



**By the gun or by the bribe:**  
Firm size, environmental governance and  
corruption among mining companies in Guatemala

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## Abstract

This U4 Issue discusses the corruption risks faced by mining companies in Guatemala, with a particular focus on the risks faced by small, “junior” mining companies primarily engaged in exploration. Several factors make such companies highly prone to engaging in corrupt behavior, especially when operating in weak institutional contexts: the highly competitive nature of the mining industry, the risky dynamics of the exploration stage, and the specific characteristics of junior companies – their short operational timelines, low reputational risks, highly mobile and flexible nature, and reliance on fickle venture capital. Additionally, public environmental governance, and in particular the approval of the environmental impact assessment, represents a moment of acute vulnerability to corruption, particularly for junior companies. In order to mitigate corruption risks among junior mining companies, donor agencies should help to build community capacity to monitor mining operations, build central state government capacity for environmental governance, work with countries to improve the rigor for environmental impact assessment processes, increase the visibility and reputational risks for junior companies, and build cultures of compliance in junior companies’ countries of origin as well as within companies.

# 1 Introduction

In this paper I advance several interrelated arguments regarding corruption among mining companies operating in Guatemala. I do so toward the goal of offering a series of recommendations for international stakeholders and donor agencies to combat corruption in the mining sector across the developing world. I identify two principal harbingers of vulnerability to corruption among mining companies—the size of the mining company and ‘moments’ of environmental governance, particularly the approval of the environmental impact assessment. An additional theme—the fungibility of bribery and violence as tools for rent-capture—crosscuts these two discussions. The organizing theme under which each of these discussions falls is a structural analysis of the mining production process and the division of labor by firm size in the global mining industry. In short, I argue that certain stages of production are earmarked for certain types of companies, which works to systematically invite and obscure the practice of corruption. Each of these vulnerabilities is intensified by the political-institutional weakness of the Guatemalan context.

The article proceeds as follows: In the remainder of the introduction I provide background and context to this research by briefly discussing the recent escalation of mining activity in Latin America and recent industrial restructuring in the global mining industry with attention to firm size. I then lay out the methods and justifications for undertaking this research. In section two I provide further background, exploring the particularities of corruption within the mining industry, and I elaborate a structural analysis of the global mining industry, drawing empirical support from the Guatemalan case, in which I argue that junior companies are structurally inclined to exhibit more unethical behavior than larger firms and that these smaller companies thrive under conditions of political institutional weakness. The third section elaborates the assertion that environmental governance generally, and the approval of the environmental impact assessment specifically, constitute moments of acute vulnerability to corruption, which is particularly pronounced where junior firms are concerned. Section four lays out a series of policy and programmatic recommendations for different stakeholders to combat corruption in the mining sector. Section five summarizes and synthesizes the arguments developed herein and offers some concluding thoughts.

## 1.1 The geography of mineral investment and the growth of junior companies

In 2006, writing about Southern Africa, anthropologist James Ferguson first commented on the growth in numbers of junior mining companies and their proclivity for thriving in weak political institutional environments. He observed that, "The most successful new mining ventures in Africa have been launched not by the giant conglomerates like Anglo-American Corporation that built Zambia's 'company towns,' but by small, 'flexible' firms operating in areas that are both mineral rich and weakly governed by national states" (205). Ferguson explains this shift as a function of reputational risk (i.e., smaller firms face less scrutiny and have less of a reputation to protect) and flexibility (i.e., smaller firms can adapt more readily to the capricious political conditions of weak states). This paper builds on these observations by demonstrating how, for these and other reasons, junior companies exhibit greater vulnerability to corruption than larger firms and thus should be a focal point for efforts to curb corruption in the mining industry.

There are three general categories into which mining companies are divided by size, capitalization and sources of revenue. Senior firms possess many production sites in multiple world regions and derive revenue from production and sales. These are the largest and best-known companies. Mid-tier firms operate a few sites, generally in one world region. Junior companies, the smallest of the multi-national

mining firms, are mostly devoted to exploration and derive their income from venture capital (Dougherty 2013a).

Over the past twenty years, the industry has witnessed a bifurcation in which the number of junior companies has grown while mid-tier firms have diminished. Although the 150 largest mining companies are responsible for 80% of global metal production, they comprise just four percent of companies. The approximately 1,000 mid-level companies account for almost all of the remaining 20% of production. Less than one percent of global metal production falls to junior companies, yet there are more than 2,000 of these companies operating across the globe. Global spending on exploration has jumped over the past twenty years, from USD two billion to 10.5 billion, as a response to the exhaustion of the large, long-standing and relatively accessible deposits of industrial and precious metals in wealth and middle-income countries. Most of this spending on exploration came from junior companies. In 1998 capital earmarked for exploration by junior companies totaled USD 1.6 billion. By 2007, that figure was USD 5.3 billion. In contrast, that same year, 2007, the combined exploration budget totals for senior and mid-tier companies combined was only USD four billion (Dillon 2007). The trends are clear. The numbers of juniors are expanding as the expenditures on exploration continue to grow.

**Table 1: Metal production and exploration by firm type**

	150 Seniors	1,000 Mid-tiers	2,000+ Juniors
% of global production	80%	20%	<1%
Global exploration 1998 (USD)	2 billion	5 billion	1.6 billion
Global exploration 2007 (USD)	2 billion	2 billion	5.3 billion

At the same time that juniors are proliferating, many regions of the global south are experiencing dramatic mining booms (Bridge 2004). In Latin America, for example, mineral exports grew by 300% between 2000 and 2010 (Dougherty 2011). In many cases, new host nations have little previous experience with mining industries and possess little capacity to regulate and monitor mining activity.

A variety of factors have contributed to these twin trends. Liberalized investment regimes across Latin America in the 1990s attracted mining capital. Further, many traditional, large-scale mineral deposits have passed peak production over the past couple of decades as intensified industrialization in the BRICS countries (Brazil, Russia, India, China and South Africa) has magnified demand for industrial metals. Demand for precious metals increased too, beginning a steep climb in 2005 in the lead up to the great recession that started in 2007. This supply- and demand-side induced scarcity has driven innovation in mining and milling techniques that have allowed for less concentrated and lower grade mineralization to be commercially mined, expanding the surface area of the earth available for exploration. These phenomena together have given rise to a “new great game” for geostrategic control of resource streams (Donnelly and Ford 2008).

Junior firms are designed to serve principally as exploration companies. As the surface area under exploration has expanded and the urgency of that exploration has intensified, so too have the numbers of juniors and the importance of their structural functions within the global mining industry (Dougherty forthcoming). As minerals become scarcer and demand increases, the competitiveness of

mining companies leads to rent-seeking behavior, which, in turn, leads to cost-cutting measures in the “secondary” areas of environmental and social management (Özkaynak et al 2012). This demand-spurred competitiveness is particularly pronounced for junior firms who derive virtually no revenue from production, and, instead, are largely dependent upon venture capital for their survival. Further, because juniors, owing to their size, are highly mobile and footloose and often subjected to less scrutiny than larger, better known companies, they demonstrate greater tendencies to operate below accepted standards of corporate ethics.

At the same time that mining investment is pouring into Latin America, corruption continues to be extremely pervasive throughout Latin America and has, in fact, increased slightly since the 1990s (Hakim 2014). Not only is corruption entrenched and pervasive in Latin America *per se*, but natural resource booms like the mining boom Latin America has experienced over the last decade, tend to intensify corruption, a pattern which is particularly pronounced in developing countries (Leite and Weidmann 1999).

## 1.2 Methods and research justification

Despite the renaissance of attention to mining issues in the social sciences over the past seven years, very little of this work has taken the mining industry as the locus of investigation and even less has prioritized differentiation within the industry by firm size as an analytic lens (Dougherty 2013a, Franks et al. 2014). There is a literature in business management that explores relationships between firm size and social responsibility, the general consensus of which is that smaller firms are less socially responsible than their larger counterparts (Lepoutre and Heene 2006). Yet no research to date has explicitly sought to connect firm size and corruption. For the reasons articulated in the preceding subsection, it is particularly crucial to integrate this focus on firm size into research on business ethics in the mining industry. These dynamics are all the more pronounced in weak political institutional environments. To address these gaps, this research sought to identify the particular harbingers of vulnerability to corruption among mining companies operating in Guatemala and the interaction effects between these vulnerabilities and firm size.

I conducted the field research for this paper in July of 2014 in and around Guatemala City, Guatemala. Using pre-existing professional networks, I conducted confidential key informant interviews with nine mining industry insiders. These included three former mining company managers, one former functionary with the Ministry of Environment and Natural Resources, one former and one current functionary at the Ministry of Energy and Mines, two self-employed consultants that contract regularly with mining companies, and one agricultural economist who studies the mining industry. I transcribed these interviews and identified common themes, which became the empirical foci of the paper. I complemented these data with interview data collected in 2009. This earlier dataset includes interviews with 15 representatives of the mining industry including managers and executives at gold and nickel companies. In what follows, I have made efforts to obscure identifying characteristics of the individuals being quoted to maintain their confidentiality.

Guatemala was chosen as the site for this research because it represents an extreme case, both in terms of the pervasiveness of corruption and in terms of the intensity of the mining boom over the past decade. Qualitative methods frequently emphasize the selection of "extreme cases" of the phenomena under examination rather than representative cases because the goal of most qualitative work is to extend rather than test theories. Therefore, case selection is made on the ability of the case to illuminate dimensions of a phenomenon, which extreme cases do particularly well. This approach is often referred to as theoretical sampling (Eisenhart and Graebner 2007). While the selection of a single extreme case may impede strict generalizability, it does not limit ability of the analysis to illuminate these same phenomena elsewhere.



Where a corruption-prone industry burgeons in a highly corrupt state, the results can be edifying for illuminating the harbingers of corruption. The mining industry is plagued with corruption. Nearly 40% of mining and petroleum companies bribe, and mining and petroleum are the fourth and fifth most susceptible sectors to corruption, after construction, utilities and real estate (Transparency International 2011). The Guatemalan state is, also, notoriously corrupt. In many cases, bribe taking is considered standard operating procedure for civil servants. Election fraud is a regular event, and conflicts of interest go unquestioned. According to Transparency International's (2013) Corruption Perception Index, Guatemala was the 52<sup>nd</sup> most corrupt country out of 175 countries ranked. In fact, corruption scandals have shaken the foundations of the Guatemalan state in the months of April, May and June 2015 with voluminous protests of over 60,000 citizens choking the center of Guatemala City. These protests led to the resignation of the country's Vice President, and threw the President's tenure into question (Repogle 2015). These scandals included a widespread and expensive tax corruption scandal and a social security scandal. Moreover, irregularities in mining and energy projects' contracting and permitting led to the resignations of two ministers of energy and mines and one minister of the environment in May 2015 (Cuffe 2015). For these reasons, Guatemala presents a particularly timely and appropriate, albeit extreme, case through which to explore these issues.

## 2 Junior firms as “dirty workers” within the global division of mining labor

### 2.1 Mining and corruption

The mining industry is structurally inclined toward greater levels of corruption than other industries for a variety of reasons. First, contrary to popular mythology, running a mining company is not necessarily a gold mine in the figurative sense of providing unearned, easily accessible windfall income. Mining is a risky venture, dependent on the vagaries of venture capital, and characterized by intense competition. These features produce rent-seeking behavior. Further, the pressures of financiers push companies to bribe to overcome bureaucratic hurdles in a time-efficient manner (Marshall 2001). If a company does “strike gold” the windfall profits can inundate municipal and even national state coffers with more revenue than they can metabolize, which can lead to graft and patronage (Karl 1997, Arellano Yanguas 2008).

Once construction begins, the fixed location, the huge capital outlay, the sunk costs, and the remoteness from urban centers encourage the company to defend their investments with all of the tools available to them, regardless of the ethics (*cf.*, Barham and Coomes 2005). The asset specificity of the company's investment can put them at a disadvantage in negotiations with the state (Bebbington and Bury 2013). Additionally, mining companies have many high stakes interactions with the state and local communities, which creates further opportunities to bribe (CIPE 2014). In most countries, the subsurface is owned by the state and mineral endowments are considered national patrimony, phenomena which render these negotiations particularly sensitive (Himley 2014). These tendencies are exacerbated by the corporate culture of the mining industry, which marginalizes social and environmental concerns and by the widely held public perception that the mining industry is dirty and exploitative (Rees 2009, Prager 1997).

## 2.2 Incentives and opportunities for corruption among junior companies

While the mining industry as a whole broadly tilts toward less ethical behavior than other industries, smaller companies may be particularly at risk. This is so for several reasons. Smaller companies run less reputational risk for bad behavior than larger counterparts. Second, as discussed, junior companies rely on finance capital to a greater extent than larger producers. This dependence on financing rather than revenue generates additional pressures. Third, some junior companies never intend to bring reserves into production. In fact, many lack the capital and technical expertise to do so. These juniors, rather than looking to develop a mine intend to license promising mineralization and sell up the food chain. They, therefore, face very short time horizons and are thus incentivized against investing in local communities and culture (Marshall 2001).

**Table 2: Incentives for corruption**

	Opportunity structure for corrupt behavior	Juniors	Seniors
Reputational risk	Disincentive	Low	High
Financial risk	Incentive	High	Low
Short time-horizon risk	Incentive	High	Low

This proclivity of junior firms for corner-cutting is not serendipitous, but is rather part of a structural organization in the mining industry designed to exonerate large companies from blame for controversy while still allowing them to pursue rents. Mining is a universally controversial activity, yet the large multinational companies must zealously defend their reputations as competent, even-handed and transparent technicians in the face of this controversy. They accomplish this partly by displacing the phases of production that lend themselves to unethical behavior onto smaller companies.

Junior companies are designated as exploration firms. They often explore with financing from senior companies and an understanding that if promising reserves are permitted, the senior waiting in the wings will acquire the junior and bring the deposit through production and closure. As one Ministry of Energy and Mines functionary commented, “The seniors are behind the juniors waiting” (Dougherty 2013a). This is a structural set up in which the stages of the production process that most lend themselves to corruption belong to the smaller firms.

Why do the early phases of mineral production lend themselves to corruption? First, there is a perception of less risk of environmental degradation from exploration than production. This means that the state oversight and permitting processes at the exploration stage are much looser than at the production stage. Further, the media, and often locals themselves, are unaware of the exploration activities, and exploration can fly under the radar. Second, early exploration, what is often called prospecting, can involve some disingenuousness on the part of the firm when seeking permission to drill on private property. A community relations manager at one mining company in Guatemala referred to his process of “stealing samples,” under the protection of night, from areas where the company held exploration concessions but did not have permission from the property owners to explore. Third, many times exploratory juniors undergo the permitting processes for the production license and take on the delicate task of acquiring the properties that will become the mine site. There

is a widespread expectation of both bribe-making and bribe-taking at the phase of the production permit. Additionally, the acquisition of properties, much like negotiating permission to explore with property owners, is often cloaked in deception.

In the case of the Marlin Mine—a large-scale open-pit and underground gold mine in Guatemala’s rugged and remote Western Highlands—the processes of property acquisition were deceptive, and this deception bred mistrust that continues to permeate community-mine relations fifteen years later. The Marlin Mine was permitted by Canadian junior Francisco Gold, which was bought by Canadian mid-tier Glamis Gold in 2002. Glamis then merged with another mid-tier, Goldcorp, to create the senior Goldcorp, the current operator of the Marlin Mine, in 2006. Glamis Gold contracted with a real estate company to negotiate the initial land purchases for the area that became the Marlin Mine. The real estate company obscured the fact that the property was being purchased on behalf of a mining company for the construction of a mine. Further, the company offered prices ten times greater than the market value of the land and insisted on purchasing the land as a lot rather than negotiating with individual owners. This created intense social pressure that forced the hands of hold outs, leading to rancor and divisions in the community. It wasn’t until the transactions were finalized that it was revealed that the purchases had been made on behalf of a mining company. All of this led to a widespread perception on the part of local residents that, at its foundation, the Marlin Mine was a product of trickery and duplicitousness (Dougherty and Olsen 2014).

Once the company has purchased the property and the state has granted the production permit, senior companies that have been waiting in the wings may acquire the junior or mid-tier companies that brought the reserves into development and thus “inherit” their properties. Of course the controversy and conflict is passed on as well, but the new owners can deflect criticism by blaming the previous owners. While Goldcorp inherited the legacy of duplicitousness at the Marlin Mine, they can claim to not have generated it. Further, the new owners, as was the case with Marlin, may claim that the acquisition of the controversial or problematic property was not the target of the merger but was “incidental” to the goals of the merger. This further exonerates the company from criticism that “they knew what they were getting into.”

### 2.3 Mergers, acquisitions and “nonpoint source corruption”

The structure of the mining industry designates junior companies to accomplish the industry’s dirty work, which enables senior companies to benefit from juniors’ rent-seeking strategies while deflecting responsibility. This setup partially explains the stark frequency of mergers and acquisitions in the mining industry. Juniors are regularly acquired by larger firms, which means that not only are these smaller companies less visible by virtue of their size, but they are destined to disappear in short order, changing names several times as they merge, are absorbed, or go dark. These tendencies work to further obscure accountability for bad behavior, creating what might be referred to as “nonpoint source corruption.” Nonpoint source pollution is contamination, generally of waterways, that is diffuse in origin and cannot be traced to a single source, making it very difficult to prosecute. Corruption in the mining industry, though not perfectly analogous, is similarly challenging to trace. An Ernst and Young report on corruption in the mining industry (2010: 10) notes that, “To date, more than half of the [United States Foreign Corrupt Practices Act] violations have arisen in the context of a merger or acquisition.”

In examining the recent history of mergers and sell-offs in Guatemala, two salient patterns emerge, which can be understood as two separate historical periods. The first period, from 1999 to 2008 is a story of the consolidation of junior and mid-tier companies into senior firms. Such consolidation is characteristic of the mining industry. The Marlin Mine exemplifies this arrangement. The second period, from 2008 to the present, is a story of the dismantling of senior control of major mine sites in

Guatemala in which intensifying controversy and state weakness drive seniors away and produce an enabling environment for small companies with little direct mining experience. These patterns corroborate James Ferguson's (2006) observations that junior companies are better suited for weaker, more capricious institutional environments given to corruption and violence.

Two well-documented "red flags" for a mining company's propensity for corruption include lack of transparency around ownership and little previous experience (CIPE 2014: 19). Below I provide brief descriptions of several key mine properties in Guatemala with a focus on how management of these properties has changed hands and the experience and expertise of the companies currently developing these projects.

**Table 3: Descriptions of mergers and mines**

Mine	Description
El Escobal	<p>In November of 2009, former Glamis and Goldcorp CEO Kevin McArthur formed Tahoe Resources, a tiny company headquartered in Vancouver. Tahoe was formed to assume development of the El Escobal silver and gold deposit from Goldcorp. The Escobal mine is located in San Rafael Las Flores, Santa Rosa in Guatemala's eastern lowlands. Escobal was Tahoe's only asset. And while most of Tahoe's management had substantial experience, the company itself had no prior experience.</p> <p>Since 2012, tensions have been high around El Escobal. In March 2013 these tensions allegedly led to the kidnapping of four and the murder of one anti-mining activist. A month later, in April of 2013, company security engaged in a standoff with protestors and fired into the crowd, seriously injuring seven protestors. The head of security was caught on tape instructing his employees to shoot protestors and subsequently was caught and imprisoned while attempting to flee the country. Victims of the shooting later became plaintiffs in a lawsuit against Tahoe Resources. Just a month after the shootings, the President of Guatemala, Otto Pérez Molina, declared martial law in the area and deployed riot police to the scene of the ongoing protests. A year later, in April of 2014, further violence led to the death of a protestor. It has been reported that Tahoe Resources has sought to hide these controversies from its shareholders (Lakhani 2014).</p>
El Fénix	<p>Two hundred miles north and east of El Escobal, in the Caribbean-influenced Department of Izabal, lies the Fénix nickel mine. El Fénix was initially developed in the 1970s by the International Nickel Company, but was shuttered until 2004 when it was taken over by Canadian junior Skye Resources, for whom Fénix was its principal asset. Skye sought to develop Fénix through its national subsidiary, Compañía Guatemalteca de Níquel (CGN). They quickly discovered that in the two decades since INCO's departure, the lands had become occupied. Skye Resources' efforts to reopen the mine led to well-documented, violent evictions of peasant squatters, which set the tone for a tense and brief Skye Resources experience in Guatemala. Skye sold Fénix to Canadian Mid-Tier Hudbay Resources in 2008. Three separate law suits were brought against Hudbay in Canadian courts, beginning in 2011, alleging violence, including several rapes, against community members perpetrated by representatives of Hudbay. Hudbay sold Fénix to a Russia and Cypress-based company, Solway Group, in 2011. Solway is not a mining company per se, but an investment management conglomerate with various overlapping interests. It has investments in a few mining operations scattered across the globe in notoriously risky political environments such as Laos, the DRC and Guatemala.</p>

<b>Mayaniquel</b>	Referred to as the Sechol deposit, this series of nickel licenses along the shores of Lake Izabál, was developed by Jaguar Nickel, an Australian junior, beginning in 1998, until its takeover by BHP Billiton in 2006. In 2009, BHP Billiton sold Mayaniquel to Anfield Nickel Corp, a diminutive junior for whom Sechol was its only asset. In 2013 Anfield sold Mayaniquel to Cunico Resources. Cunico is a small company that runs nickel processing plants in Macedonia and Kosovo and has recently acquired exploration licenses in Guatemala covering an extensive amount of territory. Cunico is not, as of yet, a mining company in the sense of having successfully permitted and brought a deposit into full production.
<b>El Tambor</b>	Vancouver-based junior exploration firm Radius Gold, acquired an exploration license through its Guatemalan partner company, Exploraciones Mineras de Guatemala, in 2003, for the El Tambor mine just miles from the El Sastre Project, in the Department of Guatemala, municipality of San Jose del Golfo. Radius sold licensing of the El Tambor mine to Kappes, Cassidy and Associates (KCA), an American company, in 2008. KCA is generally a mineral engineering firm, rather than a gold production company. Since 2011 this mine has been the site of a peaceful local resistance that has blocked vehicular access to the mine site, although the responses from the company and the state have not always been peaceful. Since 2012, there has been intermittent violence including the shooting and serious injury of one prominent anti-mining activist.
<b>El Sastre</b>	In 2006 Aurogin Resources permitted a small gold operation, near Guatemala City, in the Department of El Progreso. The following year Aurogin merged with Castle Gold, a Canadian junior producer. In early 2010, Argonaut Gold, another Canadian junior acquired Castle Gold. In late 2010 Argonaut sold El Sastre to local investors.

In each of the cases described in Table 3, the deposits were initially explored by very small companies and were subsequently taken over by larger firms. These larger firms, however, struggled to find footing in Guatemala's atmosphere of contention and impunity, and thus smaller companies retook control. This pattern exemplifies "nonpoint source corruption," a lack of transparency about ownership that confounds efforts to track responsibility. Further, none of the firms that currently manage these projects had any substantive experience bringing deposits into production, nor did they have any prior experience operating in Latin America, another corruption red flag.

## 2.4 Junior companies and political institutional weakness

State corruption, political weakness and impunity, along with the Guatemalan state's eagerness to support its mineral-led development trajectory and the ubiquity of private security forces in Guatemala, have converged to generate an enabling environment for junior companies with no previous mining experience to mine by force across Guatemala.

Junior and senior companies diverge in terms of the political environments in which they operate for four chief reasons: 1) Once again, reputational risk is a factor. 2) Senior companies possess more complex bureaucracies, which require greater transparency. 3) The flexible and footloose character of juniors allows them to shape-shift quickly to accommodate capricious political environments, and 4) their lower levels of capitalization, smaller profit margins and dependence on fickle venture financing to survive produces a "high risk/high reward" mentality that leads them into weak institutional environments.

Senior companies like Goldcorp imagined Guatemala to be a bonanza of untapped mineral wealth in the heady years following the Peace Accords and the 1997 Mining Law, which lowered royalty rates

for mining companies from 5% to 1%. But as state weakness and violent conflict wore them down they began seeking exit strategies. As one Goldcorp manager commented,

Quite frankly, Goldcorp is more interested in investing money in Mexico, where the government is stronger. There are all these other issues in Mexico right now because of narco-violence, but related to mining, the mining law, the mining history...if you get a mining license in Mexico, you are not really very worried that the government is just going to dissolve your license. We are looking pretty heavy at Colombia too because Colombia has a pretty strict permitting framework, which we like because the stricter the better. The more formulaic, the more secure. Mexico is pretty interesting, obviously. So we are actually looking, as a corporation, not so much at Guatemala as maybe we once would have.

These same phenomena are reflected in comments by a former Ministry of Energy and Mines (MEM) functionary and former mine manager regarding the divestment of a multinational mining company from Guatemala in 2009:

Interviewee: Bribes never make it to the public light. What I know is that the Ministry of Energy and Mines is very corrupt. There was a big mining company called [confidential]. They had an exploration operation. And they left the country because it was too much.

Author: What do you mean, ‘too much?’

Interviewee: Things just didn’t move, you know? They invested a lot of money. They had to give many handouts [bribes]. And they decided, ‘Nah. We’ll move our capital elsewhere. There comes a moment in which you reach *desgaste* [exhaustion]. It’s that daily grind...because the MEM is very political. Their work is to oversee mining operations, and they couldn’t do that because they didn’t have enough money for fuel. So they [the company] left. They could do this because they had better investment options.

This interview snippet gives some insights into the linkages between institutional weakness (e.g., the Ministry of Energy and Mines’s lack of financial resources sufficient to accomplish their basic charge as a regulatory body), bribe-taking, and the divestment of large, senior mining companies. These firms divest because of the anxiety and transaction costs related to operation in corrupt environments but also because, in the words of this industry insider, they have other options. The driving competition that characterizes the junior segment of the industry is simply not a consideration for the largest companies.

In addition to reputational risk, junior firms thrive in weaker, more corrupt institutional environments partly because smaller companies have smaller bureaucracies, which require less transparency. Mancur Olson (1965) describes how smaller organizations achieve their objectives more efficiently and with less need to rely on rules and formal sanctions to incentivize members because smaller groups provide less anonymity for members, which intensifies the social sanctions on free-riding behavior. Larger organizations have to rely on bureaucracy and formal sanctions to motivate behavior.

When Glamis Gold became Goldcorp, many of the Glamis directors and executives became Goldcorp employees. Across the board, former Glamis and current Goldcorp managers talked about the more defined and complex bureaucratic structures at Goldcorp. One director, for example, stated, “Goldcorp is a larger company. Glamis was smaller so it had less paperwork, less bureaucracy and less structure.” Another Director commented, “at Glamis, our motto was ‘keep it simple.’ I report to [confidential] but if I also have a direct link to the Vancouver office. I can go directly to the COO, to the VP of Legal. You see companies like Newmont, Barrick, it’s a process to get to the top.” Directors

at other mining companies shared similar experiences. One CSR director at a multinational mining company stated, “when I moved to the parent company [from a smaller subsidiary] I was trying to do similar things. I had total freedom in the small company to implement my systems, but in the big company, since there’s a lot more at stake, it wasn’t possible. If I tried to do something on my own, my boss would say, why are you doing it like that?”

Junior companies further thrive in these weak institutional environments because their small size and fly-by-night flexibility enables them to react quickly to capricious political environments. This phenomenon is particularly the case during the prospecting and exploration phases prior to sunk investment in mine infrastructure.

Finally, the competition that characterizes mineral production, particularly around the precious and semi-precious metals that make up most of Guatemala’s multinational mining investment, is uniquely intense for junior firms. This is so because of their sheer numbers and also because junior firms depend on finance capital rather than production-derived cash flow. This intense competition generates a high-risk/high reward mentality among many junior companies, and weak institutional environments are high risk/high reward environments. Permitting processes are unclear and capricious, the fear of expropriation always looms, and protest frequently disrupts production. These factors elevate risk levels. But royalty and tax rates are very low, and the price of labor is relatively inexpensive. Environmental regulation is lax and intermittent, and corruption presents an opportunity to bypass even these basic safeguards. Therefore, if a company can bring a mine to production in these environments, they can produce at exceedingly low cost-bases. Thus there is the potential for high reward. As James Ferguson (2006: 206) has suggested, “for juniors, the “disadvantages [of investing in weak states]...are compensated by countervailing advantages.”

In Guatemala, junior firms surround themselves with well-armed and inexpensive private security to force their way in to resistant communities. This often leads to violence perpetrated against protestors. Violent scenarios have played out multiple times around Fénix and more recently at Escobal and El Tambor. A former functionary at the Ministry of the Environment and Natural Resources and current private consultant to the mining industry, made this argument with respect to the sale of the Fénix property from Hudbay to Solway. “The Russians were the only ones [after the lawsuits against Hudbay] who said, ‘We’ll work here. We’re not afraid.’ And so they came in. The other companies are very careful about the social dimensions of their work. In contrast, I imagine that the Russians are culturally more willing to take risks. They said, we will mine here and that’s it.”

In sum, as the Guatemalan state weakens, rule of law thins out, and violence and impunity permeate, senior firms are disincentivized from investing. In contrast, this environment is attractive to many junior companies. These forces move the industry from mergers and acquisitions to sell-offs and fire sales instead, which, in turn, produces greater opportunities for junior companies to participate in corruption and violence.

## 3 Environmental governance and vulnerability to bribery

### 3.1 Environmental governance, citizen concerns and junior companies

Environmental governance is the dimension of the production process where corruption risks are perhaps highest. The “moment” of environmental governance most vulnerable to bribery is the approval of the environmental impact assessment (EIA). There are five key reasons why this is so.

Each will be dealt with in its own sub-section below. First, the approval of the production license hinges on the approval of the environmental impact study, making it a particularly high-stakes transaction. Second, environmental concerns around mining are acute and widely held across the citizenry, which demands, even in weak states like Guatemala's, some minimal regulatory attention to environmental issues around mining (Dougherty 2013b, Urkidi and Walter 2011). Third, in Guatemala, the approval of the EIA is the only point in the mining process in which the Ministry of the Environment and Natural Resources (MARN) can weigh in on a mining project. At all other points in the process, including environmental monitoring, the Ministry of Energy and Mines is the liaison between the firm and the state. The approval of the EIA, therefore, represents a moment of uncertainty for the company and a rare moment in which the state exercises leverage. Fourth, bribery emerges as a standard practice to facilitate approval, and violence becomes another instrument, interchangeable with bribery, for junior firms to circumvent environmental governance. Finally, there are conflicts of interest built directly into the organization of calls for bids and into the relationships between the mining companies and the contractors that produce these studies. These conflicts of interest virtually ensure that the studies favor the mining companies' objectives. For all of these reasons, the environmental impact assessment and its approval is a moment of particular salience for relations of corruption between mining firms and the state.

A small literature has emerged over the past few years exploring the idiosyncrasies of the environmental impact assessment for mining projects in the global south. These articles are critical of the EIA process as "closed" or "disingenuous" (see Jaskoski 2014 and Bedi 2013, respectively). Jaskoski (2014) identifies the approval of the environmental impact assessment in Peru as a moment in the mining process that mobilizes popular opposition to mining. She argues that the lack of opportunities for communities to participate in the assessment and assessment approval galvanizes popular opposition. Similarly, Hochstetler (2011) suggests that environmental licensing is a crucial decision point at which extractive projects can be interrupted. Bedi (2013) argues that EIAs, rather than genuine technical efforts to manage environmental risks, in some cases, underrepresent environmental risks and over-represent socioeconomic benefits. The Peruvian case offers some support for these arguments. A recent Associated Press story cites Ernesto Bustamante, former Director-General of Environmental Affairs at Peru's Mining Ministry as saying that, "mining company employees routinely sneaked into the ministry with flash drives and helped government workers edit environmental impact studies" (Bajak 2014).

Junior companies typically undertake the exploration and production permitting processes, which draw close attention from the state. This means that these high stakes 'moments' of environmental governance, which present particular vulnerabilities for corruption, disproportionately involve junior companies. Further, because juniors are particularly characterized by a high risk/high reward mentality, they are more likely to capitalize on these vulnerabilities.

### 3.2 The politics of the environmental impact assessment

The approval of the environmental impact assessment represents an opportunity for even weak states to exercise some leverage over firms regarding environmental governance. It is, therefore, a high-stakes moment of deep uncertainty for the mining company, and it becomes a stage on which the politics of mining are briefly unveiled.

Rather than a fixed bureaucratic procedure, the approval of the EIA is a highly politicized phenomenon in Guatemala. The stance of the Presidential administration vis-à-vis mining and the political climate more broadly shape the procedures for approving EIAs. For example, a former functionary at the Ministry of Energy and Mines confided that during the Berger administration (2004-2008) the message from the top was that "everything was to be approved." As he states, "with



Berger we had a very clear work direction. He was interested in jobs and bringing capital to the country. He thought that was important. In the Colom (2008-2012) government, mining wasn't so popular.”

The politicization of the EIA approval process sharply constrains the kinds of governance of the mining industry that functionaries can employ. This same former Ministry of the Environment and Natural Resources functionary went on to recount his stymied efforts to deny permits to multinational mining companies on environmental grounds.

So, during the Berger government you can imagine what happened when the technical team denied the studies for Cerro Blanco and CGN. They had a meeting with the Minister, and he was furious that the permits were denied. My departure was because of that. I was coopted, bought out. I was promoted, but the idea was to remove me from the office that approves the licenses.

The politicization of the EIA also transforms its approval into an opportunity to distribute political favor. While no EIA has ever been denied on environmental grounds in Guatemala, some have been stalled for years for ostensibly political reasons. The director of a major environmental consulting company in Guatemala that produces many of the environmental impact assessments on behalf of mining companies related the following,

I just did a mining [EIA] project that was delayed more than a year in the *Ministerio*. It was a complex project, above all politically. The technical piece wasn't complex, but the social/political part. This was one of my worst experiences. Regardless of the quality of the work, we hand over the file and it doesn't go through. Why? Because there are orders from above that this study doesn't go through.

Whereas in Guatemala the politicization of the EIA has generally served as a tool for the state to pursue political rents, in neighboring El Salvador, the government used the denial of EIA approval as a tool to institute an indirect moratorium on mining. In 2006, then Salvadoran President Antonio Saca, under pressure from wide citizen opposition to mining, sought to halt the mineral development that he himself had courted just a few years prior. To formally declare a moratorium on mining would have ensured litigation by Canadian juniors that had invested millions of dollars in exploration, under rules in the Central American Free Trade Agreement that prohibit “indirect expropriation” of private enterprise by the state. So the Ministry of the Environment, declaring the environmental conditions for the project untenable, stalled the production license indefinitely by failing to approve the EIA. This move nevertheless resulted in litigation, the results of which are still being sorted out.

In sum, the environmental impact assessment is a political phenomenon, which creates opportunities for various types of corruption on both the part of the state and the firm. Junior companies are more likely to be producing EIAs and seeking their approval than senior firms, and junior companies are more likely to pursue dubious means of facilitating approval.

### 3.3 Bribery, violence and environmental governance

While the informal rules for EIA evaluation and approval vary depending on the Executive and the Minister in place, offers of bribery and threats of violence are commonplace whenever junior companies and states interact around issues of environmental governance. In Guatemala, bribery and violence are treated as interchangeable instruments for circumventing environmental oversight.

A functionary at the Ministry of the Environment charged with evaluating EIAs related how mining executives would sit across the table from him and insinuate bribes by asking, “What do you want?” or “what can we do for you?” He would change the subject, play dumb or otherwise seek to defuse the situation.

An interview with a former technical advisor and compliance monitor at the Ministry of Energy and Mines similarly reveals the pervasiveness of bribery and its connections with violence, stating,

You know, I never had the opportunity where someone offered me a bribe or I had to say no. But I had a colleague who, yeah, was offered bribes many times. Now, did he accept? That I can't say (laughing). When I am out inspecting our mines, you know I am kind of clueless. So maybe someone insinuated something to me, but I played dumb. And if you say no, they get mad. And then you have to finish the inspection. And you go back again the next year. So the other problem that we have is that instead of offering us money, they offer us lead. In other words, they run us off with a shotgun.

In this telling quotation, a technician charged with inspecting mines for environmental compliance describes a pattern whereby inspectors are offered bribes, and if they refuse, are threatened with violence. He further describes the intimidation that occurs when one refuses a bribe and then must continue the inspection. Even where there is will on the part of state technocrats to resist illicit behavior and govern with integrity, there is not always free choice to do so.

Violence and bribery are sometimes treated as fungible instruments by junior mining managers in the context of environmental governance. One interviewee, an industry insider, having worked for decades for various multinational mining companies in Guatemala and beyond, described a hypothetical interaction between a mining manager and a state functionary charged with approving production licenses. He extended his arm toward me, his hand in a fist, knuckles facing up, pantomiming holding a gun against my stomach. “They do this,” he said. “And they’ll say, ‘You’re going to approve my project. I know you’ll find it good.’ Or they’ll say, ‘Private school is expensive. I can help with that.’ That’s how they do it...by the gun or by the bribe.” This comment starkly underscores the prevalence of violence, bribery and impunity within interactions between the mining industry and the state.

In another anecdote that highlights the pervasiveness of violence among small mining companies, a representative of the Ministry of Energy and Mines described traveling with a delegation to a remotely-located mine site to conduct an inspection where they “were turned away at the door.” The manager that received them told them, “You can come in and supervise us, but I am not responsible for what the locals may do to you.” The implied threat was that the mining company controlled the local communities, which depended on the mine for their livelihoods, and any effort on the part of the Ministry that could be perceived as having a negative impact on the mine would be met with violence.

The limited financial and technical capacity of the Guatemalan state, in part, gives rise to violence as a tool of the mining industry. This same Ministry of Energy and Mines representative told a story about a small gold mine. In this case representatives of the Ministry of Energy and Mines sought entry into the mine site to conduct routine inspections and were denied access. This was frustrating for the Ministry, but it lacked the capacity to force the company to submit to inspections. They responded by cancelling the company’s production license for “compliance failure,” which dissolves the mine’s legal standing. The mine, however, continues to operate illegally, and the Ministry has been unable to enforce the mine’s closure.

In sum, environmental monitoring, and in particular, the approval of the EIA, constitute ‘moments’ of acute vulnerability to bribery and also to violence on both the supply and demand sides of the transaction. Bribery and violence serve as fungible tools for junior companies to circumvent even the most basic environmental governance.

### 3.4 Bidding and contracting problems with environmental impact assessments

The bribery and violence that surrounds environmental governance and the politicization of the EIA approval are exacerbated by vulnerabilities to corruption built directly into the structure of the contracting and bidding processes for environmental impact assessments. Again, these vulnerabilities are particularly acute for junior companies that make contracting decisions based on price rather than quality, reputation or other considerations. The mining companies themselves are responsible for contracting with private environmental consulting companies to produce their environmental impact assessments, which presents a conflict of interest. According to standard industry practice, the payment for these services is disbursed in two separate sums: an upfront payment to cover expenses and a back end payment of wages. If the mining company were to elect to delay or omit the second payment, a relatively common practice in Guatemala, the contractors would have little practical recourse to recoup what they’re owed. There are, therefore, powerful financial incentives built into the structure of the contracting process, for these environmental impact studies to represent the interests of the mining firm above the interest of sound environmental management. A private environmental consultant in Guatemala City lamented this practice saying, “they [mining companies] want [the EIA] light, very light.”

As the mining boom has taken hold in Guatemala over the past decade and a half, there has been considerable market growth in environmental consulting and in particular for environmental impact studies. This has led to a stark increase in the number of companies offering environmental impact assessment services. As one mineral geologist in private practice and former mining manager commented, “It [EIA services] has become its own little industry.” The growth in numbers of companies has driven down the price and watered down the credentials and quality of EIA services. This informant explained that since a less rigorous study is less expensive than a thorough study, and since these bids are won and lost on their budgets, there are no incentives for companies to conduct rigorous environmental impact studies.

Junior companies with small budgets and powerful incentives to limit spending, elect the least expensive bid, and by extension least rigorous study. One interviewee, for example, suggested that “some companies view the environmental impact assessments as just a bureaucratic hurdle, while others view it as something with inherent value.” Larger companies with reputations to protect and longer term investments in the country, tend to favor larger, more established and more reputable environmental consulting companies. This was confirmed by a Goldcorp manager who commented, “There are four companies that we work with CTA, Everlife, Sierra Madre, and I forget the last one. We will work with them based on the work they have done for us previously. If we go to bid we look for the best bid, not the lowest cost necessarily but the most qualified.”

In sum, environmental governance processes in Guatemala occupy an opaque space where the letter of the law is disregarded and conflicts of interest thrive. The structures of contracting and bidding for environmental impact assessments lend themselves to corruption. Conflicts of interest virtually ensure that EIAs, rather than neutral documents, reflect the interests of the mining firm. The competition between fly-by-night consulting companies for contracts and the budgetary constraints of junior firms drive a race to the bottom in price and technical quality for these studies.

An Ernst and Young (2010) report discusses points in the mineral production process that lend themselves to corruption. These include stages with disproportionate state regulation, stages that involve high levels of risk, and stages that involve procurement. The approval of the environmental impact study, on which the emission of the production license hinges, fits each of these criteria. It stands to reason, then, that the EIA represents a moment of unique susceptibility to corrupt behavior.

## 4 Steps to discourage corruption among mining juniors

Despite the structural tendencies for mining companies to exhibit unethical behavior at a greater rate than companies in other industries, there are compelling moral and economic reasons to avoid such behavior. First, corruption is expensive for the firm. Bribe-paying itself can add between ten and 25 percent to the cost of doing business and tends to be more expensive in developing countries (CIPE 2014). If prosecuted for corruption, companies face fines and legal expenses. Further, beyond direct expenses the loss of value share through negative publicity, even if not prosecuted, can devastate a mining company. For junior companies that seek to partner with seniors, corruption allegations are likely to discourage some large companies from establishing partnerships. Additionally, engaging in unethical behavior can injure a company's relationship with the host state, which can impede licensing and other bureaucratic processes. Finally, if other firms with which a company does business are themselves involved in corrupt behavior, the company has sacrificed its access to judicial channels of recourse since it can be liable to prosecution under home country laws (CIPE 2014).

There are steps that states, firms, and institutions of private governance such as NGOs and multi-stakeholder initiatives can take to mitigate and reduce the corruption and violence practiced by junior firms. In what follows I describe six broad arenas in which the international development cooperation can work to combat the particular brands of corruption practiced by junior mining companies and reduce the specific vulnerabilities to illicit behavior these companies face. I include a table in which I lay out concrete action items the international development cooperation can undertake in these six arenas.

### 4.1 Broad objectives and concrete steps

1. **Build community capacity to monitor mining.** Residents in communities near or adjacent to the mine site are an underused resource in policing mines. Residents, by virtue of their proximity, can monitor in ways that remote state bureaucracies cannot. They can be organized to monitor and report to the proper regulatory institutions. There are several challenges to such programs however. First, one must ensure that community monitoring organizations are fully independent of the company, of civil society organizations with political agendas, and of the government. Second, proper training is necessary for technical work such as collecting water and soil samples. Third, mineral development is almost always accompanied by deep rifts in the local social fabric. Therefore, ensuring freedom from retribution for community monitors from the company and neighbors with strong company affiliations is also paramount.

Mine workers are another population with unique access to the mine site. Groups of employees could also be organized to informally monitor and report. As with resident organizations, there must be measures in place to ensure against retribution and to ensure independent monitoring.

2. **Build central state capacity for environmental governance.** As was discussed in the analytic sections of this document, the Ministry of Energy and Mines lacked the financial, legal and judicial resources necessary to enforce standards for mining companies and to effectively sanction violators. Further, the weak and politicized civil service in Guatemala inhibits the state's ability to meaningfully monitor and regulate industry. Therefore, donor attention to building state capacity is urgent. Whistleblower protections for civil servants will help de-politicize the civil service. Working to bring the Ministry of Environment and Natural Resources more substantively into the ongoing monitoring of mine activity will also enhance governance since it has consistently demonstrated greater will to enforce standards. Donors can work with both the legislative body and court system to devise and reinforce sanctions for mines that fail to comply with environmental management and ethics standards.
3. **Build municipal state capacity for mine governance.** Decentralization efforts in Guatemala have ceded unprecedented authority to the local government to influence the course of development at the municipal level. This renders the local government another important and overlooked lens through which ethical compliance in junior companies can be monitored. The danger with this line of action, along with the previous is that, as this research demonstrates, increased contact with different limbs of the state apparatus provides more opportunities for bribery. Further, not all municipalities host mining projects, and it is difficult to anticipate which municipalities will come to host such projects in coming years. This raises questions about whether donor-driven municipal programming to monitor mining activity should be targeted or universal.
4. **Improve rigor for environmental impact assessment processes.** Because the EIA reflects a 'moment' of particular vulnerability to corruption, donors must work to reform the process. Much of this reform should involve removing conflicts of interest from the process through means such as requiring neutral third parties to disburse payment to environmental consultants. The mining company could disburse payment to the Ministry of Energy and Mines, for example. Once they have evaluated the quality of the study, the Ministry of the Environment and Natural Resources can disburse the payment to the consultants. Another reform should be the elimination of budget considerations from evaluation of bids. Companies must contract a company based on their expertise and fit rather than their ability to undercut the competition. Finally, mandatory training and certification programs for environmental consultants, though not a magic bullet, could help build rigor and responsibility in this burgeoning industry. Donors can work with civil society organizations and universities to establish these standards and training curricula.
5. **Increase visibility/reputational risk for junior companies.** The small size and flexibility of many junior companies is a large part of what allows them to thrive in weak political institutional environments and what incentivizes corruption. Donors can therefore work to make junior companies more visible by working with multi-stakeholder initiatives such as the Extractive Industries Transparency Initiative (EITI) and industry organizations such as the Prospectors and Developers Association of Canada (PDAC) to establish ethics standards for junior companies. While junior companies come and go, mine sites themselves never move, and the domestic subsidiary companies are more stable than their parent firms. Therefore, watchdog organizations could track mines themselves in addition to companies. Donors could work with the Ministry of Energy and Mines to promote transparency in publishing information about exploration and production licenses and their owners. They could also work with the National Institute of Geography to publish maps of these licenses.

**6. Build cultures of compliance in companies' countries of origin and within companies.**

Although the literature shows that companies adjust their standards and norms to the political environments in which they operate, the “cultures of compliance” in the companies’ countries of origin matter for their ethical conduct abroad. Therefore, donors might work to enhance the culture of compliance in the country of origin of a given firm through advocating more stringent reporting and accounting requirements and shareholder compliance standards. Much of the training on the costs and risks of corruption and the benefits of compliance are oriented toward management. But shareholder pressure can also have substantive impacts on company behavior. Therefore, training shareholders on the costs of corruption would encourage stronger cultures of compliance. Further, anti-corruption training that specifically targets junior companies and establishing industry codes of conduct specific to junior firms may also enhance compliance within these particularly vulnerable corporations.

**Table 4: Specific steps and donor action items**

Broad objective	Specific steps	Donor action items
<b>Build community capacity to monitor mining</b>	<ul style="list-style-type: none"> <li>• Binding community consultations</li> <li>• Organize community groups to monitor mine operations and report to media/state</li> <li>• Organize mine worker groups to monitor/report</li> </ul>	<ul style="list-style-type: none"> <li>• Work with legislative assembly/civil society to create legislative framework for binding consultations</li> <li>• Work directly with community/civil society/company to set up community and worker monitoring groups</li> </ul>
<b>Build central state capacity for environmental governance</b>	<ul style="list-style-type: none"> <li>• Whistleblower protection processes for civil servants</li> <li>• Binding, enforceable sanctions for non-compliant mines</li> <li>• Increase role of Ministry of the Environment and Natural Resources relative to Ministry of Energy and Mines in environmental monitoring</li> <li>• Make EITI membership for companies a condition for investment in Guatemala</li> </ul>	<ul style="list-style-type: none"> <li>• Work directly with Ministries to establish internal protocols for whistleblower protection</li> <li>• Work with Ministry of Energy and Mines to enforce mine sanctions</li> <li>• Work toward legislation that stipulates standards for extractive investment and mechanisms to sanction non-compliant companies</li> </ul>
<b>Build municipal state capacity for mine governance</b>	<ul style="list-style-type: none"> <li>• Create/strengthen municipal offices of the environment which communicate directly with the Ministry of the Environment.</li> <li>• Build technical capacity among municipal functionaries to monitor and report</li> <li>• Create bridges between municipal functionaries and mine workers/management</li> </ul>	<ul style="list-style-type: none"> <li>• Work with Municipal Development Institute (INFOM) and Planning Secretariat (SEGEPLAN) to train and institutionalize municipal functionaries to monitor and report regarding extractive development.</li> </ul>

<p><b>Improve rigor for environmental impact assessment processes</b></p>	<ul style="list-style-type: none"> <li>• Set up procedures for EIAs that require neutral third parties to disburse payment</li> <li>• Remove budgets from first round of proposal submissions</li> <li>• More stringent training and certification standards for environmental consultants that conduct EIAs</li> </ul>	<ul style="list-style-type: none"> <li>• Work to establish domestic environmental consulting company watchdog</li> <li>• Establish domestic industry standards that investors must sign off on</li> <li>• Work with civil society organizations and universities to establish mandatory training and certification for environmental consultants</li> </ul>
<p><b>Increase visibility/reputational risk for junior companies</b></p>	<ul style="list-style-type: none"> <li>• Support industry watchdogs</li> <li>• Orient industry watchdogs towards tracking deposits rather than companies</li> <li>• Creation of new/amended multi-stakeholder initiatives for global standards for junior companies</li> </ul>	<ul style="list-style-type: none"> <li>• Work with civil society/universities to establish domestic watchdog</li> <li>• Work with Ministry of Energy and Mines and National Institute of Geography (IGN) on transparent provision of information/mapping of mine development</li> <li>• Work with existing multi-stakeholder initiatives (e.g., EITI, Kimberly Process, Earthworks) and industry groups (e.g., ICMM, PDAC) to design and implement standards specific to junior companies</li> </ul>
<p><b>Build culture of compliance in companies' countries of origin</b></p>	<ul style="list-style-type: none"> <li>• Advocate for more stringent company reporting</li> <li>• Advocate for stringent shareholder compliance standards</li> </ul>	<ul style="list-style-type: none"> <li>• Work with stock exchanges, particularly TSX and Toronto Venture Exchange, to strengthen reporting and auditing requirements</li> <li>• Train shareholders on the costs and consequences of corruption</li> </ul>
<p><b>Enhance corporate culture of compliance</b></p>	<ul style="list-style-type: none"> <li>• Corruption awareness training programs within junior firms</li> <li>• Whistleblower protection procedures within junior companies</li> <li>• Train executives on costs of corruption and tone of transparency</li> <li>• Support development/enhancement of industry codes of conduct via EITI, ICMM</li> </ul>	<ul style="list-style-type: none"> <li>• Work with watchdog groups and civil society organizations to design mandatory training programs for junior companies</li> <li>• Work with executives/management re: whistleblower protections</li> </ul>

## 5 Concluding Remarks

A former manager of a multinational mining company and current private consultant for the Guatemalan mining industry related the following anecdote during an interview.

This guy was a friend. We went to high school together, and we worked together for the same [foreign] company, but at different times. He was exploring for this company, and he found some promising results from some core samples. But rather than tell the company, he hid the results from the company. When that firm left the country, he found a foreign business partner. His EIA was basically a joke. He didn't care at all. When neighbors came from downstream to complain about the sediment, he threatened them and ran them off. Years later, I ran into him at a conference in Puerto Rico. He was there with three congressmen! He paid their way. They were on the Energy and Mines committee.

This narrative weaves together several themes central to this analysis—the flexibility and fly-by-night nature of many junior companies, the ease with which miners can circumvent efforts at environmental governance, the currency of violence and bribery, the capture of elected officials by private interests, and the complex relationships between domestic managers and foreign capital. In few words, this passage is emblematic of the series of structural problems that render corruption endemic and pronounced among junior mining companies in Guatemala.

The title of this paper, “By the Gun or by the Bribe” comes from a quote, cited earlier, by a former mining manager describing a hypothetical interaction between a mining manager and a state bureaucrat. It serves as a stark and evocative comment on both the pervasiveness of corruption among mining companies in Guatemala and the links between bribery and violence. In one sense, bribery is a form of structural violence as it entrenches an economic elite that controls the Guatemalan state and operates in opaque and anti-democratic ways. In another sense, bribery and violence (or at least the threats thereof) are qualitatively similar tools, available in equal proportions, to circumvent the rule of law. Conflating these two types of corruption was thematic across the many interviews I conducted. As one interviewee commented, “instead of offering us money, they offer us lead.” In this instance violence is the solution to efforts on the part of representatives of the state to resist the ubiquity of corruption. These two quotes, taken together, underscore the idea that bribery and violence are interchangeable expressions of the impunity and lawlessness that characterizes the relationship between the mining sector and the Guatemalan state.

It is not coincidental that these two quotations were spoken in the context of company responses to environmental governance. In the first quotation, this industry consultant was characterizing how the owner/operator of a national company would facilitate the approval of an environmental impact assessment. In the second quotation, this government bureaucrat was characterizing how companies would respond to his efforts to access mine sites for routine environmental inspections. Environmental governance, and particularly the approval of the EIA, is the dimension of the mineral production process in which both firm and state are most vulnerable to the influences of corruption.

Smaller companies are more vulnerable to the influences of corruption than larger firms. This is so for four key reasons. First, they undertake the riskier stages of the production process, which involve high stakes interactions with communities (e.g., property acquisition) and high stakes interactions with the state (e.g., exploration licenses, EIA approval). Second, they are more numerous and competitive than larger companies. They are more numerous because of the expanded surface area under exploration in recent decades, and they are more competitive because of the vagaries of the finance capital on which they depend. This produces a high risk/high reward mentality that often results in succumbing to



corruption and violence. Third, their small size and flexibility allows them to react quickly to changing political climates, which allows them to operate successfully in weaker political environments where corruption is widely practiced. Finally, their low reputational risk, by virtue of their small size and their short time horizons, encourage rent-seeking and corruption.

Mining companies of all sizes and of all national origins operating in Guatemala bribe, threaten and extort. They peddle influence within the state. They embrace conflicts of interest in the permitting process. They seek to circumvent universal standards for environmental management and transparency. They cut corners. This behavior is more pronounced among smaller companies. The mining industry is, *per se*, characterized by high levels of environmental risk and questionable development outcomes. The widespread practice of corruption and violence only serves to heighten these challenges. It is urgent that corruption among junior mining companies operating in the developing world be systematically addressed.

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#### INDEXING TERMS

Guatemala  
Junior mining companies  
Environmental impact assessments  
Environmental governance  
Mergers and acquisitions  
Violence  
Bribery

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This U4 Issue discusses the corruption risks faced by mining companies in Guatemala, with a particular focus on the risks faced by small, “junior” mining companies primarily engaged in exploration. Several factors make such companies highly prone to engaging in corrupt behavior, especially when operating in weak institutional contexts: the highly competitive nature of the mining industry, the risky dynamics of the exploration stage, and the specific characteristics of junior companies – their short operational timelines, low reputational risks, highly mobile and flexible nature, and reliance on fickle venture capital. Additionally, public environmental governance, and in particular the approval of the environmental impact assessment, represents a moment of acute vulnerability to corruption, particularly for junior companies. In order to mitigate corruption risks among junior mining companies, donor agencies should help to build community capacity to monitor mining operations, build central state government capacity for environmental governance, work with countries to improve the rigor for environmental impact assessment processes, increase the visibility and reputational risks for junior companies, and build cultures of compliance in junior companies’ countries of origin as well as within companies.