural recognition as an illusory framework of justice. Finally, the article argues that small-scale miners find themselves in the conflict between two competing rights regimes – formal and informal – and two competing production logics – subsistence and capitalist. When threatened by a competing mining claim and pushed to formalise, small-scale miners are either ignored and evicted or proletarianised; or if successful in formalising they are forced to levels of extraction that undermine their own long-term subsistence. Thus, small-scale and artisanal miners are subtly dispossessed from their livelihoods and doubly stretched between proletarianization and eviction, criminalisation and self-erosion.

CRediT authorship contribution statement

Hougaard Inge-Merete: Conceptualization, Methodology, Formal analysis, Investigation, Writing - original draft, Writing - review & editing. **Irene Vélez-Torres:** Conceptualization, Investigation, Writing - review & editing, Funding acquisition.

Declaration of Competing Interest

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

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Appendix A. Supplementary material

Supplementary data to this article can be found online at https://doi.org/10.1016/j.geoforum.2020.06.022.

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