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Popular consultations in extractive governance. Experiences from Colombia

Åsta Losnegård Skjervøy
Master of Science in International Development Studies

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aastals@gmail.com

Noragric

Department of International Environment and Development Studies The Faculty of Landscape and Society

P.O. Box 5003

N-1432 Ås

Norway

Tel.: +47 67 23 00 00

Internet: <https://www.nmbu.no/fakultet/landsam/institutt/noragric>

Declaration

I, Åsta Losnegård Skjervøy declare that this thesis is a result of my research investigations and findings. Sources of information other than my own have been acknowledged and a reference list has been appended. This work has not been previously submitted to any other university for award of any type of academic degree.

Signature..... Date.....

Acknowledgements

The writing of this thesis has been a long and complicated process, but more than anything, it has been a process in which I have learned a lot. Not only when it comes to the topic of this research, and the process of conducting fieldwork for a bigger academic work, but more than anything about Colombia—a country in which I have lived and spent time in during three different occasions, and which I have come to consider my second home. Through the fieldwork, I was able to get insight into a Colombia I did not yet know, a countryside with a complicated array of history, issues and people. I would like to give a big thank you to everyone who participated in the research, and those who helped me out and made the work easier. The friendliness, the hospitality, the hunger for knowledge and sharing that I have been met with throughout this research has been an incredible experience.

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Abstract

Mining has been an important industry in Colombia and there has been a push for expansion since the beginning of the 2000s. The granting of mining titles and planned large-scale mining projects have resulted in a social environmental conflicts in many parts of the country. In the years from 2013 to 2018, ten municipalities in Colombia carried out popular consultations—a kind of local referendum supported by the Colombian constitution, and with binding results—against extractive development in their territory. These consultations happened despite the national government opposing and trying to stop the use of the tool in extractive governance, arguing that they are illegal as only the state can make decisions on the use of the resources of subsoil. In this thesis I am looking at the development of the use of popular consultations in extractive governance in Colombia, and how local communities have organized themselves to employ the tool. I argue that the use of the tool managed to grow and reach legitimacy with the courts, and most notably the Constitutional Court, because of the country's strong courts and the history of the Constitutional Court of judicial activism, but that this was not sufficient for the use of popular consultations continue to be used in extractive governance.

List of abbreviations

AGA - AngloGold Ashanti

ANH - National Agency of Hydrocarbons

COA - Cinturón Occidental Ambiental / Western Environmental Belt

Corantioquia - Corporación Autónoma de Antioquia

Cortolima - Corporación Autónoma de Tolima

ELN - Ejército de Liberación Nacional / National Liberation Army

FARC - Fuerzas Armadas Revolucionarias de Colombia / Revolutionary Armed Forces of Colombia

UPME - Unidad de Planeación Minero Energética / Energy and Mining Planning Unit

GDP - Gross Domestic Product

NGO - Non-Governmental Organization

Moz - Million ounces

M-19 - 19th of April Movement

CINEP/PPP - Center for Research and Popular Education / Peace Program

Table of Contents

Acknowledgements	4
Abstract	6
List of abbreviations	7
Table of Contents	8
1. Introduction	10
1.1. <i>Objectives</i>	13
1.2. <i>Background information</i>	14
1.2.1. Extractivism in the Colombian context	14
1.2.2. 1991 constitution and its antecedents	16
1.3. <i>Methodology</i>	18
1.3.1. Research approach and design	19
1.3.2. Data collection.....	22
1.3.3. Ethical considerations	24
1.3.4. Limitations.....	26
1.4. <i>Theoretical Framework</i>	27
1.4.1. Judicialization of politics and judicial activism.....	27
2. Popular Consultations and their use in extractive governance in Colombia	34
2.1. <i>Popular consultations: What they are, and how they work</i>	35
2.1.1. When to use a popular consultation.....	35
2.1.2. The required process to carry out a popular consultation.....	38
2.1.3. Legal foundations for use in extractive governance.....	39
2.2. <i>Popular consultations in extractive governance</i>	40
2.2.1. Antecedents.....	40
2.2.2. Popular consultations carried out against extractive development in Colombia.....	44
2.2.1. Changing legislation and jurisprudence	45
2.3. <i>Hindrance of execution of popular consultations</i>	50
2.3.1. Threats	50
2.3.2. Reducing polling stations	51
2.3.3. Cuts in funding	51

3. Cases: La Colosa and Quebradona.....	55
3.1. <i>La Colosa</i>	56
3.1.1. Background information	57
3.1.2. Reception of project, beginning of resistance	64
3.1.3. The road to a popular consultation in Piedras.....	67
3.1.4. The road to a popular consultation in Cajamarca.....	70
3.1.5. Non-juridical processes of resistance.....	77
3.2. <i>Quebradona</i>	80
3.2.1. Background information	82
3.2.2. Reception to project and beginning of resistance	85
3.2.3. Municipal agreements and intents of popular consultations.....	87
3.2.4. Abrazo de la montaña.....	93
3.3. <i>Juridical tools only a part of the equation</i>	94
4. Discussing the use of popular consultations in extractive governance in Colombia.....	97
4.1. <i>Strengths and limitations</i>	98
4.1.1. Local level.....	99
4.1.2. Regional level	100
4.1.3. National level.....	101
4.2. <i>Popular consultations, judicialization of politics and judicial activism</i>	102
5. Conclusion.....	105
6. Bibliography.....	106

1. Introduction

I am standing in the middle of a steep field with a group of local farmers and produce distributors in the rural zone of Cajamarca, an hour away from Ibagué. Two dogs chase each other through the tall rows of bean vines, tearing some of the plants, and almost knocking over a little kid, before getting rebuffed and chased away. The vines, held up by neatly constructed wooden frameworks and wire, abound with pods almost ready for harvest. While the landowner explains his process of using an organic mixture (the main ingredient being fermented whey) to fertilize the soil, and for pest control, the man next to me pinches off a pod from one of the vines. He opens the pod with his thumbs and as he spreads the halves apart, brightly colored beans emerge—magenta mottled with white. He pours some of them into my hand, so I can study them better. The farmers have come from all over Cajamarca to partake in this little workshop on agroecology. They are here to discuss the possibilities and difficulties of organic farming and to see how some of the test fields are doing. Cajamarca is often nicknamed the food basket of Colombia because of the rich, fertile soil covering the steep slopes of the mountains, and because of the abundance of different types of crops that can, and do grow here. A small group of farmers want to transform this image into the *organic* food basket of Colombia, and cater to the growing demand for organic produce in the nearby city of Ibagué, as well as Bogotá.

This shift towards organic agriculture is part of a bigger process taking place in the municipality. An alternative kind of resistance against extractive development, because below the fertile soil, other riches are hiding. In 2007, the South-African mining company AngloGold Ashanti (AGA) found huge deposits of gold in the territory. The project, La Colosa, was planned to be one of the biggest open-pit gold mines in the world, and probably the biggest in

Latin America. When people started to learn details about the project: the size of the mine, how the extraction process works, the possible environmental and social risks, and the company's track-record around the world, concerns grew. In 2017, after years of increased tensions, the municipality carried out a popular consultation—a type of popular vote and one of the tools of citizen participation enshrined in the Colombian constitution—in which the people of Cajamarca said no to mining. Because of the vote, AGA had to abandon its project and leave Cajamarca. Since the departure of the mining company, farmers have been eager to show that there is a future in farming and that prohibiting mining was the right choice (Montaño Vásquez, 2018). An argument that was often thrown in their direction while they were opposing the Colosa project, was that they were polluting the exact same waters that they said they wanted to protect. Some took it to heart, and projects like this were born.

Cajamarca isn't the only place in Colombia where planned projects have resulted in opposition from the local communities, and where this opposition in the end has led to prohibition through popular consultations. With an increased push for extractive development, there has also been an increased number of environmental conflicts. In the last couple of decades, mining companies have increasingly been focusing their attention on Latin America, and Colombia is no exception (Bebbington & Bury, 2013). Because of the environmental and social risks, as well as the possible loss of livelihood, many people are opposing these projects. As a part of this resistance, groups and communities opposing mining projects have been searching for ways to halt extractive development.

In 2013, Piedras, located just a couple of hours away from Cajamarca, was the first municipality in Colombia to employ the tool of popular consultation against mining. Since then, a total of ten municipalities have used the tool to stop specific projects, or to preventively prohibit extractive development in their territories. Also in other Latin American countries,

different versions of the popular consultation have been employed against mining projects since 2002, with differing success (Walter & Urkidi, 2017). The tool has been especially appealing to communities in Colombia, as the results of a popular consultation are binding, according to the Colombian constitution of 1991. The Colombian government, on the other hand, has not been very content with this development, and has been trying to reduce its viability. The constitution gives the local authorities autonomy to decide over the use of land in their territories, but it also states that the subsoil and its resources belong to the State. This has been used by the government, government institutions and affected mining companies to delegitimize the use of popular consultations in extractive governance. This dispute—on what it actually entails that the subsoil belongs to the state, and whether local authorities are allowed to prohibit extractive development in their territory—has gone through the courts various times in the last decade, with contradicting conclusions. Finally, in October 2018, the Colombian Constitutional Court ruled that municipalities do not have the authority to prohibit activities related to minerals in the subsoil, effectively stopping the use of popular consultations against extractive development (ruling SU-095/18).

The use of popular consultations in Colombia has sparked interest among many scholars, looking at its potential as a tool in environmental democracy (Dietz, 2018), resource sovereignty (McNeish, 2017) and the conditions that made it possible to be employed in extractive governance (Roa-García, 2017; Villamil & Bautista, 2015), albeit for a limited period of time. Most of the studies were conducted while the use of popular consultations were on the rise, and mainly focused on the Colosa project. Though it seems like the possibility for using popular consultations against extractive development has closed for good through the ruling by the Constitutional Court in 2018, there are still interesting experiences from the use of the tool that can help understand some of the dynamics of social groups and resistance to

extractive development in the country. In this study I aim to garner a wider understanding of the use of popular consultations in extractive governance, its strengths and limitations and the context in which it was able to grow, and the context in which it fell. I will be doing this by looking at two mining projects: La Colosa and Quebradona.

1.1. Objectives

Give an overview of the experiences with popular consultations , as well as to consider the strengths and weaknesses of popular consultation as a mechanism for extractive governance in post-conflict Colombia

Research Questions

- What are popular consultations and how have they been employed in civil society led campaigns to oppose mining and other extractive projects in Colombia?
- What are the strengths and limitations of popular consultations as a mechanism for extractive governance?
- -How did popular consultations come to be used in extractive governance, and why was it stopped?

1.2. Background information

1.2.1. Extractivism in the Colombian context

It's difficult to do research on Colombia, without also touching on the Colombian conflict, as it has permeated almost every aspect of Colombian society in one way or another. The conflict has played a role in the transforming of the countryside, in putting land into the hands of a decreasingly number of people (Gómez, Sánchez-Ayala, & Vargas, 2015; Grajales, 2011, 2015), making Colombia the most unequal country in Latin America in terms of access to land according to Oxfam (Oxfam, 2017).

Despite all the minerals that were known to exist in the ground, for a long time, many international mining companies were reluctant to enter Colombia because of the internal conflict in the country. The conflict, with its intricate array of actors, ranging from left-wing guerrilla groups to right-wing paramilitary, criminal groups and the Colombian army, has lasted for over half a century and resulted in millions of internally displaced people. To attract more foreign direct investment to the country, despite the conflict, the Colombian government simplified the process of obtaining mining titles and increased the juridical and terms for exploration and extraction in the country, in the beginning of the 2000s (Pardo Becerra, 2013). The extractive industries have been seen as a way to boost the Colombian economy, and bring progress. During the government of former president Juan Manuel Santos, mining was defined as one of the main locomotives for economic development (DNP, 2015). It was also seen as an important income to help pay for the initiatives in the peace agreement that signed with the guerrilla group FARC in 2016.

Not everyone has agreed with this line of development. All kind of mining—from small-scale, artisanal to large scale open pit or subterranean projects—have environmental risks, and while there can be a lot of money in the extraction of minerals, this does not always equal

economic prosperity and development for the communities living where the minerals are extracted. In some cases, the complete opposite has been found to be true (Rudas Lleras & Espitia Zamora, 2013). Colombians don't need to travel far to see the possible devastating environmental and social effects mining can have. In parts of Colombia, artisanal and illegal mining has led to deforestation and the destruction of river beds (Sierra Praveli, 2019), and the use of mercury in the processing of gold is polluting rivers and air (Cordy et al., 2011; Fierro Morales, 2013; Güiza & Aristizabal, 2013; Olivero Verbel & Johnson Restrepo, 2002; Tierra Digna & Melo, 2016). Estimations from a study by Cordy et al. (2011), placed Colombia in «the shameful first position as the world's largest mercury polluter per capita from artisanal gold mining», and probably the third biggest polluter overall, after China and Indonesia (p. 154). The open-pit coal mines in the departments of La Guajira and Cesar have also been found to result in environmental problems, polluting water sources as well as producing health problems in workers and those living nearby (Cardoso, 2015; DanWatch, 2010).

Extraction of minerals has also had a way of making its way into the long-lasting Colombian conflict. In 1998, a bombing on a section of the Cusiana-Coveñas pipeline in the northeastern parts of Antioquia by the guerrilla group ELN, resulted in at least 84 deaths (Ó Loingsigh, 2017). According to numbers by Ecopetrol,¹ there were 2,562 attacks on Colombia's pipelines between 1986 and 2014 (Ó Loingsigh, 2017, p. 12). With rising gold prices, illegal mining has been an important source of income for guerrilla and paramilitary groups as well as criminal gangs (Wiss & Gurney, 2018), resulting in increased violence where this mining is taking place (Drost, 2014). But it is not only illegal mining that is marked by conflict. A link has also at times been found between extractive development and the military.

¹ Ecopetrol is a state-run petroleum company, and is the main petroleum company operating in Colombia.

In the department of Cauca, the planned mining project in La Toma has been related to increased militarization of the area (Sañudo et al., 2016). PAX (2016b) has seen a similar link in relation to the La Colosa project in Cajamarca, where the company has paid the Colombian military and police to better protect their project. Many times, the population in these communities feel like this placement of the military is not for their own benefit, but simply for the benefit of the extractive company.

Likewise, and more worryingly, some scholars and organizations have also found a link between extractive projects and paramilitary groups. This has been especially the case in mining districts in the department of Cesar. Throughout the 2000s, paramilitary groups have terrorized various communities, lead to increased displacement as well as killed social and environmental leaders (CNMH, 2016; PAX, 2016a; Quiñones Torres, 2015). In the department of La Guajira, and relation to the coal mine El Cerrejón there has also been a lot of violence and social conflict (PAX, 2014)

Despite the Colombian government's insistence that most of the problems that can be found in Colombia related to mining is because of illegal mining, that responsible, sustainable mining is the way to go forward (GDIAM, 2018), many people are opposing these projects. The environmental and social risks, as well as the possible loss of livelihood, are among the most common reasons. As a part of this resistance, group and communities opposing mining projects have been searching for ways to halt extractive development.

1.2.2. 1991 constitution and its antecedents

On the 4th of July, 1991, Colombia got its new constitution. The country had been through some violent decades and failed attempts at peace, but the new constitution represented something new, with inclusion of groups and movements that had been effectively held outside of Colombian politics. Indigenous groups and afrodescendants were properly recognized for

the first time, and the new constitution brought forth a wide array of tools for citizen participation. Among them; the popular consultation. With the new constitution, the Constitutional Court was created. The role of the court was to make sure that the constitution is followed. Any Colombian can appeal their case or through a *tutela*.

The 80s had been a particularly rough decade for Colombia. The rise of big drug cartels—most notoriously Pablo Escobar and the Medellín Cartel—as well as urban guerrilla groups, like the 19th of April Movement (M-19) , brought the war and violence to the cities. On the 6th of November 1985, the Palace of Justice in Bogotá was seized by members of the M-19. Through their television screens , Colombians could witness the surreal images of military tanks entering the palace at the main plaza in Bogotá in an attempt to regain control of the building. When the machine guns had silenced, and the last of the hostages were released, around 100 people were left dead—among them were almost half of the judges on the Colombian Supreme Court. Additionally were missing .. The decade ended on an especially violent note, when drug cartels tried to stop an extradition deal between the Colombian government and the United States through a series of bombing attacks and assassinations (Quintero Cerón, 2019). In 1989, Colombia had the highest murder rate in the world (Quinn, 1989). When the respected magistrate Carlos Valencia García was assassinated on the 16th of August 1989, and, only two days later, the same fate befell the widely popular politician Luis Carlos Galán—predicted by some to become the next president of Colombia—the Colombian people flocked to the streets to protest the situation of violence and impunity in the country. The protests spurred the student movement *La Septima Papeleta*, important in calling for the vote that lead to the creation of the constituent assembly that would write the new constitution.

Members of the assembly included representatives from demobilized guerrilla groups as well as indigenous representatives and representatives of religious minorities. 40% of the

constituent members did not belong to either of the two traditional political parties in Colombia. When the constitution was released it was seen as one of the most forwardlooking constitutions in Latin America and in the world .

1.3. Methodology

«Why us?». I was sitting in a simple office without windows at the local Jericó office of the South-African mining company AngloGold Ashanti—trying to further explain my research and the sampling of my cases beyond the information presented in the consent form I had given them earlier in the day. Before starting the interviews, they wanted to make sense of why yet another social researcher had wound up at their doorstep, and why my two main cases, La Colosa and Quebradona, were both related to their operations in Colombia. They were skeptical of my objectivity in relation to the research theme. They had had bad experiences with researchers before, they told me, especially researchers from Norway and the Netherlands. Why didn't I look at a case related to the company Drummond, for example? Or maybe illegal mining? I started wondering myself. Why *was* I sitting there? Why had I chosen exactly *these* cases? There were so many things I could have been looking into, so many problematics, so many themes.

Almost four years earlier, I had been sitting in a small, rickety plane on my way to the Colombian Pacific coast for Easter vacation. As an exchange student at the National University of Colombia, I would seize every opportunity to leave the chaos and pollution of Bogotá and explore the country that had become my second home. As the plane neared my layover in Quibdó, the capital of the department of Chocó, the landscape changed. The green tropical forest—more biodiverse than the Amazon—and the lazy rivers snaking its way along the almost flat landscape under us, were blotched with sores. Man-made ulcers in different shades

of green, yellow and brown. I already knew about the problematics—the spring of 2015, the Colombian government had started a huge offensive against illegal mining in the country—but seeing it for myself, from above, was something else. The extent of the damage made a huge impact on me, and sparked my interest in mining problematics in Colombia.

Still, when the time came to choose a theme for my master's thesis, I originally decided to focus on land problematics in relation to the Colombian conflict, and especially those related to monoculture oil palm plantations. How had I gone from oil palm, to extractive governance? And why was I now sitting in the office of AngloGold Ashanti in Jericó, looking into the usage of popular consultations in a place where none had ever been carried out? The decisive change of topic came after ruling SU-095 by the Colombian Constitutional Court in October 2018. The ruling effectively forbade the use of popular consultations in extractive governance in Colombia, and with it my attention was refocused back on mining problematics in Colombia.

The chapter is structured in the following way: First I will go through the research approach and explain why a qualitative method was chosen. I will then look at the research design, explain the use of a case study and how the sampling of the cases were done. Afterwards I will move on to what kind of data has been collected, how, as well as explain how I tried to ensure the validity and reliability of the data. I will then look at some ethical considerations before ending the chapter with an examination of some of the study's limitations.

1.3.1. Research approach and design

Qualitative method

As presented earlier in the introduction, the main objective of this study is to look at usage of popular consultations as well as its strengths and weaknesses as a participatory tool in extractive governance in Colombia. As my goal was to achieve a better understanding of the use of this tool, the development of its usage in extractive governance, as well as to understand

the context in which it has been used, I chose a qualitative research approach. A qualitative approach tends to be more based on an epistemological position where the «stress is on the understanding of the social world through an examination of the interpretation of that world by its participants». (Bryman, 2012, p. 380). It also lends itself for collection of data of a more descriptive kind. In this study, I have used both primary and secondary data. Most of the data, specifically the primary data on the chosen cases, is a product of three months of fieldwork carried out in Colombia from the end of November 2018, till the end of February 2019. Whereas the secondary data has been collected before, during and after the fieldwork.

Case study

To be able to get a deeper understanding of the topic I had chosen, I decided to do a case study. With a case study, a single, or multiple cases are studied in order to gain a deeper understanding of a broader phenomenon or category of events (Berg & Lune, 2012). Case studies can be used to examine «simple or complex phenomenon, with units of analysis varying from single individuals to large corporations and businesses to world-changing events» (Berg & Lune, 2012, p. 325). According to Yin (2012), case studies are especially relevant when the research questions addresses descriptive or explanatory questions, as a case study can produce rich descriptions and insightful explanations that can be hard to produce in other ways (p. 5). Multiple methods of data-gathering should be used to ensure a full examination of the case or cases (Berg & Lune, 2012). The methods used in this research are detailed in a following section of this chapter.

For this study I decided to do a multiple-case *embedded* case study. I am looking at two distinct cases—consisting of two planned mining projects by the same mining company in different parts of Colombia—to better understand the use of popular consultations in extractive governance in Colombia. At the same time, I look at the use of popular consultations in

extractive governance in Colombia as a case in itself, making the study an embedded case study where I look at and analyze sub-units of the overall focus of the research (Berg & Lune, 2012, p. 327; Yin, 2012). When planning my research, various cases were considered, but the final choice of cases were based on factors such as relevance, security situation and access. Though a peace agreement was signed with FARC in 2016, Colombia is still far from a secure place, and there are areas that have seen an increase in violence after the signing of the peace agreement. This is especially the case in parts of Cauca, Antioquia, and Chocó, all of them regions with problematics related to grand-scale, small-scale and illegal mining. For security reasons, for my own sake but especially for the sake of my possible research participants—social and environmental leaders and activists are often targeted in Colombia—I made sure to choose cases in relatively safe parts of Colombia, where there is less violence, and where activists feel like they can be more openly active.

The two sub-cases are: The La Colosa mining project in the department of Tolima, where two popular consultations against mining have been carried out and where the communities have been central in the development of the use of popular consultations in extractive governance; and the Quebradona mining project in the South-West of Antioquia, where no popular consultations have successfully been carried out, instead alternative process with the use of municipal agreement to halt mining operations have been used. Early in my fieldwork, scholars in Bogotá, working on themes around activism and extractive projects, told me how the activism in this part of Colombia was taking on a different shape than many other places in the country, with a bigger focus on territoriality and alternative development. At first glance, It might seem counterproductive to look at the usage of a completely different juridical tool when the main theme of this thesis is the use of popular consultations. The goal though, is to show how regional differences and the difference in how regional administrative courts operate

and rule, have had an impact on when and where popular consultations have been carried out in Colombia. I have chosen two contrasting cases, not necessarily to fully explain why they are diverging, but to give a broader understanding of the use of popular consultations in extractive governance in Colombia and why and how they have (or have not) been employed.

1.3.2. Data collection

In my research I have used both primary and secondary data. Most of the general data gathered on popular consultations have come through secondary sources. This ranges from reports, government documents, court rulings, news articles and opinionated pieces, as well as peer-reviewed scholarly articles and books. A lot of the data gathered on the individual cases have come through the use of primary sources: semi-structured interviews, participatory observation and field-notes written during my time out in the field, but I have also gathered information from newspapers, reports and scholarly articles and theses written on the cases.

To increase the validity of the collected data, and better corroborate my findings, I have triangulated a lot of the information (Berg & Lune, 2012). Information collected through Interviews have been triangulated with news articles written at the time of the happenings, government publications, other secondary sources, as well as with other interviews conducted during my fieldwork, narrating the same events.

Semistructured interviews

During fieldwork I conducted a total of 29 interviews. Most of the interviews were semi-structured, making it easier to keep a conversational tone and follow up on information that would come up during the interviews. Four of the interviews were group conversations: one at the University of Tolima; one in Piedras; one at the office of the mining company AngloGold Ashanti in Jericó; and one at the geological organization Terrae in Bogotá. All the interviews lasted anywhere from 15 minutes to two hours, with more than half of them lasting an hour or longer.

Of the 29 conducted interviews, 15 were directly related to the La Colosa case. These took place in Ibagué, Cajamarca and Piedras. Nine of the interviews were conducted in relation to the Quebradona case, and took place in Jericó, Támesis and Medellín. The case-specific interviews includes farmers and peasants, landowners, local politicians and activists. The rest of the interviews were more on general thematics around mining and popular consultations in in Colombia—among them a lawyer, an economist and some geologists—though some of these interviews also touched on the cases focused upon in this research. Two of the interviews were directly related to the process of popular consultation in Pijao that led to ruling T-445 by the Constitutional Court.

To get in contact with those that were of interest for my study I used a mix of different purposive sampling approaches during my fieldwork. *Snowball sampling* being the most used. I started out with a few key contacts that I had gotten through my supervisor, as well as some Colombian friends, and then it snowballed from there. I would usually ask my participants if they knew someone else that could be relevant to talk with and they would propose some people and ask them whether it was okay for me to contact them before giving me their contact information. Most of the interviews were planned, but some were casual meet-ups that turned into an interview. For example walking around in Cajamarca with one of my contacts on a Sunday morning, we stumbled upon various people that he knew, some of which were very central in the case I was researching. He presented me to them and asked them if they would like to, and had time to participate in an interview and then we took it from there.

Participatory observation

In addition to interviews, I was participating and observing a few meetings, and reunions that the different groups conducted. Some more formal, and more informal than others. In all cases, most, if not always all, of the participants were aware of my status as a researcher, and

the goals of my research. I tried to keep an observatory role in these reunions, but in especially one meeting in Támesis, my presence changed the course of the meeting and the things discussed, as the meeting turned more into a way for the members to present themselves and their organizations. It gave valuable information to me on a lot of the work they do, but at the same time I did not get to observe how these meetings are normally conducted. Additionally I participated in a demonstration in Jericó—one of the biggest they have had, I was told—as well as a small workshop on agroecological farming in Cajamarca.

1.3.3. Ethical considerations

As personal information, like written consent, audio recordings and content of the interviews, would be gathered and stored, I sent an application to the Norwegian Center for Research Data for permission to carry out my research and store data. The application was approved. Before starting the interviews, the participants were informed about the study, what it was about and its purpose. They were informed about their rights and that they were allowed to withdraw at any point. About two thirds of the interviews were recorded. Before recording, I would ask the participants if they agreed to be recorded.

Anonymisation

In this thesis I have decided to not name any of my participants—even those who explicitly told me it would be okay if I wanted to do so. There are various reasons for this. Firstly, for the general safety of my participants in the violent climate for social activists in Colombia (even though, again, I did my research in relatively safe parts of the country, and this would have been even more important in more dangerous parts). Some of my participants have received threats in the past, others might end up receiving threats in the future. Sadly, the situation for social leaders and human rights activist has become worse, rather than better since the peace accord with FARC [cinep/ppp2018a], and it is difficult to know what the future will

bring. Additionally, although various actors in the social movements in Colombia have decided to be openly active and visible in their communities, many organizations intend to have as horizontal leadership as possible, where it is the organization and cooperation within it, not individuals, that is the backbone of the movement. This was the case with most of the organizations I was in contact with throughout the research, for example the Environmental Committee in Ibagué and COA in the Southwest of Antioquia. I wanted to try to respect this intent.

Even though I have removed the names, it is almost impossible to properly anonymize when doing qualitative fieldwork, especially in small rural locations and when using snowballing to get in contact with participants (van den Hoonaard, 2003). Some of the communities I visited, especially when getting out of the municipal centers and heading out to the veredas and the countryside, are not often visited by foreigners. When someone new enters, people talk. I also realized how hard it can be to anonymize when reading other research on my cases, as I sometimes recognized people I myself had spoken with. Even when their names were not mentioned. Still, I have decided to add direct quotes from some of my interviews in this research, both for style, and because seeing it in their own words can help give some extra insight. I have tried to limit myself to citations that are hard to directly relate to one specific person, and/or with information and opinions that participants have expressed publicly many times before. There are relevant quotes, anecdotes and background stories—for example that give extra context to why activists are doing what they are doing, or might help give a better understanding of the communities—that I will not use because of ethical considerations. Some because the participant wanted to stay anonymous. Others because they were not really participants of the study and never gave an informed consent to begin with—this includes everything from random encounters on a bus ride to informal conversations with friends and

family member of participants, and people I got to know in some of the organizations I encountered. Some of these encounters have still been at the back of my mind during fieldwork and while working with the thesis. Thus they have likely had an influence on how I have worked with and analyzed the data.

1.3.4. Limitations

There are various limitations to this study. One of them is the lack of female voices on the case of Cajamarca—all of my respondents in regards to the Cajamarca case are men. In my ignorance, noticing the strong gender roles I wrongly assumed they had not played an important role in the process. I mistook their traditional roles and humbleness for lack of agency. It was a very humbling experience realizing that I had this preconceived notion, especially as woman myself. All the other places I went, Piedras, Jericó, Támesis, I made sure to speak with women, though still, the majority of my sources have been men.

Another limitation to my fieldwork is the lack of time. I only spent three months in Colombia, and of that time a mere couple of weeks were actually spent in Cajamarca, Piedras, Jericó and Támesis. Most of the time was spent in Ibagué and Bogotá. Many of the contacts I made, were made towards the end of my fieldwork and I therefore did not have time to properly follow up on some of them to plan an interview. Related to the time-constraint is also not properly realizing the scope of the cases while choosing them. Both of my cases are big, encompassing different municipalities and processes, complicating the gathering of data in such a short time span. Some of what might have been gained in scope might have been lost in depth.

1.4. Theoretical Framework

1.4.1. Judicialization of politics and judicial activism

As we will see throughout this research, the Colombian courts—and especially the Constitutional Court—have been key players in the processes of using popular consultations against mining. Additionally, social groups frequently employ constitutional rights in their activism, and appeal to the courts when they feel that their rights have been infringed. Because of this, and because of the remarkably strong judiciary in Colombia (Cepeda Espinosa, 2005; Feoli Villalobos, 2012; Uprimny, 2003; Wilson, 2009), judicialization of politics is a very relevant concept for this research. Judicialization of politics is a broad concept with many debates and theories encompassing how and why it happens, whether giving more power to the judiciary and courts is undemocratic, or whether it helps to keep the executive power in check and/or promote a protection of social rights—especially those of minority groups (for an overview of some of these discussions see for example Gargarella, Roux, & Domingo, 2016; Ginsburg & Versteeg, 2013; Rostow, 1952; C. Tate & Vallinder, 1995). Going through these debates is beyond the scope of this thesis, as my goal is not to contribute to the general conceptualization of judicialization of politics, nor to discuss whether the process of judicialization of politics can be seen as a positive or a negative in the Colombian case. Rather, I will be using the concept more as a tool to broaden the understanding of how popular consultations could develop to such a strong tool in extractive governance in Colombia—although for a short period of time. Additionally, many scholars doing research on judicialization of politics and the judiciary in Latin America and Colombia argue that the theories developed in relation to the United States and Western Europe are not as relevant to Latin American countries—among other reasons, because of the different political and juridical

context, as well as the long history of violence and military dictatorships in many of the countries (see for example Landau, 2010 and the authors in Sieder, Schjolden, & Angell (2005)).

Judicialization of politics

The judicialization of politics normally mean either: 1. The increase of power of the courts and judges at the expense of the legislative and executive branches of government. 2. The spread of judicial decision-making methods outside of the judiciary. (T. Vallinder, 1994, p. 91)

Through a judicialization process, not only do the courts frequently intervene in policy-making processes, but it also tend to change the way political actors and social groups operate, for example in the way politicians propose legislation and take judicial reaction into account when drafting proposals to «ensure that legislation will neither be struck down nor interpreted in undesirable ways» (Ferejohn, 2002, p. 41). Judicialization most commonly happens through judicial, or constitutional review² (T. Vallinder, 1994), in which courts have the power to «examine the actions of the legislative, executive, and administrative arms of the government to determine whether such actions are consistent with the constitution» (C. N. Tate, 1998). According to C. Tate (1995), some conditions that might facilitate the judicialization process are: A constitutional bill of rights and/or «an acceptance of the principle that individuals or minorities have rights that can be enforced against the will of putative majorities» (p. 30); interest groups use of the courts to promote their rights; use of the courts by the political opposition; and the delegation of decisions to the courts by the majoritarian institutions. Tate also stresses that even if all conditions are present, this does not guarantee judicialization to

² Constitutional review is one form of judicial review, though the terms are often used interchangeably (Ginsburg & Versteeg, 2013, p. 589).

happen as > «judicialization develops only because judges decide that they should (1) participate in policy-making that could be left to the wise or foolish discretion of other institutions, and, at least on occasion, (2) substitute policy solutions they derive for those derived by other institutions.» (1995, p. 33]

Constitutional review

According to (Cappelletti, 1971), there are two main systems of constitutional review used around the world: A centralized system (European model) and a decentralized system (American model). The decentralized system is based on the system of constitutional review in the United States where all level of courts have the ability to make constitutional rulings, whereas the centralized system is based on the model in the Austrian constitution of 1920, where this power is restricted to a special constitutional court (Rosenn, 1974, p. 787).

Another difference is between abstract and concrete review. In the American model, the courts can only review concrete cases—where someone brings a case to the courts through standard litigation, claiming their constitutional rights have been violated and ask the court to review their case. Concrete review can only be applied on laws that are already in effect, and actions that have already happened, and usually only having an effect on that specific case. In the European model, the courts normally only review abstract cases. With abstract review, the court looks at a legislation or statue without an actual concrete case or controversy. In some countries, an abstract review must take place before the law takes effect, whereas in other countries you can have abstract review also afterwards, but without the need of a concrete case (C. N. Tate, 1998).

Even though a constitutional review to some extent reduces the power of the elected branches of government—as courts for example might be able to invalidate legislation or political actions if they are found to be unconstitutional—an increasing number of countries

around the world have introduced some form of constitutional review in the last half decade or so. According to Ginsburg & Versteeg (2013), about «38% of all constitutional systems had constitutional review in 1951; by 2011, 83% of the world's constitutions had given courts the power to supervise implementation of the constitution and to set aside legislation for constitutional incompatibility» (p. 587). Ginsburg & Versteeg (2013) argue that among the various theories proposed to explain the spread of constitutional review, the most likely is that of «*electoral market* theories that hold that constitutional review is adopted when constitution-makers envision themselves out of power after the adoption of the constitution» (p. 616), as a kind of insurance policy of their politics.

Judicialization of politics and judicial activism in Colombia

The process of judicialization of politics is seen as particularly strong in Colombia³ (Cepeda Espinosa, 2005; Uprimny, 2003). Laws, the judiciary and the constitution play an important role in Colombian society, and since the 1991 constitution, Colombia has seen the judiciary—most notably the Constitutional Court—become an increasingly powerful political actor, continuously pushing for social rights (Cepeda Espinosa, 2005; Feoli Villalobos, 2012; Uprimny, 2003; Wilson, 2009). Rulings by the Constitutional Court are very commonly broadcasted and discussed in national media, and when they mention the «court», this almost always means the Constitutional Court (Cepeda Espinosa, 2005, p. 76).

According to Cepeda Espinosa (2005), former magister of the Colombian Constitutional Court, there are three important factors to the judicialization process in Colombia: 1. The judicialization process has been taking place since the beginning of the twentieth century. 2. It

³ There seems to be a general agreement among scholars looking at judicialization of politics in Latin America that Colombia is one of the most judicialized countries in the region. Additionally, Colombia might have one of the most open systems of judicial review in the world (Cepeda Espinosa, 2005).

responds to the coexistence of a violent conflict. On one hand, flaws in the political system can be seen as an important factor in the judicialization process in Colombia, as it has not been able to properly respond to common social conflicts. At the same time various governments have used laws and constitutional amendments as peace agreements between actors in the conflict.

3. The judicialization of politics have taken an even stronger turn since the promulgation of the 1991 constitution, making the constitutional court an important political actor (p. 68).

Some possible explanations that are often brought forward to explain this strong process of of judicialization in Colombia is the long history of constitutional review, combined with the extensive rights in the 1991 constitution⁴; easy access to the courts; rampant violence; and weakness in the political system so that the judiciary is often looked upon to resolve problems that normally should be resolved in the political sphere (Cepeda Espinosa, 2005; Feoli Villalobos, 2012; Uprimny, 2003; Wilson, 2009). Additionally, human rights were increasingly on the agenda in Colombia in the 1990s⁵(W. Tate, 2007), and was an important theme in the construction of the 1991 constitution, which might have helped the Constitutional Court to its role as a protector of social rights and marginalized groups (Cepeda Espinosa, 2005).

Colombia operates with a very extensive, mixed system of constitutional review. The system is open to both abstract and concrete review, and it is decentralized—any court can rule

⁴ In the words of Uprimny (2003): «when the Constitutional Court began operating in 1992 the Colombian legal and political culture was already very familiar with judicial review, to the point that few in the Colombian judicial community thought it strange that the court had the power to annul governmental decrees or laws approved by Congress. The court could therefore act vigorously, without fear that the executive branch or the political forces would decide to shut it down, as has happened in other countries where the first task of a constitutional court has been to secure legitimacy for its role» (p. 61).

⁵ Even in the political sphere, to some extent. During his presidency, Ernesto Samper (1994-1998) admitted that Colombia had a human rights problem. This was in contrast to former presidents that had been rejecting this fact. «We had to admit that we had a human rights problem. It was a reality, and what we had to change was not the image of the problem abroad but the reality itself. That was the philosophy that I worked from» (interview with Ernesto Samper in W. Tate (2007), p. 61).

on constitutional matters—while at the same time having a Constitutional Court standing above the others. The courts are easily accessible, with the tutela being the most important tool used to access the system (Cepeda Espinosa, 2005). The tutela can «be brought forward by any person before any judge with territorial jurisdiction in order to prevent or stop the violation of her/his constitutionally protected rights» (Cepeda Espinosa, 2005, p. 74). A tutela has to be resolved within 10 days, and any ruling can be appealed to a higher court. The Constitutional Court can pick cases at their discretion, and review any case they deem to have been incorrectly decided (Cepeda Espinosa, 2005, p. 74).

Since its creation, the Constitutional Court has on many occasions carried out rulings opposing the national government—especially on the use of presidential extraordinary powers (Uprimny, 2003)—and has pushed for the rights of various minority and disadvantaged groups. Among them indigenous groups, internally displaced people, homosexuals and HIV/AIDS positives (Cepeda Espinosa, 2005; Wilson, 2009). It does not have a history of opposing the government on matters of territory though. According to Vale (2013), in these cases the constitutional court has tended to follow the recommendations of the attorney general (procurador general).

Because of easy access to the courts, and the strong support the Constitutional Court has shown to social rights through its ruling, many social movements and groups have actively employed the judiciary to fight for their rights (Cepeda Espinosa, 2005; Wilson, 2009). According to Cepeda Espinosa (2005) «this is, perhaps, a side effect of two factors: the existence of the *acción de tutela* and its impact upon citizens' grasp of the constitution's potential and relevance for their ordinary lives, coupled with the inability of normal political channels to deal with the pressing problems that affect Colombians on a daily basis, which are thus deferred to judicial resolution» [p. 76]. He also asks whether this system might ultimately

be unsustainable as «the «losers» are often powerful interests that may combine forces to push forward constitutional amendments to reduce the power of the court» (Cepeda Espinosa, 2005, p. 100). Various presidents have unsuccessfully tried to limit the extent of constitutional review through constitutional amendments (Uprimny, 2003), though in general the Colombian constitution and Constitutional Court seems to be in high regard in Colombian society. When some congress members of the political party Centro Democrático⁶ recently proposed a constitutional amendment that would open up for citizens to annual interpretations by the Constitutional Court through referendums (El Tiempo, 2019b), this was not received well, even by many within the same party (El Tiempo, 2019a).

⁶ Colombian Political party founded by former Colombian president Álvaro Uribe (in office from 2002-2010).

2. Popular Consultations and their use in extractive governance in Colombia

Through this process, a constitution has been born. But we should keep in mind that additionally, a participatory democracy has been created. Now let's all repeat this expression. We are not just talking about democracy anymore, but a participatory democracy, a democracy of popular participation.

César Gaviria Trujillo, promulgation ceremony, 4th of July 1991. (El Tiempo, 1991)

We don't want anything revolutionary. We just want the government to respect its own laws, and the constitution.

Environmental activist (Interview, January, 2019)

As extractive development has increased in Latin America, there has also been an increase in social conflicts related to extractive projects (Bebbington & Bury, 2013). In various countries, communities have tried to show their opposition to this development through the usage of various tools of local referendums. In the time period between 2002 and 2012, 68 referenda or popular consultations were carried out against large-scale mining projects in five different Latin American countries (Walter & Urkidi, 2017). Despite popular consultations being a constitutional tool of participation with strong legal support in Colombia, the first popular consultation against extractive development did not take place until the 2013, and in the years it was used this way (2013-2018), it was a highly contentious tool. In this chapter I will try to give an overview of what popular consultations are and how they work in Colombia,

how they came to be used in extractive governance, and a general overview of this use and how the government have tried to stop it.

2.1. Popular consultations: What they are, and how they work

2.1.1. When to use a popular consultation

A popular consultation is a participatory tool used to let the inhabitants partake in important decisions at a municipal, departmental, or at a national level through an election. The popular consultation is one of seven participatory tools established in the Colombian Constitution of 1991 (article 103). The other six are; the right to vote, the plebiscite, the referendum, the *cabildo abierto*, the right of legislative initiative and the recall vote. All of the participatory tools are regulated through law 134 of 1994 as well as law 1757 of 2015. These laws details the process of using these tools, as well as in which instances they can be employed.

At first glance, the popular consultation can seem quite similar to other participatory tools that call for an election—like the referendum and plebiscite—but they all have different applications. In Colombia, the referendum is only used to have the citizens accept or reject a proposed law or regulation, or to repeal an existing one (article 3, law 134/94). As an example, the constituent assembly that rewrote the constitution in 1991, was called through a referendum. A plebiscite is used to let the population show their support for (or disapproval of) a political decision, and can only be called by the president (article 7, law 134/94). There have only been two plebiscites carried out in Colombia: The first one in 1957, when Gustavo Rojas

Pinilla, leader of the transitional military government, called for a constitutional reform⁷. The second plebiscite was the vote called by president Juan Manuel Santos in relation to the peace accord signed with FARC in 2016. The popular consultation is for all other decisions that can be put up for a popular vote and can be called if it adhere to the following conditions:

1. It has to be related to the correct head of affairs. The president can call for popular consultations on a national level, governors on a regional/state level, and mayors for municipal and local affairs.
2. It cannot be a project trying to change a legal act, law or resolution.
3. It cannot be related to themes that implicates a change in the Political Constitution of Colombia.
4. It should not be of such a character that it would invoke a constituent assembly.

(Registraduría, n.d.-a)

In addition to this, the question needs to be clear and presented in such a way that the citizens can answer yes or no (article 52, law 134/94). The results of a popular consultation are obligatory, but for the vote to be deemed valid, it demands a minimum threshold of participation of one third of the electorate. If the consultation reaches the threshold, and there has ben an affirmative vote reaching over half the voters, the results of the consultation has to be carried out (article 55, Law 134/94)

Most of the popular consultations that have taken place in Colombia have been carried out at the municipal level. There have been none on departmental level, and only one at national level: a recent consultation against political corruption that did not reach the necessary

⁷ The constitutional reform that was voted upon, validated what is now called the National Front—an agreement between the Liberal and Conservative party to rotate power, after years of conflict and violence. The National Front effectively excluded all other political parties from participation and lasted until 1974. Even though it was called a plebiscite, the content of the vote was more in line with a referendum (El Tiempo, 2016).

threshold⁸ (Registraduría, 2018b). Since its implementation popular consultations have been used for a wide range of topics. Everything from rejecting violence,⁹ make decisions on environmental issues¹⁰; to change the location of municipal buildings—though the most common use has been in the creation of new municipalities, or in delimiting municipality borders (MOE, 2012). In the period from the law regulating the participatory tools came into effect in 1994, until the end of 2011, 32 popular consultations were carried out in Colombia¹¹ (Registraduría, n.d.-b).

⁸ The national level consultation was carried out in August 2018, with a series of propositions on how to reduce corruption in the country. It was the result of a citizen initiative started by Claudia López Hernández—member of the Colombian congress and recently elected mayor of Bogotá—and backed by over four million signatures, three million of them which were deemed valid (Registraduría, 2018a). All the seven questions reached an affirmative vote of over 99%, but because of low voter turnout—only 32% of the electorate voted, just below the threshold—the results were not deemed valid (Registraduría, 2018b).

⁹ The first popular consultation carried out in Colombia was in 1995, in the municipality of Aguachica, Cesar. It was an innovative and bold consultation in which the inhabitants of the municipality were asked whether they rejected violence and agreed on turning the territory into a model of peace. The popular consultation was organized after an increase in violence in the municipality, at the hand of various armed groups, and after an esteemed local doctor, José Padilla, was assassinated (Verdad Abierta, 2015). The consultation was carried out in August 1995, but did not reach the necessary threshold. A few other municipalities, heavily affected by the conflict and the rise of paramilitary groups, carried out similar consultations in the following years—though the consultations had little more than symbolic value, and, in some cases, the initiatives directly resulted in increased violence and in the targeting of the promoters. For example, before the consultation in Aguachica, pamphlets circulated, saying that the consultation would not affect the violence in the region (El Tiempo, 1995). In 1996, various of the promoters of the consultation were murdered. Documents and photos documenting the popular consultation started disappearing, and when the mayor behind promoting the popular consultation, Luis Fernando Rincón, ran for mayor again in 2000, he was assassinated (Verdad Abierta, 2015).

¹⁰ In 1995, Santa Marta had a popular consultation trying to turn the Sierra Nevada of Santa Marta into a heritage area, guaranteeing the autonomy of the indigenous communities living in the area, as well as to conserve the biodiversity and protect the watersheds. The consultation, like many others, did not proceed because of low voter turnout. In 2000, Bogotá voted yes for a yearly car-free day through a popular consultation. There have also been popular consultations carried out to stop the development of landfills (MOE 2012).

¹¹ Popular consultations with two questions carried out on the same day in the same municipality, are counted twice. For a more detailed overview of the popular consultations carried out before 2012, check out MOE (2012)

2.1.2. The required process to carry out a popular consultation

For a popular consultation go forward, the question needs to be brought to the correct governmental entity, and approved. Along with the proposed question, there needs to be a justification for carrying out the consultation and a planned date for carrying it out. In the case of a national consultation, the president needs to present the information to the Senate; in the case of regional consultation, the governor needs to present the information to the Departmental Assembly; and in the case of municipal consultations, the mayor needs to present the information for the municipal council for a vote. If the consultation is approved, the planned question is then submitted for a review through the correct courts to make sure that it is constitutional. In the case of popular consultation at municipal level, which is most relevant for this topic, the question is sent to the correct regional administrative court. If the question is deemed constitutional, the popular consultation can be carried out (law 134/94).

Until 2015, a popular consultation could only be brought forward by the president, a governor or a mayor (law 134/94). This was changed with the new law of participation in 2015, which goal was to further strengthen the participatory tools in Colombia (law 1757/15). With the new law, a popular consultation can be initiated by any individual, group of citizens, organization, a political movement or -party. To initiate a popular consultation this way, a petition, which includes the proposed question for the popular consultation, has to be registered at the *Registraduría Nacional del Estado Civil* (National Civil Registry [Registraduría]). The promoters then have six months to collect the necessary signatures in support of the initiative: 5% of the electorate for a national consultation, 10% for a local consultation. After the collection, the signatures have to be deemed legitimate and approved by the Registraduría. If all these requisites are carried out and the question is deemed constitutional by the courts, the process of a popular consultation can go forward (law 1757/15).

2.1.3. Legal foundations for use in extractive governance

The use of popular consultations in extractive governance has been highly contentious. There are many levels to the debates on extractive governance in Colombia and who should be able to have a say in the decision-making and why. Debates touching on economics, development, territorial sovereignty, participation and democracy, the environment, livelihoods and culture, among other things¹². The core of the matter though, especially when it comes to the legality and legitimacy of the use of popular consultations in extractive governance, has been on the state's constitutional right to the subsoil and its resources, what this actually entails and whether it overrules rights of autonomy to the territories (Dietz, 2018; R. Negrete Montes, 2017; R. E. Negrete Montes, 2013; Vargas Valencia, 2013.). The state's right to the subsoil is enshrined in article 332 in the Colombian Constitution of 1991, which states that «the State is the owner of the subsoil and of the natural non-renewable resources». This right was reinforced in the mining code of 2001, which stated that «. . . no regional, sectional or local authority can establish areas in the territory that are permanently or temporarily excluded from mining» (article 37, Law 685/2001)¹³. The legitimacy of the use of the tool has been dependent on the current understanding of the constitution and laws related to the subsoil, mining and popular consultations. Jurisprudence set by the Constitutional Court has had a huge impact on the carrying out of popular consultations, both opening up for its use (Dietz, 2018; Roa-García, 2017), and closing it (SU-095/18; C-053/19).

One of the strongest legal foundations for the defense of popular consultations in extractive governance—in addition to territorial autonomy—has been the Municipal Law from

¹² The series of books on mining and mining problematics in Colombia published by the Controlaría gives a wide overview of many of these debates. See (Garay Salamanca, 2013c, 2013d, 2013a, 2013b).

¹³ This article was later deemed unconstitutional and removed.

1994. This is the law that has been used as argumentation in various of the rulings by the Constitutional Court in favor of the use of the tool. Article 33 in the Municipal Law states that:

When the development of projects related to tourism, mining or other kind threatens to create a significant change in the land use, or leads to a transformation in the traditional activities of a municipality, a popular consultation shall be conducted in accordance with the law. The responsibility of these consultations will be the responsibility of the respective municipality. (Law 136/94)

Not only does it say that municipalities have the right to organize a popular consultations under these circumstances, but that they *should*. The article has been tried appealed as unconstitutional various times, and was finally removed by the Constitutional Court in February 2019, through ruling C-053.

2.2. Popular consultations in extractive governance

2.2.1. Antecedents

The popular consultation in Esquel, Argentina in 2003, is often cited as an inspiration for the popular consultation in Piedras in 2013—the first of its kind in Colombia (for example Dietz, 2018, mcneish2017a). In my interviews, the only time Esquel was mentioned, it was to emphasize that even though this is often repeated, this was not the case. That the inspiration for the popular consultation in Piedras was other environmental popular consultations carried out in Colombia (Interview, January, 2019)¹⁴. Either way, with so many different actors, environmental conflicts and similar processes going on at the same time, it is highly likely that

¹⁴ More details of this process in Piedras will be provided in the next chapter-

the inspiration can have come from many holds at the same time, as well as started different places, with luck and coincidences making Piedras the first. The most important thing to note though, is that the popular consultation in Piedras wasn't created in a vacuum, and can be seen as an extension of similar processes of citizen participation other places in Latin America (Walter & Urkidi, 2017) as well as within Colombia (Roa-García, 2017), and a wish of some kind of inclusion and citizen participation, without necessary knowing what shape it can and should take.

Before the popular consultation in Piedras, there were other examples of communities using a legislative or participatory initiative trying to protect local territory against extractive development. Even intents at using popular consultations to stop extractive projects. Some of these earlier attempts did not necessarily explicitly try to prohibit mining, but implicitly tried to do so through the protection of water sources and páramos¹⁵. Here I will focus on some of the antecedents within Colombia, as well as the gradual moving of the frontier of discussing territorial autonomy within extractive governance.

Intent of national referendum on water rights

In 2007, an initiative for a referendum regarding water rights was started in Colombia. There were various reasons for the initiative, among them the increased pressure put on important water resources with the continuous focus on extractive development. The referendum proposed to incorporate five new principles into the constitution: «the state's responsibility for the protection of water and of ecosystems that maintain the hydrological cycle; the declaration of access to water as a fundamental human right; the requirement to respect the cultural value of water for ethnic groups; the free provision of a minimum amount

¹⁵ A páramo is a type of ecosystem found in the highlands in the northern Andes, that are generally humid and very important for the water supply.

of water to all; and the direct provision of water and sewerage services by the state or by organized communities» (Roa-García, 2017, p. 63). The initiative was promoted by more than 60 organizations (El Espectador, 2009), supported by the global water movement, and received over two million signature—45% above the necessary threshold—but it never made its way past the Colombian Congress and to the polls (Roa-García, 2017). During its time in congress, the content of the proposed changes were so distorted that it didn't even look like the original attempt when the proposed referendum was finally put down in 2010 (Roa-García, 2017).

Popular normative initiative - Cerrito, Santander

In August 2010, the municipal council of Cerrito, Santander, approved a popular normative initiative¹⁶ prohibiting mining in the páramos of the municipality, as well as recognizing their important role in the water cycle (Roa-García, 2017). This came after two decades of environmental conflict related to coal-mining in the Almorzadero páramo in Santander, and the use of various other mechanisms in the process(Sandoval, 2012). The municipal council, with the help of a resolution by the Autonomous Corporation of Santander, managed to stop the extraction by Minalmo the same year. Finally, when the community learned about the granting of new mining titles in the páramo, they decided to use a popular normative initiative to prohibit mining. The popular normative initiative in Cerrito is the only popular normative initiative that has ever been carried out and approved in Colombia (Roa-García, 2017, p. 63).

¹⁶ A popular normative or legislative initiative is one of the seven participatory tools in the Colombian constitution of 1991. Through the use of signatures, people can call forth legislative and normative changes at local, departmental or national level (Ley 134/94).

Popular consultations - intents in Santander and Norte de Santander

With the Almorzadero páramos encompassing an area of 16.356 hectares—8.395 of which have mining titles—covering various municipalities over two different departments, there have also been other initiatives against mining in the area. Because of the importance of the ecosystem for the whole region, a process to protect the páramos through a popular consultation was initiated in both departments in 2011 (MOE, 2012; Roa-García, 2017). The question for the consultation initiated in Santander was deemed unconstitutional by the Administrative Tribunal of Santander, whereas the question for the one initiated in Norte de Santander got a green light in its respective administrative tribunal. The date for the popular consultation in Norte de Santander was set for the 30th of October 2011, the same day as the regional and local elections. The proposed question did not specify mining or extractive development, but sought to recognize the páramo as worth of conservation and protection, which would effectively prohibit mining in the area. Even though the consultation had gone through all the correct channels, and the question was deemed constitutional, it was never put on the ballots for the election. The excuse given was that all the logistics for the elections had already been carried out, and that it would be impossible to send out another ballot that included the question for the popular consultation (MOE, 2012).

Municipal agreements - Prohibiting mining in The Southwest of Antioquia

Though the earlier mentioned examples were trying to prohibit mining indirectly through protecting the important ecosystem of a páramo, some more direct attempts at prohibiting mining was starting to take place in 2012 in the Southwest of Antioquia. Throughout the year of 2012, the municipal councils in Támesis, Urrao and Jardín prohibited mining activities in their territories through the use of municipal agreements agreed (Londoño Calle, 2012). These municipal agreements, and similar agreements in other parts of Colombia that were

implemented later, were important in bringing the question of territorial rights—what it really entails that the state owns the rights to the subsoil and its resources—on the national agenda. It also pushed the government to issue decree 0934 in 2013, trying to prohibit municipalities from prohibiting mining (El Espectador, 2013).

2.2.2. Popular consultations carried out against extractive development in Colombia

On the 28th of July, 2013, Piedras carried out their historical popular consultation against mining projects in their territory. It was the first time a popular consultation of this type had successfully been carried out in Colombia (Roa-García, 2017). On the 15th of December the same year Tauramena, in the department of Casanare, followed suit (Registraduría, 2013). Tauramena is an oil-producing municipality; during the oil boom in the 80s they experienced economic growth and development, but they also got to experience the bad consequences when the bubble burst (Rojas & Semana Sostenible, 2018). With plans of a new oil project, the community wanted to be included in the decisions on how these kind of projects are developed and what parts of the territory. Citing the Colombian constitution, the Mining Code and decree 0934 issued earlier in 2013, the national government deemed the use of the tool unconstitutional (Dietz, 2018). Before the planned date, representatives from various governmental entities traveled to Tauramena trying to convince the local government not to go forward with the consultation, but the organizers decided to go forward with the vote despite this (Molano Jimeno, 2013). After the first two successful popular consultations, the municipality of Monterrey—also in the department of Casanare—programmed a vote for April, 2014 (El Espectador, 2014), but before the planned date, a tutela interposed by the oil company Ecopetrol against the process resulted in the popular consultation having to be suspended (Registraduría, 2014).

After the failed attempt in Monterrey, the wave of popular consultation slowed down. In fact, as can be seen in Figure 1, it would take years before another popular consultation again would be used in extractive governance.

2.2.1. Changing legislation and jurisprudence

The explanation for this can be found in the changing legislation on mining, territory and rights to the subsoil, as well as jurisprudence by the Constitutional Court and other Colombian courts. Here I will give a quick overview of some of these development. For get a better grasp of what happened when, see the timeline in appendix A.

2013-2015: Intents of strengthening the State's right to the subsoil

As mentioned earlier in this chapter, on May 9th, 2013, the Colombian government issued decree 0934, which tried to regulate article 37 of the Mining Code and prohibit municipalities from prohibiting mining. This decree was used as an argument by the Council of State when they suspended the popular consultation in Monterrey. «The National Attorney General (Procuraduría General) filed a complaint because the decree violated territorial autonomy» (Roa-García, 2017, p. 64). In March, 2014, before the Council of State issued a ruling on the constitutionality of the decree, the Constitutional Court issued ruling C-123 on the constitutionality of article 37 of the mining code. The court stated that the article was constitutional as long as local authorities was taken into account when making decisions in matters of extractive exploration and exploitation, to assure the protection of a healthy environment (C-123/14). In September 2014, the Council of State suspended decree 0934 (Roa-García, 2017).

After the suspension of the decree, the Colombian government quickly and silently issued a new decree, in the middle of the holiday season (decree 2691 of 2014), which would later be nicknamed the Christmas Decree. This decree also tried to make it harder for local government

to regulate or prohibit mining. The decree was temporarily suspended by the Council of State on the 2nd of July, 2015, as «it limited the rights constitutionally granted to local authorities to make land use decisions in their jurisdiction» (Roa-García, 2017, p. 64).

2016: Solidifying territorial autonomy in extractive governance

With ruling C-123 in 2014, the Constitutional Court had first made a reference to the importance of including local government in some way in matters of extractive development. In 2016, various rulings by the Constitutional Court would further solidify the rights to territorial autonomy in extractive governance. In February, the Constitutional Court issued ruling C-035. The ruling invalidated parts of the National Development Plan for 2014-2018, it prohibited mining in páramos on the grounds that the fact that the state has granted an environmental license to carry out extractive activities, is not an obstacle that the same state prohibits the carrying out of the aforementioned activity after issuing the license (C-035/16). «In this ruling, the Court restated the recognition of mining as an activity with significant socioenvironmental impacts affecting people and territories, and which poses challenges to municipalities in carrying out land use planning according to their mandates and responsibilities» (Roa-García, 2017, p. 65). In May, the Constitutional Court reviewed article 37 in the mining code again, this time suspending it. Finally, in August 2016, the Constitutional Court issued ruling T-445—what would turn out to be the most important ruling for opening up the use of popular consultations in extractive governance. Since the first popular consultations in 2013, various municipalities had tried to move forward a process of popular consultation, but they were all deemed unconstitutional by their respective administrative courts. Among them was an intent of popular consultation in the municipality of Pijao in the department of Quindío in 2015. The decision was appealed with the help of the organization DeJusticia, but the tutela was negated by the Council of State. In the end, the Constitutional

Figure 1: Popular consultations carried out in Colombia in relation to extractive development

2013					
Municipality	Date	Question		Results No	Related court rulings
Piedras, Tolima	July 28 th	«Do you agree, as a resident of Piedras, Tolima that in our jurisdiction, the following activities are carried out: exploration, exploitation, treatment, transformation, transportation, washing of materials that originate from large scale gold mining; or that materials that are harmful to health and the environment are stored or used, specifically cyanide and/or any other substances or hazardous materials associated with these activities; furthermore, that surface and ground water is used from our town in such operations or any other similar operations that may affect and/or limit the supply of potable water for human consumption, and for agriculture, the traditional productive vocation of our municipality?»	Mining and mining-related activities	98.8%	
Tauramena, Casanare	December 14 th	«Do you agree that seismic exploration, exploratory drilling, production and transportation of hydrocarbons are carried out in the rural districts/communities/divisions [veredas] of San José, Monserrate Alto, Monserrate la Vega, Guafal del Caja, Bendiciones, Visinaca, Lagunitas, Aguamaco, Zambo, Oso y Jaguito, where Tauramena’s groundwater recharge area is located?»	Hydrocarbons	96%	
2017					
Cabrera, Cundinamarca	February 26 th	«Do you agree, YES or NO, that in the municipality of Cabrera, Cundinamarca, as a Peasant Reserve area [zona de Reserva Campesina], that mining and or hydroelectric projects that transform or affect the use of land, water and the agricultural vocation of the municipality, are carried out?»	Mining and hydroelectric power	97.3%	

Cajamarca, Tolima	March 26 th	«Do you agree, YES or NO, that mining projects and -activities are carried out in the municipality of Cajamarca?»	Mining	97.9%	
Cumaral, Meta	June 4 th	«Do you agree, resident of Cumaral, that within the jurisdiction of the MUNICIPALITY OF CUMARAL (META), activities of seismic exploration, exploratory drilling and production of hydrocarbons are carried out? Yes or no?»	Hydrocarbons	99.4%	SU-095, 2018
Arbeláez, Cundinamarca	July 9 th	«Do you agree yes or no, that in the municipality of Arbeláez, Cundinamarca, seismic activities, exploration, exploitation and washing of hydrocarbon and / or large-scale mining materials are carried out?»	Mining and hydrocarbons	98.5%	
Pijao, Quindío	July 9 th	«Do you agree, YES or NO, that projects and activities related to metal mining, are carried out in the municipality of Pijao?»	Metal mining	97.8%	T-445, 2016
Jesús María, Santander	September 17 th	«Do you agree, Yes or No, that activities related to exploration and exploitation of mining and oil are carried out in the jurisdiction of Jesús María, Santander?»	Mining and oil	97%	
Sucre, Santander	October 1 st	«Do you agree, Yes or No, that activities related to the exploration and exploitation of mining and oil are carried out in the jurisdiction of Sucre, Santander?»	Mining and oil	98.2%	
2018					
Fusagasugá, Cundinamarca	October 21 st	«Do you agree, YES or NO, that activities of exploration, perforation and production of hydrocarbons, fracking and grand scale mining, are carried out in the municipality of Fusagasugá?».	Oil, fracking and grand scale mining	99.2%	

Table based on information from press releases and other information, retrieved from the Registraduría (<https://www.registraduria.gov.co>)

Court decided to review the case, which ended in ruling T-445 (T-445/16). The ruling stated that the Administrative Court of Quindío had misinterpreted earlier rulings by the Constitutional Court and emphasized that municipalities do have the capability to regulate the use of land in their jurisdiction to protect the environment, even when this results in the prohibition of mining (T-445/16). They did agree with the administrative court though, that the proposed question for the popular consultation should be deemed unconstitutional (T-445/16). After ruling T-445, administrative courts started approving popular consultations with questions regarding extractive projects and development, resulting in seven popular consultations carried out in 2017.

2018-2019: Closing the door

After ruling T-445, there was a general acceptance of using popular consultations in extractive governance, although the government still considered them unconstitutional. But in 2018, after the appointment of three new judges on the Constitutional Court, the tide turned. Companies that were affected by popular consultations filed complaints against them. One of them was the company Mansovar in relation to the popular consultation carried out in Cumaral in 2017. The Constitutional Court decided to review the case, and in October, 2018, the court ruled in favour of Mansovar, deeming the popular consultation carried as invalid (SU-095). The ruling effectively stopped and prohibited the use of popular consultations in extractive governance in Colombia (Semana Sostenible, 2018). Despite the ruling, the municipality of

Fusagasugá decided to go forward with the consultation that was planned for only a few days later (Semana, 2018). In 2019, the door was probably closed for good, as the Constitutional Court removed article 33—which have been one of the strongest card in the protection of popular consultations—from the municipality law through ruling C-053.

Although both rulings emphasized that despite deeming the use of popular consultations in extractive governance as unconstitutional, there should be some kind of mechanisms in place to include local government and communities in decisions of extractive development because of the big impacts these projects have in the territory (SU-095/18 and C-053/19).

2.3. Hindrance of execution of popular consultations

Since the first intents of regional popular consultations against extractive development in Santander and Norte de Santander, the government—or governmental actors—have continuously tried to hinder the execution of these popular consultations (Roa-García, 2017). In addition to the issuing of decrees, and using tutelas to invalidate consultations, this has also happened through threats, reducing polling stations, and by cutting funding.

2.3.1. Threats

Threats and warnings have frequently been used to try and stop popular consultations. The Procuraduría—a control institution overseeing other government institutions and agencies, which, among other tasks, make sure that public officials don't overstep their administrative boundaries—have been very active in this. They have issued threats and warnings in an attempt to deter mayors and council members from initiating and carrying out popular consultations. Before the popular consultation in Piedras, Tolima in July 2013, a warning was sent by Alejandro Ordoñez—then head of the Procuraduría—to mayors, governors and other representatives of local and regional government all over Colombia. The warning stated that the consultation was unconstitutional and that those who still went through with it would risk criminal action (Organizer of popular consultation in Piedras, Interview, January, 2019). In the beginning of 2014 the threats were made true, as the Procuraduría started an investigation on

Arquímedes Ávila Rondón, the mayor of Piedras (Cuevas Guarnizo, 2014). In other municipalities where popular consultations were proposed, similar threats were made.

2.3.2. Reducing polling stations

Another measure that has been used, is heavily reducing the number of polling stations in the popular consultations that are carried out. In Cumaral, for example, the number was reduced by 50% (Semana Sostenible, 2017a), the same was the case in Cajamarca (La Silla Vacía, 2017). This has been taken as a way of trying to repress the vote. Fewer polling stations leads to longer lines, and in worst case it can mean that not everyone has a chance to vote in time. In other cases, it can result in a longer travel distance for some voters, making them less inclined to vote. This can have an effect on the number of people who participate in the popular consultation. Considering that there is a threshold that has to be reached for a popular consultation to be deemed valid, reducing polling stations and making it harder to vote can in theory have a huge impact on the results.

2.3.3. Cuts in funding

In 2017—when numerous processes of popular consultations were in motion—uncertainty around funding ended up stopping a series of initiatives. Fund cuts was probably the most effective way of stopping planned popular consultations in the period they were deemed legitimate by the Constitutional Court.

On the 1st of October 2017, the municipality of Sucre, Santander, voted no to mining and oil exploration and exploitation in their territories. Like all the preceding consultations, the consultation had been carried out with funds allocated by the Registraduría. The next planned consultation was supposed to take place three weeks later, in Granada, Meta. Just a couple of days before the planned date, the mayor of Granada received a letter from the Registraduría, informing that the consultation had to be suspended. This was explained by lack of funds, as

the *Ministerio de Hacienda* (MinHacienda) would not allocate the necessary funds to carry out the vote (Semana Sostenible, 2017b). Mayors in other municipalities started to receive similar letters. La Macarena and El Castillo in Meta, San Lorenzo in Nariño, Córdoba in Quindío. All the consultations planned for the last months of 2017 were suspended for the same reason.

In a letter to Carlos Garzón Saboya in the Registraduría, Fernando Jiménez Rodríguez from MinHacienda stated that popular consultations on a local level, had to be funded by the local government. In the letter, this position was justified by referring to article 31 of law 1757 of 2015, that says that «when it comes to popular consultations, there are two courses of action: one for popular consultation at national level, and another for the territorial popular consultation», and that article 33 of the same law, states that when the president, or the regional mandates call for a popular consultation, not only do they have to establish the date of the execution of the consultation, but also the necessary provisions to carry it out, like a budget to cover the costs (Portafolio, 2 august 2017).

MinHacienda was accused of trying to obstruct the planned consultations . MinHacienda on the other hand, retracted their original opinion and stated that they had already given the Registraduría their budget for the year. It was up to them to allocate sufficient funds to the consultations within their budget [elespectador2017e].

What complicated the matter further, was that as long as there was an uncertainty of who was supposed to finance the popular consultation, the municipalities could not take it upon themselves to pay for the local election. Even if they wanted and were able to do it. In Granada, the mayor offered to foot the bill , other municipalities wanted to do the same. Local fundraising was also considered. In all cases, the Registraduría said that they could not receive the money, that it was unconstitutional, and that only the correct entity could fund the popular

consultations—promising that funding would be coming from the national budget (El Espectador, 2018)

The debate continued on whether MinHacienda was effectively stopping the consultations, or if the blame was to be put on the Registraduría, and meanwhile, dates planned for popular consultations came and went, without a single one being carried out (Terrepaz, 2018). Various municipalities—among them Fusagasugá and San Bernardo in Cundinamarca, and Córdoba in Quindío—interposed tutelas against the suspensions, saying that their rights to participation and equality (as other municipalities had received funding) had been violated (Terrepaz, 2018). In June 2018, the Administrative Courts of Cundinamarca sided with Fusagasugá and San Bernardo saying that the financial situation has to be solved (Terrepaz, 2018).

State level				
State	Municipality	Theme of Consultation	Planned date	Reason for suspension
Norte de Santander		Mining	October 30, 2011	Not added on ballot for regional elections
Municipal level				
State	Municipality	Theme of Consultation	Planned date	Reason for suspension
Boyacá	Gachantivá	Mining	January 27, 2018	Lack of funds
Caquetá	El Doncello	Sismic exploration, extraction of oil and hydrocarbons	June 10th, 2018	Lack of funds
Casanare	Monterrey	Exploration and exploitation of hydrocarbons in groundwater recharge areas	April 27, 2014	Tutela (Ecopetrol)
Cundinamarca	Fusagasugá	Fracking		Lack of funds
	Pasca	Hydrocarbons and mining	August 6, 2017	Tutela (ACIPET)
	San Bernando	Hydrocarbons and mining	January 14	Lack of funds
	Une	Mining	November 12, 2017	Lack of funds / Tutela
Huila	Oporapa	Hydroelectric dams, mining and fracking	February 25, 2018	Lack of funds
Meta	El Castillo		December 3, 2017	Lack of funds
	Granada	Hydrocarbons	October 22, 2017 and November 6, 2017	Lack of funds
	La Macarena	Hydrocarbons and mining	November 26, 2017	Lack of funds
Nariño	San Lorenzo	Mining and hydrocarbons	December 17, 2017	Lack of funds
Quindío	Córdoba	Mining	December 3, 2017 and January 21, 2018	Lack of funds
Quindío	Salento	Mining	July 15, 2018	Lack of funds
Santander	El Carmen de Chucurí	Mining and hydrocarbons	December 10, 2017	Lack of funds
	El Peñon	Mining and hydrocarbons	November 5, 2017	Lack of funds / Tutela

3. Cases: La Colosa and Quebradona



Figure 2: Location of projects (AGA, 2017)

We did everything quietly, we told each other: we are fighting a monster, if we start doing this publicly they are going to turn us into nothing, so let's do this quietly.

(Landowner in Piedras, Interview, January 2019).

3.1. La Colosa

In December 2007, president Álvaro Uribe revealed the La Colosa project to the Colombian people. In the mountains of Cajamarca—some 40 minutes from the city of Ibagué—the South-African mining company AngloGold Ashanti (AGA) was planning to build one of the ten biggest open-pit gold mines in the world (El Tiempo, 2007a). The discovery at La Colosa¹⁷ was AGA's biggest greenfield discoveries (AGA, 2012): Early estimations put the mineral deposit at 12.9 million ounces (Moz) (AGA, 2008) of gold. By 2017, the estimations had more than doubled, reaching 28.33Moz (AGA, 2017).

The project was expected to bring welcome income and royalties to Cajamarca, Tolima and Colombia, as well as some 1.200 jobs in the local community (El Tiempo, 2007a). Not everybody agreed with the rosy outlook of the project. Few days after the announcement, El Tiempo (2007b) published an article where various people stated their skepticism to the project, quoting possible social and environmental consequences. Among them Fernando Osorio, then governor of the department of Tolima, who in an interview said that where there is gold, there is misery (El Tiempo, 2007b).

Over the years, opposition against the La Colosa project grew. When AGA's plans of locating a processing plant and tailings dam near Doima, in the municipality of Piedras, became

¹⁷ La Colosa directly translates to the colossus. Though the name perfectly fits the project, La Colosa did not get its name for the size of the gold deposits, rather it is named after the mountain where the deposits were found.

known, the local community put up fierce resistance. In the summer of 2013 a popular consultation was carried out against mining operations in Piedras. It was the first popular consultation against an extractive project in Colombia. The vote in Piedras sparked a series of popular consultations in Colombia, and in 2017, a popular consultation was carried out in Cajamarca as well, halting the project . The popular consultation in Cajamarca made headlines around the world , whereas Piedras had been the first, Cajamarca became the symbol of the wave of democratic processes in extractive governance that was taking place in Colombia .

3.1.1. Background information

La Colosa - Project information

La Colosa is an open pit gold mining project currently on hold, with an estimated gold deposit of 28.33 million ounces (Moz) (AGA, 2017). The project is planned in the mountainous municipality of Cajamarca in the department of Tolima, about 150km west of Bogotá, and 30km west of Ibagué. The project has been envisioned as one of the biggest gold mines in the world and possibly the biggest in Latin America. The gold deposits of La Colosa was discovered in 2006 by AGA's exploration team (AGA, 2014), but preliminary work had been going on in the area for years before that. According to Colombia Solidarity Campaign, London Mining Network, Redher, & The Green Center (2013), AGA's first mining title for the project was expedited in January 2003, even before AGA registered its first Colombian filial under the name of Sociedad Kedahda. According to PAX (2016), AGA arrived in Tolima and Cajamarca already in 2000, and got their first mining title in the area in 2002. AGA had been one of the earliest international gold mining companies to enter Colombia, despite the security situation (PAX, 2016; Willatt, Timson, Pichard, Furuvald, & Ávila Sánchez, 2011)

Various reports have remarked on the various environmental and social concerns of the project. Among them regarding water usage; possible pollution of water sources, concerns of

the fact that big part of the exploration has been carried out in a forest reserve, and possible risks of having a processing plant and tailings dam in the municipality of Cajamarca (more detailed information about the concerns can be found in Colombia Solidarity Campaign et al., 2013, and @ikvpaxchristi2009).

A tailings dam and processing plant was originally planned in the municipality of Piedras, but after a popular consultation prohibiting mining and all mining related activities there in 2013, AGA looked into other possible solutions. In 2015, AGA presented a study in which an ore leach processing plant of reduced size and all other facilities could be located «on mountain» (AGA, 2016). The whole project is currently on hold, after a popular consultation in Cajamarca in 2017 prohibited mining activities in the territory.

Cajamarca

Cajamarca—often described as one of the main food baskets of Colombia—sits in the Central Andes, in the department of Tolima. It is about 30km west of Ibagué, and the main road between Bogotá and Cali goes right through the municipal center. The soil is considered very rich, which is often credited to the nearby volcano Machín. In the steep mountainsides, farmers, largely small-scale, are producing a wide range of of vegetables and fruits. Everything from bananas and plantains, to legumes, root vegetables, fruits and berries. Cajamarca is especially known as a big producer of beans and *arracacha*.¹⁸ Lately there has been a shift of focus towards export products with an increase in the production of avocado and especially *gulupa*.¹⁹ Because of the steep hill and mountainsides, the agriculture in Cajamarca has not

¹⁸ Arracacha is a root vegetable originating in the Andes. The leaves resemble those of parsnips, and the roots like something between a parsnip and a celery root.

¹⁹ *Gulupa* is a variety of passionfruit, sweeter than the variety *maracuyá*, which is the most common variety in Colombia

gone through much modernization and is still mainly reliant on manual labour. Many of the farms don't have any road access, and transportation of produce with mules is common.

Three rivers run through the municipality . The river Toche is born in the mountains here , before becoming river Coello, the most important river in the department of Tolima. 70% of the population of Tolima are benefitting from the Coello River (the municipalities of Cajamarca, Ibagué, El Espinal, Coello, Rovira, San Luis y Flandes) and it is an important water source for the rice farmers on the flat plains to the east of Cajamarca.

Because of the mountainous terrain and the important location along La Línea, one of Colombia's main roads, Cajamarca has at times been heavily implicated in the Colombian conflict. The urban guerilla group M-19 had operations in Cajamarca before it was disarmed. Afterwards FARC became a common presence, with the 21st and 50th front having camps in the municipality. Around 2003, paramilitary groups also started to have some presence in the area, intimidating peasants, and there was an increase in targeted murders, forced disappearances and forced displacement.

Figure 3: Photos from Cajamarca





Piedras

About an hour east of Ibagué, you find the municipality of Piedras, in many ways a complete opposite of Cajamarca. Descending the Central Andes going east, the landscape flattens and the temperature rises. Even when cloudy, the air is hot and stifling. The municipality, with a population of about 5600, stretches over 355km² and is mainly rural. There are three *corregimientos*: Piedras, Doima and Guataquisito. Doima is where AGA's tailings dam for the Colosa project was originally planned, and where most of the activism has

taken place. Though the temperatures are high, and everything seemed quite dry and yellow when I was there in January, the municipality has good access to water. Various rivers and streams run through the municipality, with the Opía river being the most important; it starts in Ibagué, runs through Piedras, before flowing into the Magdalena river. The most important water source, though, is hiding below surface. Under the municipalities of Piedras, Ibagué and Alvarado, there is a huge aquifer considered to be the fourth most important in all of Colombia. It is from this aquifer that most inhabitants in Piedras get their water.

The flat land, and easy access to water, lend itself to large-scale industrialized farming. Whereas small-scale farming is the norm in Cajamarca, in Piedras, there are gigantic farms, stretching over thousands of hectares. Many of the landowners live in Ibagué or Bogotá, and have hired workers taking care of the daily operations. The area is famous for its rice, but there is also cattle grazing the scorched grass. In addition to agriculture, there has, since 1984, been extraction of hydrocarbons in the municipality²⁰. The extraction has led to some discontent in the community, and there are people who argue that it has reduced water levels and increased draught in the territory (Lombana, 2010), though there don't seem to exist much research on the issue, nor was it an issue that was mentioned when I visited Doima. Inequality and poverty in the municipality is high: in 2014, 81,95% of the population lived in extreme economic poverty (Gobernación de Tolima, 2015, p. 82). This was an increase of almost 50% from 2011, when 55,62% of the population lived in extreme poverty. Basic infrastructure is lacking, the hospital in Piedras is underfunded, and at the school in Doima, not even the teachers have

²⁰ Since 2005, this work has mainly been carried out by the Norwegian company InterOil (InterOil, 2015).

internet access,²¹ though the municipality offers public internet access at the main plaza in each *corregimiento*.

Compared to other nearby areas, Piedras has largely been left out of the Colombian conflict: no guerrilla or paramilitary group has been operating out of the municipality. This could be explained by the presence of a battalion of the Colombian Army being stationed in the territory throughout the conflict, lack of support among the local communities, as well as the fact that flat, open land isn't necessarily the best landscape for guerrilla warfare. There has been instances when FARC has passed through the territory and kidnapped landowners on their way, in an intent to collect ransoms, but according to my sources, this has not been a very common occurrence.



Figure 4: Photo taken in Doima, Piedras

²¹ I was told by a teacher that apparently there is an internet connection to the school, which the principal does not allow anyone but him to access.

3.1.2. Reception of project, beginning of resistance

When the La Colosa project was revealed nationally in 2007, it was the first many of the inhabitants of Cajamarca heard about the project (PAX, 2016), which was also the case for those I spoke with in Cajamarca. AGA had arrived as Sociedad Kedahda in 2003²². People in Cajamarca had noticed that geologists had arrived in the zone, studying rocks, but until the televised announcement in 2007, few people knew what it was all about. With the announcement also came promises: La Colosa would bring progress and development to Cajamarca, it would erase poverty, create jobs and start agricultural projects. Youth that didn't see a future in Cajamarca were optimistic by the prospects and opportunities that could come with the projects (interview, January, 2018). Many of the activists I spoke with told how people would question whether they were against development when they voiced concern about the project.

In the beginning, many in Cajamarca looked positively at the project, but as more and more information was revealed and people learned what the mining operations would entail, the resistance against the project increased, some people who had initially supported the project, or worked for AGA, would later change their mind.

PAX, the gathering of information and the growth of environmental groups in Cajamarca

When La Colosa was announced in the media, the Dutch organization PAX was already present in town, organizing workshops on strengthening local democracy and citizen participation. When hearing about the project, some people went to them in an attempt to learn more about the project and mining (PAX, 2016). They knew it was going to be a gold mine,

²² Further research done by Pax (2016) relates that AGA might have arrived in Colombia and Cajamarca even earlier than first thought

but they didn't really understand what this would entail. Mining was something new in Cajamarca; except for some seasonal artisanal mining—at a very small scale in periods when agriculture was failing—no mining had been carried out in Cajamarca. People wanted more information. PAX, based on what they knew about the La Colosa project, decided to share information on similar mining projects carried out in other parts of Latin America (PAX, 2016, p. 6). Among them Yanacocha—the biggest gold mine in Latin America—located in the Cajamarca region in Peru.

A local organization called Ecotierra was created with a base out of the Pax's workshops. In the years to come, PAX became an important actor in relation to the La Colosa project. In the years between 2009 and 2013, PAX brought international experts on mining—among them the hydrologist Robert Moran—to study the projects and its possible impacts. They released their first report in 2009 with information based on the research done by Moran (IKV Pax Christi, 2009). PAX considered independent research to be important. From 2011 to 2013 they were conducting an independent study on the La Colosa project in cooperation with AGA and the Colombian government, the study was funded by Pax (PAX, 2016). Because of disagreements with Pax on the one hand, and AGA and the Colombian government on the other, the study was never published (PAX, 2016). Instead the recommendations based on the study was published in the local newspaper El Nuevo Día.

In addition to the work they did on gathering independent information—as well as trying to make AGA include the local community in the project, and keep them updated on what they were doing—it was also an important ally to the the various groups that were popping up in Cajamarca, opposing the project. PAX funded various projects carried out by local groups in relation to the La Colosa project, especially projects focused on gathering and spreading

information. For example 14 million pesos²³ were granted to one organization to buy a camera, laptop and equipment needed to project video. This equipment was used to document the work of the organizations, like demonstrations, as well as to spread information (Activist, Interview January, 2019).

The role of the University of Tolima and the Environmental Committee of Ibagué

Also outside of Cajamarca, people started to question the project. The University of Tolima—a public university in the city of Ibagué, about an hour drive from Cajamarca—would soon become the center of opposing forces. The university of Tolima has a long history of environmental work, and one of its professors, Gonzalo Palomino Ortiz, is often referred to as one of the fathers of Colombian environmentalism (Patiño, 2009). In the 1970s, Palomino started an environmental movement based out of the University of Tolima. In the publication *SOS Ecológico*, environmental problems were broadcasted. As Palomino Ortiz (25th of February 2014) has stated about their work: > Wherever the ecological alarm sounded, there we were: there has always been more alarms than possibilities, but still, there we were. Always creating new ways of converting an aggression into a mechanism of spreading ecology, of education, of action.²⁴ (Palomino Ortiz, 25th of February 2014).

Students at the University of Tolima would meet to discuss the case of La Colosa, find information about the project, and ways to protest it. From these informal meetings, two important organizations were born: The *Comité Ambiental en Defensa de la Vida* (Environmental Committee in Defense of Life, from here on referred to as the Environmental Committee of Ibagué) and *Corporación SOS Ambiental*.

²³ Which equals around \$4100.

²⁴ Translation by author.

Other Colombian universities, like the University of Quindío in Armenia, the National University of Colombia, as well as the private universities of La Javariana, El Externado and Los Andes in Bogotá, played their roles. Professors and students flocked to the mountainous municipality to conduct research on La Colosa, some would return repeatedly and aid in the activism.

Through an increased network, the social organizations opposing the La Colosa project learned more about AGA and their plans in Cajamarca.

This is the advantage of having allies in the Congress. For example, if I, as a common citizen, makes a petition they are going to deny me the information, but if a person of that kind of level does it, they would have to give it to him out of obligation. The same in the ministry of mining (Interview, January, 2019).

3.1.3. The road to a popular consultation in Piedras

By 2012, AGA had decided that Doima, in the municipality of Piedras, would be a good spot for a processing plant, as well as the tailings dam for the Colosa project. The company arrived in the municipality silently, without disclosing their plans. People had started to notice their presence, but they didn't really know what it was all about, until a community meeting at the school in Doima on the 5th of December 2012. In the meeting, AGA informed them about their plans for the municipality, and emphasized that they were not looking for gold, just for a place to be able to process the minerals from the La Colosa mine. The meeting didn't last long, as it was suspended by the community when they learnt that AGA had already been conducting investigation in the territory for a year (Colombia Solidarity Campaign et al., 2013, p. 49).

As soon the inhabitants of Piedras knew about AGA's intentions in the territory, they started to work against them. Both peasants and big landowners were skeptical to what this project could mean for the municipality and their water sources. Activists from Cajamarca and

Ibagué came to talk more about the mining project and what it was that AGA planned to do in Doima. Some landowners had private reunions where they discussed possible courses of action. They had been working together before when the company Turgas wanted to build a gas pipe from the Toqui Toqui field in Piedras, to Cemex, a company producing cement in Ibagué, without the necessary permissions. Through that process, they had seen how easily things could be done without following the rules: if a gas pipe could be constructed without anyone «knowing», and nobody doing anything about it as soon as it was known, what would one of the biggest gold mining companies in the world be able to get away with? In one of the reunions, the idea of a referendum was brought up, but a lawyer present said that a popular consultation would be a more appropriate tool. None of the landowners had heard about the tool of popular consultation before, so they started to gather information on popular consultations carried out in Colombia, how they worked and what they needed to do to carry one out in Piedras. They also decided to go forward with their plan as quietly as possible. People in Doima and Piedras knew that they were up to something, but not necessarily what.

Meanwhile, a different kind of process was taking place in Doima. On the 23rd of December 2012, hundreds of people marched against AGA. The villagers held various community meetings at the school and in the veredas. In one of them, a peasant woman spoke up and said that they should block the road. The blockade was supported by the landowners, who supplied the protesters with food and materials to set up a comfortable camp. The women of Doima were central in the blockade, as they were the ones who stayed during most of the day while the men were working, and cooked for all those attending. The first blockade lasted for about three weeks, until the 19th of February, when the villagers realized that the mayor could get in trouble for not doing enough to stop it (El Nuevo Día, 2013). The blockade didn't end completely though. The villagers set up a rudimentary camp and system of surveillance

where they would know when anyone from AGA came and then stream out to block them. This blockade ended up lasting for four months.

All of those I spoke with related to the process of Piedras spoke of the blockade with fond memories. It was especially one event that was mentioned by various of my interviewees as an example of the spirit of the community. The protestors had a tv at the camp where they were blocking the road. One night when a football match was on, the police came to the camp and asked what was going on. Some of the protestors started explaining the reasons why they were doing this, and at the end of the conversation they invited the police officers to join them for some food. In the end, everyone where sitting there together, eating and watching football.

Popular consultation

On the 18th of May, the proposal for the popular consultation reached the municipal council . In the municipal council ten of the council members voted in favour of the popular consultation whereas only one voted against it. Having been approved in the municipal council, the popular consultation and question proceeded to the Administrative Court of Tolima where it was deemed constitutional [@elnuevodia2013a]. Though as both those who redacted it, and a lawyer told me: it would never have been approved today because of the unclarity and complexity of the question. After having been approved in all the necessary instances, the date of the popular consultation was set to the 28th of July, 2013.

The process wasn't over yet. When the organizers of the popular consultation were preparing for the vote, they realized that there were more registered voters in the municipality than inhabitants²⁵. «This means that supposedly even children, youth, babies, and those not yet

²⁵ It is quite common in Colombia, especially in smaller municipalities where few votes can be important for the results of an election, to register voters from other municipalities and bus them in for election day. This phenomenon goes under the name of *trashumania* in Colombia, It is considered a kind of electoral fraud as voters have to live in the municipality where they vote. Before the local

born, had been voting» (Landowner in Piedras, Interview, January 2019). Realizing that their chances of reaching the necessary threshold were small when many of the registered voters didn't even live in Piedras, they decided to hold a meeting with politicians and ex-politicians in Piedras to find out where they had been bringing their voters from. «Luckily most of them came. We told them in the reunion: we are not here to judge you, tell us where you have been bringing them from, because we will also need to bring them». They told them that they would not pay the voters, nor bring their families, only the registered voters. They would fix transport and give them breakfast and lunch. They had buses from Ibagué, Bogotá, and even as far away as Cali. In Piedras, activists were trying to motivate the community to vote. Volunteers from the Committee Ambiental in Ibagué as well as local activists went from vereda to vereda to talk about the mining project. They brought showing equipment to show documentaries on gold mining and show the environmental damages.

The vote was carried out as planned on the 28th of July, 2013 and No won with 98,8% of the votes. Close to 59 per cent of the electorate voted: 2971 voted no and 24 voted yes (Registraduría, 2013). Because of the uncertainty surrounding decree 0935 from earlier the same year, the municipal council members were skeptical about signing the final municipal agreement that would make the results from the popular consultation valid.

3.1.4. The road to a popular consultation in Cajamarca

On the 26th of March, 2017, almost four years after the one in Piedras, Cajamarca carried out a popular consultation of their own. In the election, an overwhelmingly 97,92% of the voters said no to mining in their municipality (Registraduría, 2017). The process had started shortly after the vote in Piedras, but whereas things had run more or less smoothly for the

elections in 2019, the Registraduría tried to add more measures to reduce the amount of trashumancia.

organizers in the nearby municipality, the road would prove to be a lot more complicated for the organizers in Cajamarca. Like many other municipalities that tried to organize a vote in the wake of the popular consultations carried out in Piedras and Tauramena in 2013, the process in Cajamarca got caught up in the political and juridical struggle over who should get a say in extractive governance that was taking place at national level in Colombia at the time²⁶. At local level things were also more complicated. Whereas the popular consultation in Piedras had had support from the municipal council and mayor, the local government in Cajamarca was actively opposing the process every step of the way.

First seeds

After the popular consultation in Piedras the summer of 2013, a similar process was started in Cajamarca. While the mistrust with AGA and the La Colosa project had increased in Cajamarca—especially in Anaime, where many farmers in 2013 learned that AGA had been granted new mining titles in 2009, covering the land of their own farms—many people were in support of the project. Activists weren't really sure of how strong the support and the opposition towards La Colosa was in the municipality, and worried that they would not reach the necessary threshold of a third of the electorate if they were to organize a popular consultation. In other parts of Tolima people were also worrying about the project. La Colosa would be operating right near the beginning of the Toche river, an important source to the Coello.

As the La Colosa project might pose problems for the water sources that are important for the communities along the Coello river, a group of rice farmers and activists from different municipalities in Tolima met together with the environmental groups in Cajamarca to talk

²⁶ As seen in Chapter 2 on the general overview of popular consultations in extractive governance.

about the problems and their legal options after the popular consultation in Piedras. In the meeting it was decided that processes of popular consultations would be started in the municipalities of El Espinal, Ibagué, Roncesvalles, Rovira and Cajamarca. Because Cajamarca was the epicenter of the La Colosa project, they were to be the last one to carry out their popular consultation. It was thought that if the people in Cajamarca realized how much other municipalities were worrying about the environmental impact of the project, they would start to worry more about it themselves. Formal processes were started in Ibagué, El Espinal and Cajamarca, but only the one in Cajamarca would be carried out in the end.

As soon as the decision of going forward with a popular consultation was made, a lot of time was spent on formulating the questions that were to be used in the popular consultations. This was done with the help of lawyers, among them the Bogotá based group DeJusticia. «We spent a lot of time making the one single question, so that it wouldn't be denied. Not by the administrative court, nor by the national government» (interview, January, 2019).

First round in the municipal council of Cajamarca

At the time all of this was taking place, the question of whether popular consultations in the use of extractive governance was constitutional, was making its way through the courts. The planned popular consultation in Monterrey, Casanare, had been suspended in April because of a tutela interposed by Ecopetrol. The same month, the Procuraduría had started an investigation of the mayor of Piedras, Arquímedes Ávila Rondón, for overstepping his legal bounds in carrying out the popular consultation the year before (Cuevas Guarnizo, 2014). The mayor of Cajamarca received the petition for a consultation in July 2014. He responded to the petition and forwarded it to the municipal council, while at the same time expressing his fear of judicial retributions if they were to go forward with the proposal (PAX, 2016). It was decided

that a vote on whether to go forward with a popular consultation or not would be carried out in the municipal council in February, 2015.

In the months leading up to the vote, members of the municipal council were pressured from many holds (PAX, 2016). In December 2014, the Procuraduría summoned the council members of the municipality of Cajamarca to meetings in Ibagué and Bogotá (Arenas, 2015; Cuevas Guarnizo, 2015). In the meetings they talked about the illegality of prohibiting mining in their territory, and that if they went forward with a popular consultation they risked investigations and disciplinary proceedings. The disciplinary case against the mayor of Piedras was used as an example (Arenas, 2015; Cuevas Guarnizo, 2015).

Additionally, they received a letter from AGA where they threatened to «withdraw all current local development funding if there was support for the *consulta*» (Dietz, 2018, p. 9). According to some of the council members, the mining company also showed up outside the town hall—twice, during extra sessions called by the mayor to discuss the consultation—to remind them of all the jobs that would be lost if AGA was to leave Cajamarca (Arenas, 2015). There were also rumors circulating that guerrilla groups were threatening the members of the municipal council to vote in favour of the popular consultation—these rumors came after FARC supposedly burnt the car of an AGA employee in the township of Anaime—but this was categorically denied by all of the council members (PAX, 2016, p. 48). A few days before Christmas, the Ministry of Mining and Energy issued decree 2691 of 2014, again explicitly prohibiting local authorities from regulating extractive industries in their territories. When the vote was finally carried out in February 2015, 10 of the 11 council members voted no to the popular consultation (Cuevas Guarnizo, 2015).

Local elections of 2015 and change of participation laws

The vote in the municipal council was a hard blow to the social groups in Cajamarca, they felt that their elected members had completely let them down. If their municipal council didn't support them, they had to get people that did support them into the council. For the local elections of 2015, a list with people opposing the La Colosa project was put together, mainly farmers and locals with no former experience from politics. A similar project had been tried in the local elections in 2011, but none of the members on the list had gotten into the municipal council. In the end, a candidate positive to the La Colosa project became mayor of Cajamarca, but the new political list won three seats in the municipal council (Jaramillo Arango, 2017), and of the 10 members that had voted against the proposed popular consultation, only one managed to get reelected in the 2015 local election [local politician, interview January, 2019].

2015 also brought a new law of citizen participation, law 1757 of 2015, which seen as an opportunity to go forward with a popular consultations. The new law opened up for the process of popular consultations to be started if 10% of the electorate signed the initiative. A petition was started, and people walked from vereda to vereda to talk about the La Colosa project and collect signatures.

On the 8th of November, 2016, the new initiative for a popular consultation in Cajamarca was approved by the administrative court of Tolima. Now they just had to wait for the mayor to set a date for the election. On the 21st of November, through decree 083 of 2016, the date of the vote was set for the 27th of November, 2016. This caused an uproar among the civil society groups in Cajamarca as they did not see how they would be able to carry out all the logistics for the election in less than a week, and they felt like this was yet another blow from the mayor, trying to impede their democratic rights (El Nuevo Día, 2016). Because of the outcry from local groups, the Registraduría suggested the 21st of December as a date for the popular consultation, but in the end it was necessary to delay the vote until at least the 22nd of

January, 2017. As it looked like the popular consultation was going to go forward, AGA interposed a tutela to the Council of State, asking for a provisional suspension of the popular consultation. Their demand was denied.

Death of mayor, atypical elections, and preparing for the popular consultation

Just when things seemed to be going fine, the mayor of Cajamarca suddenly died of a health related issue. Atypical elections were carried out to elect a new mayor. The municipal council would stay the same, it would only be an election for the role as mayor. The popular consultation was further delayed till the 26th of March, and the atypical election was carried out on the 12th of March. Again, the candidate supporting the popular consultation, Julio Roberto Vargas, did not receive enough votes for the position of mayor.

The results at the atypical election was a wake-up call for the movement. Did this mean that people in Cajamarca didn't really care about the project and whether it went forward or not? Would enough people end up voting on the day of the election to reach the threshold of one third of the electorate? The results of the election didn't necessarily mean that people didn't care or wouldn't vote in the popular consultation, it could also simply mean they didn't want or agree with Vargas as a mayor in Cajamarca. Various people had expressed that they felt he didn't have a proper program, they didn't know what else he stood for except for being against La Colosa, and some were expressing doubts about whether he was just using the project as a platform to get into politics.

Leading up to the election day, the town of Cajamarca seemed quiet, the battle was taking place in the veredas.

«We utilized a strategy, and the strategy was to get people from all over the country, from the universities, from other municipalities, from organizations, and they came to

Cajamarca about a week before the election to go from door to door. Just like we did in Piedras. . . . We found places they could sleep, people helped out, with food, everything. There were farmers from Antioquia that came to convince farmers in Cajamarca: Come down from the mountain and vote tomorrow. . . . There was also people from Piedras. It was really nice to see the support from Piedras, considering that they looked at us as a people that had been bought [by AGA]» (Interview, January, 2019).

The carrying out of the popular consultation and the results

On the 26th of March, 2017—almost four years after the popular consultation in Piedras—a popular consultation was carried out in Cajamarca. On the day of the vote 6296 cajamarceños showed up to the urns (38% of the electorate) and «no» won with an astounding 97,92%—only 76 of the voters said yes (Registraduría, 2017). The consultation, the fourth of its kind in Colombia, became an emblematic case. In a press release, AGA expressed its regrets that the community had voted the way they did , but that they respected the decision of the people. AGA stopped their work on La Colosa, and left their offices in Cajamarca. Still, most of those I spoke with in Cajamarca wouldn't let the guard down, and was worrying that AGA will be able to find a way to invalidate the popular consultation continue the project of La Colosa.

In the beginning of June, 2019, various rivers in Cajamarca was declared as subject of rights, protecting them against mining []. Environmental activists are now hoping that the declaration of juridical rights to the rivers will result in AGA finally renouncing their titles . Together with the NGO organization Tierra Digna, local environmental organizations have demanded annulment of AGA's titles to the Administrative Court of Cundinamarca (Aguirre Z., 2019).

3.1.5. Non-judicial processes of resistance

Although the popular consultation was seen as a very important step in the protection of the territories of Cajamarca and Piedras, it was not necessarily seen as the most important tool, just one in a toolkit with many, where the different tools have different roles, and education has been seen as especially important.

Diplomados ambientales

Twice a year, the Environmental Committee of Ibagué, together with the University of Tolima, organizes an open and free course on environmental issues, named after the environmentalist Gonzalo Palomino Ortíz. The course has kept on growing, and for the spring semester of 2019, 1200 persons signed up for the course on its three different levels, which is a new record.²⁷ Whereas in the beginning it was sometimes difficult to find people who would hold classes for free, with the growth of the course and its increased reputation, this problem has disappeared. *«Now, people are writing us. . . . We have like three or four international lecturers, and they come by their own means. We don't even pay for their water on the day [of the lecture].»*(Interview, January, 2019). While I was conducting my fieldwork, they are considering making a web-version of the course, to reach out to more people. The university also receives requests to hold environmental classes outside of the course, there have, for example, been requests coming from local politicians in different municipalities in the department of Tolima. Additionally, an internal version of the course is held for professors and staff at the university as a way of increasing environmental awareness within the university and across the different disciplines.

²⁷ Because of the student strike in Colombia at the time of my fieldwork, the spring semester was delayed and I did therefore not have a chance to check out the course myself.

Marcha Carnaval

In 2011, a group of students at the University of Tolima arranged the first *marcha carnaval* in Ibagué. The march was used to hand out flyers and tell people about the mining project in Cajamarca, and the possible environmental damages if it was to be carried out. What started out as a protest against La Colosa has gradually become one of the most important, or at least most visible and known parts of the work of the Environmental Committee of Ibagué. It is a carnival celebrating and advocating for the protection of water and nature. The event has kept on growing in Ibagué, and has also spread to other cities and towns in Colombia. Though the carnival is a way to make environmental problems more visible, the march in itself isn't necessary the most important part of the event. The people I spoke to at the Environmental Committee said that the weeks leading up to the carnival are what they consider the most important and most fruitful part of the process, as it is during these weeks that volunteers visit schools in Ibagué and talk about what the carnival is for, and why it is important to think about protecting the environment. Various of the volunteers active in the committee mentioned that their first encounter with the group and the work it does, was through these school visits and the carnival.

One important aspect of the carnival is that it is supposed to be a fun and family friendly event. Many Colombians avoid attending political demonstrations because they have a tendency to turn violent, with clashes between the police and demonstrators. The police frequently uses teargas and also rubber bullets to disperse crowds.²⁸ By arranging a carnival it becomes a day of celebration, and people that normally wouldn't attend a demonstration might partake.

²⁸ While I was doing my fieldwork in Colombia, a national student strike was going on. An afternoon I spent at the offices of the Environmental Committee in Ibagué we could hear repeated explosions as there were demonstrations going on at the nearby university.

So what we do is this. Constructing a new language where the demonstration is a common and normal demonstration, but it is a carnival. And carnival, what is that? Music, happiness, drums, people are dressed up, there are kids, elderly people, everyone are joining. . . . It's a party. And why? Because the revolution, the transformation has to be happiness. We are calling for life, we can't call for it by being boring, being sad. No, this is music, art, culture. The only way to turn away from a culture of death, is through a culture of life. (Environmental activist, Interview, January, 2019)

3.2. Quebradona



Figure 5: Photo from vereda La Soledad, Jericó

I'm standing at the vereda La Soledad. The views are breathtaking. Green, lush mountains meet steep cliffs, before giving way to the Cauca Valley,²⁹ nestled between the Colombian Western and Central mountain ranges. La Soledad is home to some spectacularly located farms and dwellings, with names like *Casa de las nubes* (House in the clouds) and *Casa sobre la roca* (House on the rock). Down in the valley, the Cauca river—the second most important river in Colombia—flows lazily. The river is born near the city of Popayán in the department of Cauca. It runs through seven departments on its way through the western parts of Colombia, before merging with the Magdalena river in the department of Bolívar, where it finally flows out into the Caribbean ocean. In some ways, the view from where I am standing is a representation of the Southwest of Antioquia. Part of the culture of this sub-region of Antioquia is anchored in this frontier landscape: between the lush highlands, and the warmer

²⁹ Here I'm talking about the geographical valley where the Cauca river flows, and not the Colombian department of the same name (Valle del Cauca).

lowlands. Between coffee plantations and small-scale farmers on the hillsides, and citrus plantations and big *haciendas* further down in the valley.

My guide for the day points out various points of reference in the valley below us: *Puente Iglesias*, the municipalities of Tarso and Fredonia, and where the tunnel for the planned Quebradona project is supposed to come out; what will be the main entrance to the subterranean copper mine according to current plans. Where the mighty mountain range of the Andes reaches Colombia, it splits into three parts: the Western, Central and Eastern Andes. The mountains in the Western and Central Andes has been found to contain so much gold and minerals that a part—stretching from the northern parts of the department of Tolima, into parts of Antioquia—has been called *Cinturón Occidental de Oro*, or the Western Gold Belt. . The Middle Cauca Gold Belt, it's more standardized name is considered the most important of the three gold belts in Colombia. It is home to various big mining projects, like Marmato, the traditional mining districts of Segovia and Remedios, and the Quebradona project. Though the department of Antioquia has a long and strong history of mining—it is the only department in Colombia that issues its own mining titles—the southwestern sub-region of the department is mainly agricultural, and has taken a strong stance against extractive development. Mining goes against the agricultural vocation in the area, and people are scared of the possible environmental consequences, as well as the cultural ones. Because of this, many of the municipalities in the sub-region, among them Jericó and Támesis, have prohibited mining activities through municipal agreements, and some have made intents of popular consultations. Though all processes trying to prohibiting mining in the are has been shut down by the Administrative Court of Antioquia. In this part I will go through some of these processes.

3.2.1. Background information

Quebradona project information

Quebradona is a joint-venture project between the South-African mining company AngloGold Ashanti (AGA) and the Canadian company B2Gold. AGA being the main actor with an ownership rate of almost 95%, as of December 2018 [Note:] (AngloGold Ashanti, 2019). The companies have been doing exploratory work in the municipalities of Jericó and Támesis in the Southwest of Antioquia since 2004. The work has focused on five main targets: Nuevo Chaquiro, Aurora, Tenedor, Isabela and La Sola. Since the beginning of 2011, Nuevo Chaquiro—in the municipality of Jericó—has been the main focus for exploration. It was also the only deposit considered in the prefeasibility study, completed in January 2019 (AngloGold Ashanti, 2019).

The possible mineral deposit at Quebradona in the Southwest of Antioquia were discovered by AGA (Sociedad Kedahda) in 2004 while doing regional prospecting work. While the department of Antioquia has a long history of mining, especially gold mining, the area where the discovery was made has no known history of mineral exploration or exploitation. The exploration work was carried out by AGA from 2004, then by B2Gold from 2006-2009 before AGA took over management again in 2010, and focused its exploration effort on the Nuevo Chaquiro target (AngloGold Ashanti, 2019, p. 2).

The Quebradona project has reserves of 1.26 million tonnes of copper and 2.22 million ounces of gold (AngloGold Ashanti, 2019). The original plan was an open pit mine, but as the ore deposits were considered either too small, or too deep—as was the case of the Nuevo Chaquiro field—for open pit mining, a subterranean mine is now planned (p.8). The ore is considered exceptionally good, and is expected «to produce «clean» copper concentrate with low level of impurities» (AngloGold Ashanti, 2019, p. 4). Different areas for processing and

tailing storage has been considered, but the planned infrastructure is about 6km away from the Quebradona project, and entirely in the municipality of Jericó (p. 18).

The mining concession stretches over 7.593 hectares, but the expected affected area is 471 hectares, or 2.4% of the territory of Jericó (López Suárez, 2019). «Approximately 70% of the area including and surrounding the Quebradona property has been cleared for agricultural purposes, including primarily commercial coffee and fruit production, including subsistence food crops such as plantain and manioc, and for cattle grazing.» (B2Gold, 2007, p. 14)

Jericó



Figure 6: Photo from Jericó

Jericó, the Athens of the South-East, the cultured city of Antioquia, there is no lack of nicknames alluding to the beauty and culture of this little town nestled in the Colombian western Andes. With its colorful streets and houses and many churches it is considered one of the prettiest towns in the department. It is a popular tourist destination and weekend getaway, as well as a pilgrimage destination as it is the birthplace of Laura of Saint Catherine of Siena,

the only Colombian saint. The town houses a cathedral, looming over the small houses, where the bishop of the catholic Diocese of Jericó resides. Jericó is the municipal center of the municipality of Jericó, which stretches almost 200km² in the Southwest of the department of Antioquia, about a 3 hours drive from Medellín. The municipality has about 12 000 inhabitants, most of which live in the urban centers. Jericó has traditionally been a coffee producer, and still coffee plantations are dotting many of the hills surrounding the town. With falling coffee prices, there has been an increased focus on other export products, like avocado and gulupa.

Támesis



Figure 7: Photo from Támesis

Bordering Jericó is the municipality of Támesis. Like most of the municipalities in the Southwest of Antioquia, the territory of Támesis stretches from the mountains and down into the valley. The municipal center of Támesis looks over the valley of Cauca and on mornings when the fog lays as a carpet over the valley, it is almost like the town is floating in thin air.

Támesis has a shrinking population that has decreased from around 17,600 inhabitants in 1997 to about 14,200 in 2018 . It is mainly the rural population that has decreased. The last

couple of years there has been a trend of professionals returning to Támesis after having lived in Medellín, other parts of Colombia, or in the exterior, for years or decades. Tourism is on the increase—though not even near the level of Jericó—but Támesis is still mainly an agricultural municipality with small coffee plantations and large scale plantations with citrus and cocoa. In addition, there are huge swatches of monoculture pine trees. The area is rich in water, many streams and rivers are born here and as it's fresh groundwater.

Támesis and Jericó in the Colombian conflict

Támesis and Jericó have been affected in the Colombian conflict to some extent, with some presence of ELN as well as paramilitary groups. The AUC had a block operating in the Southwest of Antioquia, though despite a lot of violence in the 90s Támesis and Jericó have been quiet compared to some other municipalities in the Southwest of Antioquia (Verdad Abierta, 2009, 2015a, 2015b).

3.2.2. Reception to project and beginning of resistance

Just like with the La Colosa project, most people in Jericó and Támesis did not learn about the plans of a mine until long after the exploration period started. For many, the first meetings with the mining company and exploration process was the helicopters flying around doing prospecting work. In 2011, the Quebradona project was presented to the community. Very soon after, the organization Cinturón Occidental Ambiental, the Western Environmental Belt (COA)³⁰, was started—an umbrella organization encompassing various peasant, environmental and indigenous groups in the Southwest of Antioquia (González Díaz, 2018). As people learned about the Quebradona project, the extent of mining titles all over the

³⁰ The name alludes to the nickname given to the mineral-rich Late Miocene Middle Cauca Au-Cu Porphyry Belt: The Western Gold Belt

Southwest of Antioquia become apparent as well, with many municipalities having titles on more than 90% of their territory.

The exploration phase of the Quebradona project has been going on for more than a decade, and the acceptance or rejection of the project, has gone through many different phases in this time period. According to assessments from AGA, there is resistance towards the project among about half the population in Jericó (AngloGold Ashanti, 2019).

When I was there in January and February, 2019, people I spoke with said that there seemed to be an increase of people resisting the mine. There can be many reasons for this. One thing that can have pushed more people against the mine at this specific time, and which was also mentioned by various of my contacts, was that news about problems with the Hidroituango dam project, as well as the break of the Brumadinho tailings dam in Brazil—which killed over 200 persons—were hitting the headlines. The Hidroituango is a big hydroelectric dam project on the Cauca river, a river that many *Antioqueños* and people from the Southwest hold very dear [Note: The dam is being built near the town of Ituango, further down the Cauca river, about 110km north of Medellín. The news showed how big projects can have unintended and unforeseen consequences, which might have influenced people's opinion on the project. Another reason might be the Hay festival. In January, the literature festival was arranged in the town of Jericó for the first time. Many of the speakers at the festival decided to mention the mining project during their presentation. Flyers were also handed out around town the whole time during the festival. The Hay festival might also have helped people to see the cultural and touristic potential of Jericó. During the festival, every hotel bed in town was occupied, and people rented out rooms in their houses to accommodate all the festivalgoers.

3.2.3. Municipal agreements and intents of popular consultations

First round of municipal agreements

On the 6th of September, 2012—before the municipality of Piedras in Tolima had their popular consultation against mining, before they even started discussing it—the municipal council of Támesis prohibited mining in their territory through a municipal agreement (Alcaldía de Támesis, 2012; Londoño Calle, 2012a). The municipal agreement gave special protection to the territory of Támesis and prohibited activities like mining, using various articles in the Colombian constitution, laws, and ruling C-149/12 by the Constitutional Court to support its decision (Alcaldía de Támesis, 2012). Soon, other municipalities in the Southwest of Antioquia followed suit, with municipal agreements prohibiting mining being put in place in Urrao and Jardín as well (Londoño Calle, 2012a).

The project had been born many months earlier, in May 2012, in a *cabildo abierto* in Jericó (Ceballos, 2012). In the *cabildo abierto* there were council members and mayors from municipalities all over the Southwest of Antioquia—many of which huge parts of the territory was assigned mining titles. Additionally, the organization Censat Agua Viva had invited environmental lawyers and other experts to join [Ceballos (2012); Interview with lawyer, January 2019]. The municipal agreement in Támesis was historical as it was the first time a local entity successfully prohibited mining in their territory (Ceballos, 2012), though the joy would not be long lasting. Various governmental entities opposed the agreements, stating that they were illegal and that the local governments were exceeding their power. Claudia Cadavidad Márquez, from the Ministry of Mining in Antioquia, said that:

One thing is what one want to do, another thing is what the law permits. We have to make sure that the mayors and the community understand that the activity of mining is governed by law. (Londoño Calle, 2012b)

After the first municipal agreement prohibiting mining was signed in Támesis, the governor of Antioquia requested the Administrative court of Antioquia to revise the agreement and its constitutionality (Londoño Calle, 2012b). All the three agreements³¹ were invalidated by the administrative court. As a result of the municipal agreements in the Southwest of Antioquia, and subsequent intents other places in the country, the Colombian government issued decree 0934 in May 2013,³² explicitly prohibiting municipalities from prohibiting extractive activities in their territory (El Espectador, 2013).

Intents of popular consultations in the Southwest of Antioquia

Not a single popular consultation regarding extractive development has been carried out in the department of Antioquia. There have been a few attempts in sub-region of the Southwest of Antioquia though. I will include some information about some of these intents—even though they come from municipalities that are not directly affected by the Quebradona case—as all the municipalities in the Southwest have been cooperating extensively, and what has happened in one municipality has had an effect on how the social movements act in another municipality. Additionally, the intents in Pueblorrico, the neighboring municipality to Jericó, gives interesting aspects to the use of popular consultations, as well as how citizen participation is seen and understood by different groups and actors in Colombia.

³¹ Támesis, Jardín and Urrao.

³² For more information on this decree, and its relevance to popular consultations in extractive governance, see chapter 2 .

First seeds

Although the municipalities in the Southwest of Antioquia decided to follow the road of municipal agreements, the first seeds of a possible popular consultation had been planted earlier. Already in the *cabildo abierto* in Jericó in May 2012, the possibility of this option had been discussed. COA, and the different groups operating in Jericó, Támesis and the rest of the Southwest of Antioquia, were working closely with the national environmental organization Censat Agua Viva—which had been central behind the intents of the departmental popular consultation to protect the páramos in Santander and Norte de Santander against mining in 2011.

I remember in the year of 2012, there [*cabildo abierto* in Jericó] they asked me what I thought of article 33 of law 136 from the year 1994. And I was like, what are you talking about? . . . And they asked me, «what is this?» It turns out that this article says that projects that create significant changes in land use, like tourism, mining, among other things, should be put up for vote in a popular consultation.

(Interview with lawyer, January, 2019).

A kind of regional popular consultation for the Southwest of Antioquia was first proposed, something similar to the intents in Santander and Norte de Santander, though the political climate was not seen as sufficiently mature (Interview with activist, February, 2019).

A couple of years later the idea was revisited. In May 2014, Pueblorrico hosted the fourth regional *cabildo abierto* on mining problematics in the Southwest of Antioquia, in which various tools of citizen participation was again discussed (González Díaz, 2018). The popular consultations carried out in Piedras and Tauramena in 2013, had shown that it was actually possible to carry out a popular consultation related to mining and extractive industries, and it was seen as a viable option also for the municipalities of the Southwest of Antioquia. After the

meeting, environmental and social groups in various municipalities in the Southwest of Antioquia decided they would try to promote a popular consultation in their territory, among them Pueblorrico, Támesis and Urrao.

Intents of popular consultations

In June, 2014, a committee whose goal was to draft and promote a popular consultation in Pueblorrico was born (González Díaz, 2018). When the social groups in Pueblorrico decided to go forward with a popular consultation in their territory, they wanted to do it differently. In Pueblorrico they did not necessarily disagree with the municipal agreements that had been implemented in other municipalities in the Southwest of Antioquia per se, but the way they were employed. Some people felt it was a copy-paste of agreements drafted by lawyers without including the groups they said they were protecting in the process:

We, when the municipal agreements came about, we took a very critical stance. Because first, the municipal agreement is a construction by lawyers, in a language of lawyers. And the way it was implemented excluded participation, both from social organizations and from the people. (Interview with activist, February, 2019)

After reflecting on the experiences of the municipal agreements in nearby municipalities, they decided that they wanted the popular consultation to truly be an initiative from and to the people. And they wanted it to have positive connotations. All the popular consultations that had been carried out had a question where the organizers wanted the voters to say no to mining. In Pueblorrico they wanted a question where people said yes to life.

The question that was agreed upon was the following: > Do you agree, yes or no, that in the municipality of Pueblorrico, Antioquia, the rights to life, water and the territory are declared

as sacred, supreme, autonomous and collective rights that are above any project of mining, energy, commercial treaties and extractive industry?³³(La Calle 30, 2014)

Even though they were warned that there was no possibility that the intent would be approved, because sacred rights are not recognized in the constitution, they decided to go forward with the intent. The intents in Támesis and Urrao do not lead anywhere as well. A couple of years later, Pueblorrico made a new attempt, with a question similar to the one that was posed in the popular consultation in Cabrera, but again the Administrative Court of Antioquia shut it down.

In the case of Jericó, the possibility of a popular consultation was never seriously considered. There were discussion about whether or not to go forward with a process of popular consultations, but, just like in Cajamarca, there was a lot of uncertainty about how big part of the population supported or opposed the Quebradona project. Because of this, going forward with a popular consultation was deemed risky. Later, when the intents in Pueblorrico and Urrao were shot down by the administrative court of Antioquia, it was seen like an impossible task to get a proposal approved. Some of the participants I spoke with in Jericó lamented that they hadn't started a process of a popular consultation in the municipality earlier, while they still had the chance.

Second round of municipal agreements

In 2017, various municipalities in the Southwest of Antioquia made new attempts at prohibiting mining in their territories. Even though all the municipal agreements that were put into effect in 2012 and 2013 were invalidated by the administrative court of Antioquia, and the

³³ ¿Está de acuerdo, sí o no, que en el municipio de Pueblorrico Antioquia, el Derecho a La Vida, al Agua y al Territorio sean declarados Derechos Sagrados, Supremos, Autónomos y Colectivos que están por encima de cualquier proyecto minero, energético, tratados comerciales e industria extractiva?

attempts of popular consultations were dismissed by the same court, the general climate around local governance and extractivism as a result by various rulings by the constitutional court in 2016 gave the municipalities the possibility to try again.

On the 28th of May, 2017, the municipal council of Támesis voted unanimously in favor of a new municipal agreement prohibiting mining in the territory (Martínez Arango, 2017). Again being the first municipality in the Southwest of Antioquia taking the initiative against mining. After the vote, the president of the local municipal council³⁴, Pedro Juan Martínez, stated that he hoped the municipal agreement would achieve the desired effect, and if not, they would be looking at other constitutional tools, like a popular action (acción popular) or popular consultation (Martínez Arango, 2017).

Again, other municipalities followed suite. In June, with a vote of six against four, the municipal council of Jericó agreed on protecting the whole territory against mining (El Espectador, 2017). By December 2017, ten municipalities in the Southwest of Antioquia had prohibited mining through municipal agreements³⁵ (Semana, 2017). Just like with the municipal agreements in 2012 and 2013, this new round of agreements prohibiting mining were not received well by the governorship of Antioquia, nor the ministry of Mining and Energy. Dora Elena Balvín from the ministry of Mining in Antioquia emphasized the role of mining in the history of Antioquia: «Mining is one of the most traditional activities of the department, because of this we have 1.400 mining titles. The vocation of our land is to a big extent mining», while stressing that only the national government can make decision on the uses of the subsoil

³⁴ Leader of the municipal council, and voted by the council members. A different role than that of mayor of a municipality.

³⁵ The municipalities of Támesis, Jericó, Urrao, Titiribí, Jardín, Concordia, Betulia, Tarso, Salgar and Pueblorrico.

(Semana, 2017). All the agreements are denounced as unconstitutional and sent to the administrative court of Antioquia to be reviewed.

In November 2017, the court announces its first decision. The municipal agreement in Urrao was invalidated on the grounds that the municipal council have exceeded their limits (El Tiempo, 2017). In December, the municipal agreement in Jericó is annulled (RCN Radio, 2017). One by one, they all fell, whereas very similar agreements were deemed constitutional by the Administrative Court of Huila (Negrete Montes, 2017).

Ruling by the Council of State and third round of municipal agreements

After the municipal agreement of Urrao was invalidated, the promoters of the initiative interposed a tutela, denouncing the decision by the administrative court of Antioquia as unconstitutional. They argued that the court did not take into consideration the jurisprudence regarding territorial decisions in extractive governance by the Constitutional Court. In October 2018 the Council of State finally made a ruling regarding the case. The ruling was in favor of the municipal agreement in Urrao. The ruling was completely contrary to ruling SU-095 issued by the Constitutional Court only shortly before. In Jericó, a new municipal agreement was quickly drafted and approved, prohibiting mining in their territory for the third time in six years.

Although some people argued that the ruling against popular consultations included all kinds of local decisions prohibiting mining, including municipal agreements (as was the view at the office of AngloGold Ashanti in Jericó as well), others saw it differently.

3.2.4. Abrazo de la montaña

Since the creation of COA in 2011, the organization has organized two journeys around part of the Southwest of Antioquia as a way for people to better get to know the sub-region, and also to spread information on environmental concerns. The journey goes under the name

of *abrazo de la montaña*, or hug of the mountain. Some legs of the journey are carried out by bus, other parts are done by foot. Some people partake in the whole journey, whereas others might join in on parts of it. The first one was organized in 2012 and lasted five days. It started in the town and municipality of Valparaíso and ended in Jardín, going through Caramanta, Támesis, Jericó, Pueblorrico and Andes, as well as the indigenous reservations of Bernardino Panchi and Karmata Rúa. In 2016, a second journey was carried out. This one went in the opposite direction, starting in Jardín and did a longer journey, lasting a whole week; adding Hispania, Ciudad Bolívar, Peñalisa, Bolombolo and Tarso to the journey. A third version was carried out in 2019. In each municipal center a different activity, or workshop, is carried out on topics ranging from biology and environmental concerns to extractive industries, peasant economies, indigenous culture, democracy and citizen participation. Getting to know the territory in general, and to let people get to know the territory to achieve a higher appreciation of it, seems to be an important goal of COA and also other organizations in the region, and this is one of the ways they are trying to do this.

3.3. Juridical tools only a part of the equation

What I noticed during my fieldwork is that even though popular consultations has been seen as this big, important tool for citizen participation and territorial autonomy in extractive governance, many people within the movements see it as just one of many. That there are other processes that are equally or more important. There were also some participant who felt that the use popular consultations in and on itself did not necessarily equal citizen participation. As we saw with the groups in Pueblorrico. Still, popular consultation was seen as a lot more inclusive than for example regulating mining through municipal agreements.

In Tamesis the sentiment of constructing territory and identity has been a very important part of the process of resistance to mining and other environmental and social issues (Hincapié Carmona, 2015; Maya Taborda, 2016). In the words of one my participants in Tamesis:

We have one thing very clear. The juridical is only to give time. There are long term, medium term and short term processes. In the short term are the juridical processes. In the medium term is for example educating the children, organizing groups, raising public awareness. Long-term is the agroecology and everything that comes with it. The change of mind, the spirit, spirituality. We have to return to the indigenous, to the direct contact between man and mother nature. We have to work with these three terms at the same time. (Interview, January, 2019)

These sentiments seemed to be stronger among peasants and those more directly working with and living off the land, whereas a more pragmatic and practical view of law and juridical tools was more often found among urban activists and bigger landowners. Various of those I spoke with regarding the Quebradona case also expressed a slight disappointment with the social movements in Cajamarca and Piedras. They felt the activism there had focused too much on the popular consultation. That the popular consultation was a goal in and on itself and that the work ended as soon as the votes had been counted, and the municipal agreement signed. This view did not necessarily match my own impressions from my fieldwork in Tolima, though there might have been a shift in sentiments after the consultation when people started to be uncertain of its longevity. As one of the participants I spoke with in relation to the La Colosa said:

Where should we not fall? To let the discussion fall into only one aspect. It doesn't serve us at all to now have a clear understanding of the juridical, if we don't have a social movement that legitimates it in the streets, and who express themselves. . . . Understanding that there are many tools. That the technical is key, but that the discussion can't only be technical. . . . And while we discuss this [technical details], we are losing the connection with the people, with the civil society, which is the most important. This is what we always have to win, the people, and these are the tools: Juridical, academic, technical, and additionally, philosophy, culture, ancestral or religious.

At the same time, many people expressed a maturing from all actors within the movement. Peasants and activists used to do their activism through demonstrations, road blocks and national strikes had gotten an increased appreciation for the law and constitutional rights and how they can actually be used to protect what they hold dear. This might be explained by seeing how it works, but also through an increased awareness of their rights, and thus feeling more included in the process. Many of my participants (both related to the La Colosa and Quebradona case) had taken part in workshops and courses on the environment as well as environmental and social law—like the open environmental course at the University of Tolima, and courses held by organizations in Bogotá. On the other side, activists felt that the lawyers working with and helping their cause had matured, that they had become less arrogant and feeling like their solutions and law could fix everything, to getting a better understanding and grasp of the social and territorial situation where they were working.

4. Discussing the use of popular consultations in extractive governance in Colombia

When Roa-García (2017) looked at the development of the use of popular consultations in extractive governance Colombia, the use of popular consultations was on the rise. The Constitutional Court had been issuing various rulings that gradually gave more support both to the territorial autonomy of the municipalities, but also to the usage of popular consultations in extractive governance. In her conclusion she writes that:

There is enough evidence to suggest that a process of environmental democratization is in motion in Colombia, supported by the high courts and an increasingly aware and capable citizenship. The multiple cases of citizen participation mechanisms that have been activated in many countries in Latin America as emerging and evolving institutions in the context of mining conflicts suggest a broader trend towards environmental democratization (Roa-García, 2017, p. 69).

Since then it has become evident that equally strong forces were trying to stop this environmental democratization process, and in the end those were the ones that succeeded. It is not very likely that popular consultations will be used in extractive governance in the future, still, there is a lot of understanding that can be garnered from this experience.

4.1. Strengths and limitations

One of the most alluring aspects of the popular consultation was its combination of direct democracy—a way for the community to clearly show their opinion—and legally binding results. In the word of a local politician in Ibagué:

The goal of the popular consultation was clear. It was to first generate a popular mandate that later could not be discredited by any actor, it could only be revisited through another popular consultation. (Interview, February 2019)

Many of those I spoke with during the fieldwork felt that the popular consultation was the most useful tool that they had been able to employ in the political and juridical context in which it was used—with few viable options. At the same time, some of those I spoke with did not necessarily consider it an ideal tool to use in extractive governance and that new tools should be considered. Tools and mechanisms in which municipalities and communities can be included in the process of extractive development in a more inclusive way than what is done today. The need for a new mechanism was also the posture of the Constitutional Court in ruling SU-095, and was repeated, though a tool as strong as the popular consultations was is unlikely that will be considered, if any new mechanism is brought on the table. Despite the legally binding results and strong symbolism of the popular consultation, none of the activists I spoke with considered the popular consultation as the most *important* tool they employed. It was useful, but it was only one part of a bigger equation that would not be possible without all the other work that was happening in the local communities, like educational programs, agroecology projects and inclusive and sustainable development³⁶.

³⁶ This was especially the case in the communities where the socioenvironmental conflict has lasted for a longer time, like in Cajamarca, Támesis and Jericó, whereas it was not as evident in Piedras.

Through my research, it also became evident that even though popular consultations did have some kind of juridical legitimacy for a while, one of the biggest limitations during the years 2013-2018, was the uncertainty and changing juridical climate, as well as being seen as illegitimate by the national government in Colombia. If we look at different territorial levels, we can see that although popular consultations has been a valuable tool for many, it has not been equally available for all parts of the country, limiting its role.

4.1.1. Local level

Communities where the local government have been supporting citizen initiatives have been more likely to bring forth and carry out a popular consultation. Despite the change of rules with the new law of participation in 2015, where a popular consultation can be called with a sufficient number of signatures, only one municipality has successfully carried out a popular consultation this way: Cajamarca. All the other successful initiatives have had support from the local communities. Among the suspended popular consultations, there are some, and among those that were in the planning process by the time of the ruling SU-095, there are a lot more, though they never had a chance to be carried out. As the uncertainty have been big and jurisprudence have changed quickly, those who managed to act quickly when there was a favorable climate (or take everyone by surprise, as the case of Piedras), have had a headstart. As the process of organizing a popular consultation through signatures is slower and longer than through support in the municipal council, the communities without this support have normally lagged behind in the process. Another finding is that municipalities that have a strong presence of an enterprise wanting to extract minerals have higher level of conflict within the communities, and more often have local government (as well as bigger part of the population)

There was a lot of community work happening before the popular consultation in Piedras, but this does not seem to have sustained itself in the same way as it has other places.

supporting the extractive project. For example the communities of Piedras and Támesis being seemingly more unanimously against the planned mining projects than Cajamarca and Jericó. The social movements in community centers with the presence of a mining company seem slightly more apprehensive about starting a juridical process, as they are unsure about the level of support among the population.

4.1.2. Regional level

At regional level, I have noted especially two tendencies. One is that various municipalities within a region usually work together to some degree or another, and often plan and discuss how to deal with extractive plans or mining titles in the territory together. This can for example take the shape of how it has been done in the Southwest of Antioquia, with bigger organized meetings (concejo de concejales) where both local politicians and organizations from many different municipalities meet to discuss various options and courses of action; or for example the shape of how it has been done in Tolima, where the Environmental Committee of Ibagué has been a central player and Ibagué a meeting point for different movements and organizations in the department of Tolima. When one municipality is successful, others are usually ready to follow suite, often employing the same lawyers and organizations, and using the same formulae in their propositions. Or, use the experience from the nearby communities to define a different route of action. Either way, there is usually a lot of interchanging of information and strategies between the different organizations, both between groups within a municipality and across different municipalities within a region (and also across regions as we will see in the next point). The deviation from this is when a process has the possibility to transcend the traditional ways of how activist and social movements are operating, like the first popular consultation against mining in Piedras, where the momentum of surprise can be advantageous. In those cases, the involved actors tend to keep their cards close to their chest,

but are usually generous with information after the fact. That way you often see a series of intents of for example popular consultations or municipal agreements within the same region or sub-region, as was the case with municipal agreements in the Southwest of Antioquia and in the department of Huila, and popular consultations in Tolima and Casanare.

A second finding is that no matter the support for juridical mechanisms at the level of the municipality, if the regional administrative court oppose a proposed initiative, it is difficult, or almost impossible to carry out. This can help explain how the locally supported intents in the Southwest of Antioquia were not as successful as other places, both when it comes to municipal agreements and popular consultations. Some of these differences can be explained by different municipalities posing different kind of questions for their popular consultations, some which might be easier to deem constitutional than others. Still, as all the municipal agreements in the Southwest of Antioquia were invalidated, whereas the ones in Huila were not, and none of the intents of popular consultations in Antioquia have been approved, one might be able to conclude that the different administrative courts operate by different standards³⁷. Municipalities with stricter administrative courts (like Antioquia) were thus not able to carry out popular consultations despite them being deemed constitutional at national level.

4.1.3. National level

At national level the Colombian government, and various governmental institutions, have claimed that the use of popular consultations in extractive governance is illegitimate and unconstitutional since the beginning, while continuously working against it. This have happened through decrees and tutelas, and when that hasn't gone through the way it was hoped, through threats and sabotage. The Procuraduría for example have threatened many mayors and

³⁷ Though a proper review of all proposition for popular consultations in Colombia, and the arguments to approve or decline them would be needed to properly answer that question.

members of municipal councils of the legal repercussions if they were to decide to go forward with a proposal of a popular consultation. In the popular consultations that have been carried out, voting tables have often been reduced, and in 2017, funding to carry out the planned popular consultations was cut, suspending many popular consultations. The continuously changing and uncertain juridical climate has made it hard to know what to expect, both for the social movements and extractive. Some communities have been unlucky (others lucky) with the moment they have proposed their popular consultations.

4.2. Popular consultations, judicialization of politics and judicial activism

As Cepeda Espinosa said in 2005:

«The difficult question is whether or not the system designed in 1991 is ultimately sustainable. The «losers» are often powerful interests that may combine forces to push forward constitutional amendments to reduce the power of the court.» (Cepeda Espinosa, 2005, p. 100)

This is what we have seen in the case of the use of popular consultations in extractive governance. Which has pushed the institutions within the government as well as affected industries, against rulings by the constitutional court.

When the constitutional court issued rulings supporting the use of popular consultations in extractive governance, it was blamed as being activist (El Espectador, 2019; Martínez, 2018). Likewise, when the constitutional court started issuing rulings going against this usage of popular consultations, civil society groups and activists touted the court as coopted. The biggest battles have taken place in courts, with both sides issuing tutelas, wanting the courts to make a decision in their favor.

As have been noted by scholars like , the judiciary and courts are increasingly being used by social groups and movements in Colombia. As more and more people are becoming aware of the power of the Colombian constitution, while at the same time not getting forward through political means, or because the political climate is too dangerous to operate in. This is something I also noted during my fieldwork. Lawyers and judicial processes were important in the activism, with tutelas being frequently used. For example, when during the Hay festival in Jericó in January, 2019, a group of farmers and activist demonstrated at one of the exploration platforms of AGA, one of the lawyers who have been implicated with the groups helped the activist that the political and judicial road would be better to take. The municipal agreements in Jericó and other municipalities in the Southwest stopping mining projects have been invalidated various times, but each time this happens, the decision is.

A legal language and legal processes are just as important as political processes. Both in the case of Piedras and Cajamarca, lawyers were employed or helping out in the general process and in formulating the questions that were to be asked in the popular consultations to make sure that they were constitutional. Lawyers have also been important in the formulation of the municipal agreements in the Southwest of Antioquia and in the tutelas that have been posed against their invalidation. Tutelas have been used both to try and invalidate and validate the use of popular consultations in extractive governance, and its mainly the decisions taken by the constitutional court that has decided the road of the use of popular consultation in extractive governance and not necessarily the national or local government, though they all have tried to influence the courts.

Further, when one road is closing, the groups—and their supporting lawyers and lawyer organizations—try to find other routes they can employ, that also usually involves the judiciary. For example, to further protect the area in Cajamarca against mining after the

uncertainty of how long the popular consultation will be able to stop the mining project, social groups in Cajamarca has teamed up with the lawyer organization Tierra Digna and declared parts of the river system a person of rights. Some times they are looking for a final solution, and other times various processes are used to drag out the time. After the ruling by the Constitutional Court that stopped the use of popular consultations in extractive governance, various municipalities around the country, most notably in the Southwest of Antioquia, but also other places—like Salento in the department of Quindio—tried to keep up with their municipal agreements prohibiting mining.

The use of the judiciary in the question of territoriality in extractive governance is just one of numerous examples in Colombia where social groups are employing judicial activism.

Though judicial activism has been especially fruitful in Colombia—a country in which people have one of the easiest access to the courts in the world—this judicialization of activism is not necessarily looked positively upon among the local activists themselves. Though various people I spoke with said they were forever grateful for the help they had received from lawyers, many felt alienated from the process because so much of the work took place between lawyers behind closed doors. This was especially the case with the municipal agreements in Jericó and Támesis, and to some extent the popular consultation in Piedras. Though in the case of Piedras the rest of the process of carrying out a popular consultation was very inclusive.

5. Conclusion

Despite the Colombian government's effort to stop the use of participatory tools in extractive governance, for a while, it did seem like an environmental democracy process was on the rise in Colombia in the spirit of the peace accord and the participatory tools of the 1991 constitution (Roa-García, 2017). This research shows that the ten popular consultations carried out in extractive governance between 2013-2018 can be seen as outliers, processes that managed to get through the cracks despite the government's vehement opposition to the use of the tool in this manner. It also shows how important the Colombian courts, and especially the Constitutional Court has been in the decisions regarding the use of popular consultations in extractive governance, a part of a bigger tendency of judicialization of politics in Colombia.

When the Constitutional Court shut down the use of popular consultations in extractive governance in Colombia, it made it harder for communities to participate in decisions in their territory. With conflict levels again rising, and social leaders increasingly being targeted—as well as the connection between mining projects and violence in parts of Colombia, this development is worrying.

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Popular consultations in extractive governance

1991

1991 Constitution

The new constitution opens up new modes of citizen participation, among them, the electorate tool of popular consultations. The constitution also states that the resources of the subsoil belongs to the State.

1994

Law 134/94

The new participatory tools are regulated in law 134 of 1994. According to this law, only the mayor in a municipality can call for a popular consultation.

Law 136/94

Article 33 in the municipality law states that when a development project might create a significant change in land use, or traditional activities in the municipality, a popular consultation should be carried out. This article will later be used to support popular consultations in extractive governance.

2001

Law 685 /2001

A new mining Code is passed. The new law makes the process of acquiring mining titles and starting exploratory processes easier. It also reiterates the state's rights to the subsoil.

2011

Consultation intent

The departments of Santander and Norte de Santander tries to organize popular consultations on departmental level to protect the páramo against mining. The consultation for Santander is approved, but is never carried out because the question is not added to the ballots for the local election.

2013

Decree 0934/13

In May, the Ministry of Mining and Energy issues decree 0934. The decree regulates article 37 of the Mining Code which states that the subsoil belongs to the State. The decree prohibits municipalities from prohibiting extractive development in their territory. It is later deemed unconstitutional.

2013

Popular Consultations

In July, first popular consultation against mining is carried out in the municipality of Piedras (Tolima). A few months later another consultation is held in Tauramena (Casanare) against hydrocarbons.

2014

Suspended consultation

The popular consultation planned in the municipality of Monterrey (Casanare) in April, is suspended because of a tutela interposed by Ecopetrol. Decree 0934/13 is used to justify the suspension.

Ruling C-123/14

The Constitutional Court deems article 37 of the mining code constitutional, as long as local authorities are taken into account to some extent, when making decisions in matters of extractive exploration and exploitation

2014

Decree 0934 unconstitutional

In September, the Council of State rules decree 0934/13 unconstitutional.

2015

Decree 2691/14

In December, the Ministry of Mining and Energy issues decree 2691. The decree again prohibits local authorities from regulating extractive industries in their territories. It is later temporary suspended.

Law 1757/15

A new law on citizen participation is passed. The law opens up for a group of individual, or an organization to initiate popular consultations through a petition. Ten per cent of the electorate needs to sign for the initiative to proceed. Through the new law, initiatives for popular consultations don't need the support of the mayor or local council.

2015

Suspension of decree 2691/14

The Council of State temporary suspends decree 2691/14 because it would limit the constitutional right of local authorities to make land use decisions in their territory.

2016

Consultation intents

Throughout the year, various municipalities try to organize popular consultations to regulate extractive development in their territory. All are deemed unconstitutional by their respective departmental Administrative Courts.

Ruling C-035/16

In February, the Constitutional Court issues ruling C-035. The ruling invalidates part of the National Development Plan for 2014-2018, and reaffirms local authorities autonomy when it comes to making decisions on land use in their territory. It also prohibits mining activities in páramos.

2016

Ruling C-273/16

The Constitutional Court issues ruling C273, that removes article 37 of the Mining Code. Arguing that other contents of the constitution, like citizen participation, territorial autonomy and the duty to protect the natural and cultural heritage of the nation, are more important to uphold, than the State's right to the subsoil.

2017

Ruling T-445/16

In August, the Constitutional Court issues ruling T-445. The ruling states that local governments do have a right to make land use decisions in their territory, even when the decision might lead to a prohibition of extraction of minerals from the subsoil.

Popular Consultations

Between February and October, seven popular consultations are carried out:
Cabrera (Cundinamarca)
Cajamarca (Tolima)
Cumaral (Meta)
Arbeláez (Cundinamarca)
Pijao (Quindió),
Jesús María (Santander) and
Sucre (Santander).

2018

Suspended consultations

In October, the planned consultation in Granada (Meta), is suspended because the Registraduría is not able to allocate sufficient funds to carry it out. It is the first in a series of suspensions because of lack of funding.

Ruling SU-095/2018

In October, the Constitutional Court issues ruling SU-095, which states that popular consultations cannot be used to prohibit extractive projects. It also states that some mechanism of territorial inclusion or participation in extractive development has to be created.

Popular consultation

Despite ruling SU-095 by the Constitutional Court, Fusa-gasugá (Cundinamarca) decides to go forward with their popular consultation against fracking. The consultation is carried out on the 21st of October.

2019

Ruling C-053/19

In February, the Constitutional Court issues a ruling that removes article 33 of law 136/94. The article has frequently been employed when defending the use of popular consultations in extractive governance-



Norges miljø- og biovitenskapelige universitet
Noregs miljø- og biovitenskapelige universitet
Norwegian University of Life Sciences

Postboks 5003
NO-1432 Ås
Norway