

## **The origin of crony capitalism in modern Mexico and its current Impact on Foreign Direct Investment**

El origen del capitalismo de amigos en el México moderno y su impacto actual en la Inversión Extranjera Directa

José Galindo Rodríguez\*

**Abstract:** This paper analyses to what extent crony capitalism (CC) affects international business activities. By using the case of Canadian companies investing in mining in Mexico, I explain in which ways CC impacts foreign direct investment. My argument is that CC does not imply negative consequences for international business activities if other variables are controlled at the domestic level. CC could even generate positive incentives to foreign investors, deepening corruption problems internally. This type of corruption does not elevate the risk perceived by foreign investors if the process of doing business in Mexico is under the control of domestic power groups.

**Keywords:** Crony Capitalism, Mining, Foreign Direct Investment (FDI), Mexico, Canada.

**Resumen:** Este artículo analiza en qué medida el capitalismo de amigos o “crony capitalism” (CC) afecta las actividades comerciales internacionales. Al utilizar el caso de las empresas canadienses que invierten en minería en México, explico de qué manera el CC impacta la inversión extranjera directa. Mi argumento es que el CC no implica consecuencias negativas para las actividades comerciales internacionales si otras variables se controlan a nivel nacional. El CC incluso podría generar incentivos positivos para los inversores extranjeros, profundizando los problemas de corrupción internamente. Este tipo de corrupción no eleva el riesgo percibido por los inversores extranjeros si el proceso de hacer negocios en México está bajo el control de grupos de poder nacionales.

**Palabras clave:** Capitalismo de amigos, Minería, Inversión Extranjera Directa (IED), México, Canadá.

## Introduction

Focusing on Mexico, this paper analyses to what extent and in which direction domestic crony capitalism (a type of collusive corruption) affects international business activities. First, I introduce the origins and evolution of crony capitalism in Mexico since the Porfiriato (1876-1911); then, I explore how business networks operated in this country at least until the end of Peña Nieto's period (2012-2018) and how crony capitalism is related to corruption. Finally, by using the case study of Canadian companies investing in Mexico, mainly in the mining sector, since the start of NAFTA in 1994, I explain in which ways these grey areas have an impact on foreign direct investment. My main argument is that crony capitalism does not imply negative consequences for international business activities if other variables are controlled at the domestic level. What is worse, crony capitalism could even generate positive incentives to foreign investors, in a context of weak formal institutions, as is still the case with Mexican institutions, while deepening corruption problems internally by weakening even more the institutional structure of the country. In that sense, this type of corruption does not necessarily elevate the risk perceived by foreign investors if, regardless of the applicable law, the process of doing business in Mexico is under the control of domestic power groups made up of entrepreneurs and government officials, who sometimes negotiate directly with foreign investors. These groups can partially guarantee the success of foreign investments projects and, at the same time, obtain personal benefits. This is one of the main reasons why, even though Mexico has such substantial corruption problems, many foreign companies are still willing to invest there: they obtain high

earnings and they get guarantees from local governments to operate their businesses at different levels (federal, state, and municipal), something that has also recently been observed in other countries, i.e. Russia.

### Defining crony capitalism and its relation to corruption

Crony capitalism is a term used to describe an economy in which success in business depends on the relationships between businessmen and government officials. Even though there may be a few situations where crony capitalism differs from collusive corruption, for this work both concepts will be used as synonyms (**table 1**).<sup>1</sup>

### The relation of corruption and Crony Capitalism

**Table 1. Types of Corruption**

	<b>Bureaucratic Corruption</b>	<b>Political Corruption</b>
Extortive Corruption The public servant extorts citizens by not doing his job, doing it conditionally or omitting his daily work in exchange for gifts or money that he asks of the citizen, or obliges him to offer it.	Services provision (healthcare, education, licenses, law enforcement)	Licenses, property, expropriation, court rulings
Collusive Corruption Implies the collusion among different participants of the private and public sectors at different levels. Public servants divert or misuse the public budget.	Arrangements to avoid or deviate from standards (taxes, quality control, permits), public procurement  CRONY CAPITALISM	“Close links” between companies and politicians (with the capacity to manipulate regulations, including public services and works’), high-level recruitment, tax exceptions CRONY CAPITALISM

Source: Own elaboration based on OECD (2015), Consequences of Corruption at the Sector Level and Implications for Economic Growth and Development.

1. Not all crony capitalism is necessarily corrupt. Andrew Paxman distinguishes between two stages or types of relationships between businessmen and public officials: the symbiotic imperative, which involves crony relations but benefits state formation and economic stability, e.g. after a Revolution, and symbiotic convenience, which implies a mutual personal interest, without taking into account anyone else. Put another way, all collusive corruption is crony capitalistic, but not all crony capitalism is corrupt (Paxman, 2017: 30-1).

In this paper, collusive corruption is defined as the phenomenon by which a public official (supported by a network of bureaucrats under his orders and sometimes by other officials of the same hierarchy) in exercise of his functions abuses public power and appropriates, in collusion with elements of the private sector, what belongs to the inhabitants of a nation (the public) in an illegitimate manner, either following the laws or not (or, in some cases, even supporting modification of specific laws in the short or long term), to favour his individual interests. This type of corruption usually benefits to differing degrees all individuals in the public and private sectors that participate in a corruption act, i.e. in a public procurement process, and who are organized in a network. These networks usually vary in each corruption act but can be the same for different corruption processes.

My definition refers particularly to acts committed by members of the public sector who manage public resources, and who are linked to elements of the private sector. In addition, it includes an aspect difficult to measure but fundamental to consider, referring to when the corrupt individual or network, even without violating the law, carries out acts of corruption. This situation also appears continuously in the processes of public tenders for goods, services, and public works, for example. That is to say: a scenario or simulation is set up in almost every procurement process, where all the laws are fully complied with. However, this scenario benefits the bidders of goods, services, and public works that allied public authorities may favour by assigning them contracts. The profits that eventually emerge from these contracts are distributed among elements of the private and public sectors that participated in these activities.

Exploring this topic as it applies to Latin America using a neo-institutionalist approach, Stephen Haber defined crony capitalism as a system “in which those close to the political authorities who make and enforce policies receive favours that have large economic value”(Haber, 2002). Some economic consequences of crony capitalism are that under a crony system, favoured entrepreneurs can operate their businesses as monopolies or near-monopolies. Monopolies generally have two negative consequences for the economy: a company that has a monopoly produces less than would be produced in a competitive market, and products are sold at higher prices than they would be in a competitive market. This creates a loss to society in which consumers transfer resources (money) to privileged entrepreneurs due to the higher prices they pay. This has an effect on income distribution.

Society also loses on the supply side. That is, individuals of society are limited as producers in economic sectors where privileged companies operate. In that sense, we can say that crony capitalist systems distort economic incentives, negatively affecting the growth rates of various sectors of the economy, because under crony capitalism “industries that would not exist otherwise arise . . . and opportunities are denied to entrepreneurs who have the necessary skills and assets but not the political access or the necessary protection.” This has a negative impact on the quality of goods and services, including that associated with a lack of innovation.

Regarding to the rule of law, in crony capitalism “application of the law becomes arbitrary, unpredictable and dependent on informal relations and factors other than universal rules.” In short, the law does not apply equally to all social and economic participants, as there is no

calculable law. Second, in these systems, property rights are weak and transient. Crony capitalism is a system that ensures property rights of selected economic actors.

### **The debate over the existence of Crony Capitalism during the Porfiriato (1876-1911) in Mexico**

In 2003, Stephen Haber along with Armando Razo and Noel Maurer, published *The Politics of Property Rights: Political Instability, Credible Commitments, and Economic Growth in Mexico, 1876–1929*, which presents a Vertical Political Integration (VPI) model that posits the existence of crony capitalism in Mexico. For Gulnaz Sharafutdinova the neo-institutionalist approach that Haber adopted "provides a solid starting point, but it does not address the issue of the origins of cronyism" (2010: 27-34). In addition, neo-institutionalist models cannot explain the existence of some characteristics of crony capitalism in developed countries, which supposedly have solved this problem, at least partially. In that sense, neo-institutionalist models have also been criticized insofar as they are constructed with excessive generalizations that do not distinguish between specific versions of crony capitalism.

Edward Beatty, in his book *Institutions and Investment: The Political Basis of Industrialization in Mexico before 1911*, implicitly questions the idea that the Porfiriato was a case of crony capitalism. Beatty shows that Díaz's government favored the development of a national industrial sector through a carefully planned and administered series of laws and policies, including trade policy (import tariffs), intellectual property law (patents), and the programme of new industries, providing tax incentives to employers who established new industries. Beatty argues that these formal institutions (laws and policies) played a critical role in the formation and

behaviour of investment in Mexico<sup>2</sup>. Moreover, he asserts that there were a number of small and medium enterprises that did not have special privileges during the Porfiriato and that were subject to the laws. In the same direction as Beatty, Sandra Kuntz also affirms that during the Porfiriato, the rules undoubtedly improved; and she proposes the analysis of crony capitalism over a longer term. That is, “going backwards, we can better appreciate the institutional progress of the Porfiriato” (Kuntz, 2014).

However, the conclusion I have reached after many years of studying crony capitalism is that the reality of crony capitalism in Mexico during the Porfiriato falls somewhere between the position of neo-institutionalists and that of Beatty and Kuntz. This implies that the term crony capitalism for Mexico should be understood as a hybrid model or a nuanced version of what the neo-institutionalists, who were the proponents of the term for Latin America, consider. That is, crony capitalism was not as prevalent and harmful (one could argue it helped draw investment into some sectors that would otherwise have remained underdeveloped) as neo-institutionalists say, but more prevalent than what the other authors acknowledge. Whether or not the legal system of the Porfiriato had more weight than what neo-institutionalists recognize, the formulation of laws and policies in this period was often the product of the mixed interests of political and business elites, this being the main characteristic that distinguishes cronyism from crony capitalism. A clear example of this is found in the construction of the General Law of Credit

2. Institutions are defined here as “humanly devised constraints that structure political, economic and social interactions.” According to Douglass North, constraints are devised as formal rules (laws, constitutions, property rights) and informal restraints (customs, traditions, taboos, sanctions, codes of conduct), which usually contribute to safety and order within a society or market (North, 1990: 97-112).

Institutions of 1897 by the federal government in conjunction with the few banks that existed at the time. This led to a highly concentrated banking sector that led to a highly concentrated industrial structure (Maurer, 2002). However, Mexican politicians in this period were not involved in companies in all economic sectors, nor in most small and medium companies established in Mexico. So, the story of crony capitalism changes depending on which sectors and sizes of companies are analysed.<sup>3</sup>

Crony capitalism has continued to operate in Mexico over the years. In fact, crony capitalism was necessary for the development of capitalist economies in the world. So, when capitalism took off with greater force in Mexico during the Porfiriato (1876-1911), and there was little formal institutional development, the cooperation between entrepreneurs and politicians, which implied monetary benefits for both groups, was of enormous importance in making the productive apparatus work; however, over the years, this informal practice for doing business in Mexico, favouring connections between political and economic elites, passing over the formal institutional framework, and negatively affecting the possibilities of new participants to produce, has been difficult to control and has played against the strengthening of institutions that it had initially promoted. In addition, an important number of entrepreneurs maintained their position within the Mexican elite from the Porfiriato through to the late twentieth century, as a result of crony capitalism. Between the 1940s and 1960s the traditional porfirian economic elite continued

3. For more details on this debate see ... (not cited to maintain anonymity)



to participate actively, the Mexican economy showed stable growth within an Import Substitution Industrialization (ISI) model that required strong state involvement.<sup>4</sup>

However, the Mexican economy began to deteriorate from the 1970s and a change in economic paradigm was adopted during the 1980s, in great part due to pressure from developed countries (particularly the United States and the United Kingdom). This led to the liberalization of the economy, which included the privatization of most state-owned companies, and a restructuring of the economic elite as new business entrepreneurs were granted access to opportunities. Despite the emergence of greater economic competition, the neoliberal reform mainly led to a change in business leaders without changing the way of doing business in Mexico, ultimately supporting a new generation of cronies.<sup>5</sup> That is, despite the economic changes that emerged in Mexico in the twentieth century, economic groups have kept similar practices in their operations, inherited from the Porfiriato.<sup>6</sup> They can be identified by the following characteristics:

- Ownership and operation are in the hands of a small number of major shareholders.
- The links between the companies that form a network are long term. While legally independent, companies share ownership through informal mechanisms such as family or social relationships and the overlap of members of the boards of directors (interlocking directorates).
- Their network architecture leads companies to be integrated vertically or with a certain level of diversification (related, non-related, or geographic).
- For funding, companies are supported mainly by retained earnings that are distributed through their domestic capital markets, or by the investment of securities in international financial markets and credit extended by the financial wing of their holdings (banks, brokerage firms, insurance companies).

4. For a detailed recount on the evolution of business groups and economic and business models and practices in twentieth century Mexico see...(not cited to maintain anonymity)

5. Many of those cronies are currently involved in mining activities, as will be discussed later.

6. For a detailed recount on the evolution of business groups and economic and business models and practices in twentieth century Mexico see...(not cited to maintain anonymity)

- There is some overlap between the majority shareholders, the boards of directors, and senior executives of various companies (Castañeda, 2010: 604-605).

In addition, crony capitalist practices have found new ways to expand. There are new alliances between organized crime, government officials and legal entrepreneurs, or new ways to attract foreign direct investment guaranteeing certain benefits to foreign investors who share their profits with local politicians. This is why we can classify certain foreign direct investment projects as crony capitalism.

Before analysing in what ways these grey areas have an impact on foreign direct investment, we need to examine the variables taken into account by foreign investors when making investment decisions.

### **International Investing**

The most common ways to invest internationally are: through mutual funds, depository receipts, exchange-traded funds, foreign stocks, or direct investments in foreign markets (FDI). The first four types are known as portfolio investments, and their main difference with foreign direct investment (FDI) is that in these four types of investments, foreign investors are not necessary intent on management control over local companies, but rather on building an investment portfolio. The type of investment chosen is determined by the amount of risk foreign investors are willing to take in a specific market. Investors take into account sudden changes in market values and fluctuations in exchange rates, among other variables (risks). International mutual funds, for example, can be less risky than direct investments in foreign markets. Risk can

also be avoided by investing in developed economies, where the variables taken into account in investing generally fluctuate less, but where profits (interest rates) are also commonly lower.

In this paper, we will focus on FDI. Something that has not been studied and is usually not recognized is that crony capitalism may limit the risk of investing directly (FDI) in developing economies, if specific foreign investors are connected directly or indirectly (through local entrepreneurs) to key politicians in a country. This would guarantee (protect) their investments. In other words, when a country, through the conduct of its rulers, can offer preferential terms and guarantee physical investments arbitrarily, foreign entrepreneurs, whose ultimate goal is to maximize profits, will seize it. Local politicians will obtain, in exchange, part of the profits secured by foreign businessmen.

### **About FDI**

There are numerous indexes of socio-political risk that present a negative correlation between socio-political risk and FDI. For example, Business Environment Risk Intelligence developed an index that ranks countries according to their degree of political risk. In doing so, it looks at domestic causes of political risk considering a fractionalized political spectrum: how far people are divided by language, ethnicity, and/or religion; and coercive political risk, that is, dependence on, or importance assigned to a hostile power, or both. The index also takes into account symptoms of political risk -mass demonstrations and politically motivated street violence-. This qualitative index rates countries from 0 (complete instability) to 100 (complete stability). A study based on this index concludes that, “broadly, and not surprisingly, the index rating is higher for countries with a high net share of FDI in GDP.” For all countries, the perception of socio-political

stability plays an important role in determining levels of FDI. For countries with low FDI flows, instability is a significant deterrent to FDI (Jun and Sing, 1996).

However, here one can formulate an important question. What is it that makes investors keep investing in certain countries despite high socio-political risk? In other words, why does FDI is maintained in Mexico despite the social and political risks caused by factors such as lack of transparency and accountability in Mexican public institutions, corruption, or drug trafficking and violence? In that sense, on what side should collusive corruption be considered in social and political risk indexes?

Even though there are other many variables considered important for attracting FDI to countries, such as the relative size of exports, there is a variable of special interest to this research, having to do with the indexes that measure hospitality. Business Environment Risk Intelligence also developed an Operations risk index. Broadly speaking, in this index each country is ranked according to the preferential treatment, if any, given to business people and the general quality of the business climate. Within this index a wide range of factors are evaluated, including political continuity, attitude toward foreign investors, enforceability of contracts, and infrastructure and its management, among others. Ratings range from 0 (totally unacceptable conditions) to 100 (superior business climate). As expected, the higher the value of the index the higher the attraction of FDI flows in a country. This is consistent with the general notion that some developing countries are not considered as candidates for FDI by foreign transnational firms until the climate for corporations becomes more “hospitable,” in terms of the factors considered by the index (Jun and Sing, 1996). In addition, many studies claim that foreign investors also generally

avoid corruption in possible recipient countries for ethical reasons (Mohsin and Zurawicki, 2002: 291).

Part of the argument of this paper is to show that some of the same variables that theoretically could discourage FDI, such as political risks and social instability,<sup>7</sup> lack of institutional transparency, which conceals corruption, and lack of a strong legal system to enforce contracts formally, can also attract FDI indirectly. The lack of transparency, for example, allows foreign companies to obtain certain concessions under the table, which results in maximizing profits. No one can deny that where corruption is low, a country can perhaps attract more FDI at the aggregate level. Shang-Jin Wei proves this hypothesis in his article about corruption in China (Wei, 2002: 303). However, as this author emphasizes, the idea to write his article came from how surprised he was to see high levels of corruption in China with high levels of FDI at the same time. In that sense, the intention of the rest of my paper is not to analyse each of the factors that make corruption an impediment for foreign direct investment, but to analyse scenarios in which businessmen agree to invest in a country despite corruption issues. This has to do with guaranteeing their earnings, whether it is through corruption or not, always taking care not to harm the reputation of their companies. Here we will examine the case of Canadian mining companies that invest in Mexico and analyse the qualitative aspects that can even make corruption an incentive for investment for them.

7. There are numerous indexes of socio-political risk that propose a negative correlation between social-political risk and FDI.

In a conversation with Carlos Solórzano, a promoter of Canadian investment in Mexico, he mentioned that Canadian extraterritorial laws affect Canadian investors in Canada if they engage in corrupt practices outside their country.<sup>8</sup> As a result, Canadian businessmen are very careful about how they proceed doing business abroad. However, if after a “legal” procurement process to do business in Mexico the Mexican government invites foreign investors to enter into association with a Mexican company, and if that company is legally established in Mexico, then foreign investors will definitively accept that business, even if they are aware of the company’s bad reputation. Solórzano mentioned some examples, most of them related to procurement processes that recently took place in PEMEX. According to him, in one of the cases he is aware of the winning Canadian company was “forced” to associate privately with a legally established Mexican company owned by a member of the Hank family, one of the most corrupt in Mexico, and founders of the well-known political group, Atlacomulco (Solórzano, 2019). And, according to Solórzano, it is through these legally established Mexican companies that the profits obtained in mining projects can be shared among Canadian and Mexican businessmen and government officials in Mexico.

### **Historical context of Mexican Mining**

The extraction of minerals in Mexico has existed since pre-Hispanic times. In addition, it became very important in the colonial period. One of the main reasons why Spanish colonists arrived at

8. The Corruption of Foreign Public Officials Act (CFPOA) was passed in 1999, more than 20 years after the U.S. passed the Foreign Corrupt Practices Act (FCPA) in 1977.

the current Mexican territory was to become wealthy through the extraction of silver and gold (main minerals extracted during the colonial era). Such extraction was concentrated mainly in the current central, south-pacific and northern states<sup>9</sup>, and little changed in the early years of independent Mexico. An important mining boom in the independent period occurred in the Porfiriato, when not only precious minerals but also those demanded by industries were extracted. New extracting methods made the process cheaper and increased production, replacing primitive winches with steam engines after the 1820s and later, with electric machines. At the same time, mining activity created a large mass of workers (including women and children) with very low salaries or who received bonds that could only be exchanged in the companies' stores as payment (Nava, 1962: 53).

Foreign investment in mining grew considerably in the Porfiriato supported by new mining laws and codes. In 1884, the first mining code was issued, establishing the right to free exploitation by both Mexicans and foreigners of the subsoil and free possession of the minerals extracted (Mining Code, 1884). In 1887, a series of facilities, such as tax exemptions, were issued, which mainly benefited foreign entrepreneurs who had the capital for investment and the technology required. Barriers to the entry of new companies were also removed, and a period of high demand for Mexican minerals from the United States and European countries began (Gámez, 2001: 55). In 1892, a new Mining Law reaffirmed the free exploitation of mining concessions, which would only be cancelled if the payment of taxes was not carried out (Ley Minera de los

9. Some of these states are: Guerrero, Aguascalientes, Zacatecas, Hidalgo, Guanajuato, San Luis Potosí, Chihuahua, Estado de México, Coahuila, Nuevo León.

Estados Unidos Mexicanos, 1892). In 1909 a series of additions to the Law were established, but these changes did not alter the investment practices on mining, especially in industrial minerals that were in high demand abroad at that time (Urias, 1980: 953).

Investments in mining through the Porfiriato varied between those with mixed capital and those where Mexican investment was non-existent. In addition, for the population, all these new sources of employment were insufficient. Especially during the last decade of the Porfiriato, the development of the industry was unable to absorb labour needs, a problem exacerbated by high mortality rates in the mines. In part because of low wages, a strike broke out in the mining city of Cananea in the northern state of Sonora, where the US military ended up attacking Mexican workers on Mexican soil. After the Mexican Revolution and the influence of the labour circles (where there were different ideological currents, from anarchism to Catholic circles through mutualism and unionism) legislation to protect workers was created (Rosenzweig, 1965: 405).

In this same context, article 27 of the Constitution, promulgated in 1917, appeared. In this article, the control of the nation over mineral resources of the subsoil was established, however, large mining companies, including foreign ones, rejected the new regulations (Riguzzi, 2015: 195). Thus, the structure in mining practice in Mexico continued unchanged, and the Mining Law of 1909 was in force until 1926 (Coll-Hurtado et al., 2002: 47). In 1926 the new Mining Law tightened the nation's control over the subsoil and established a series of requirements for the granting of concessions for mining exploitation (Mineral Industries Law, 1926), and by 1930 a new Mining Law aimed to control in particular foreign domination over natural resources and reduce their



profits, causing a decrease in foreign investment in mining in Mexico in that period (Urias, 1980:954).

Following this tendency, in 1940 the nationalist policy of president Cárdenas was represented in an energy reform that gave sole and exclusive ownership to the state over mining and energy resources. Under this reform, establishing contracts with entrepreneurs was allowed, as long as the rights of the nation were not endangered and the individuals operated within the legal framework. Article 27 would be modified in 1958, 1960, 1983 and 1992. As for the mining laws, in 1961 the Law of 1930 was replaced, a period known as "the Mexicanization of mining", which sought to make Mexican capital greater than foreign capital in mining companies, implementing protectionist measures. However, these measures did not turn out to be an obstacle for foreign investors since they also obtained fiscal facilities, which allowed them to continue controlling part of the mining activity.

During the eighties the official discourse mutated. It changed from a revolutionary nationalism to democratizing liberalism discourse by modifying its approach from welfare to that of the privatization of large sectors of the economy, particularly parastatals and basic social assistance services. This created a great deal of discontent among Mexican citizens, (... , 2011). Under this logic of liberalizing the economy is when in 1993 a new Mining Law was approved. This law, in conjunction with the amendment to Article 27 of the Constitution of 1992, legally allowed the privatization of both ejido and agrarian communities' properties, and opened a legal space for national and foreign mining companies to expand throughout the national territory with very few restrictions. This is how the accelerated growth of mining in our country reappeared

(Martínez, 2016: 45). In the period 2000-2010 more gold was extracted than in 300 years of dominion of the Spanish crown (La Jornada, 2011).

### **The current situation of the mining sector in Mexico**

Currently, Mexico contends with Peru for first place in silver production worldwide and is among the top 10 producers of different minerals: bismuth, fluorite, celestite, wollastonite, cadmium, molybdenum, lead, zinc, diatomite, salt, barite, graphite, plaster, gold and copper. It is first in Latin America in mining exploration investment, and fourth in the world, according to a report published by SNL Metals & Mining in 2015. In addition, it ranks fifth as the best environment for mining business, according to a report of the consultant Behre Dolbear published in August 2015 (Secretaría de Economía, 2015).

On the other hand, the weight of Canadian mining companies in today's Latin American mining, often having an elevated percentage of US partners, is very important. As of mid-2017, Canadian mining assets in Latin America were worth \$ 67.5 billion and accounted for 55% of Canadian mining investments in the world (Fajardo, 2017). In addition, Canada is the most important foreign investor in the Mexican mining sector with approximately 70% of FDI in the sector. Mining represents 5.9% of FDI in Mexico out of a total of 18 billion dollars (Aristegui Noticias, 2017).

The investment reported in 2017 by companies affiliated to the Cámara Minera de México (CAMIMEX), representing the majority, amounted to 3,638.9 million USD (more than 1,000 million USD were allocated to new projects or expansion of existing ones). This figure meant an increase of 11.9% from the previous year. In addition, in December 2019 there were a total of 237 foreign

companies operating 988 mining projects in Mexico. Of the total number of these companies, 153 (64.56%) reported being based in Canada; 32 (13.5%), in the United States; 14 (5.91%), in China; 9 (3.8%), in Australia, and 5 (2.11%) in South Korea and also in Japan; 4 (1.69%), in the United Kingdom; Spain and France, reported 3 companies each, representing 1.27%. Finally, 9 companies were placed in the category of "others", representing, 3.8%. It should be noted that approximately 711 (60.41%) of the registered projects were associated with precious metals, particularly gold and silver; a total of 162 (13.76%), with polymetallics; others 177 (15.04%), with copper; and 72 (6.12%), with iron; the rest, with metals and materials such as germanium, cobalt, titanium, molybdenum, bismuth, barite and wollastonite, among others. However, in most cases, these minerals are considered as by-products, or associated with metallic minerals (Servicio Geológico Mexicano, 2019). In addition, by December 2019, a total of 24,066 mining concessions in force were located in the country's land surface, covering 16.83 million hectares.<sup>10</sup> Ernesto Zedillo (1994-2000) gave 9,990 concession titles, which meant little more than a million hectares granted. At the beginning of the federal governments of the PAN, with Vicente Fox (2000-2006), more than 30 million hectares were granted through 17,774 titles. Felipe Calderón (2006-2012) gave 12 thousand 274 titles that covered 34 million 379 thousand hectares. During the administration of Enrique Peña Nieto (2012-2018), the Secretaría de Economía granted more than 3 thousand mining concessions involving around 15 million hectares (Flores, 2019).

10. A mining concession is not the same as a mining project; however, concessions are the first step for exploration and eventual extraction of minerals. The area covered by a concession does not grant the concessionaire property rights over the land surface, but only over the mineral resources of the subsoil; however, it does allow the concessionaire to request, if necessary, the expropriation and temporary occupation of the lands located within the concession to carry out the exploration, extraction and processing of minerals (Mining Law, Article 19) (Anuario Fundar, 2017).

Regarding mining production, during 2019 the main producing states of the sector were: Sonora, with 33.3%; Chihuahua, with 19.9%; Zacatecas, with 15.9%; Durango, with 8.0%; and Guerrero, with 4.9%, with mining present in 24 states of the Mexican Republic, in more than 690 municipalities and in 210 communities. At the same time, in that same year, there were 5 minerals whose production at the national level stood out by contributing 81.9% of the metallurgical mining value, gold being in the first place, with 27.7%; followed by copper, with 24.6%; silver, in third place, with 16.0%; zinc, with 7.0%; and iron, with 6.6%. ( Servicio Geológico Mexicano , 2019).

This massive growth in mining activity is a direct consequence of the signing of NAFTA, which came into force in 1994, designed to give preference to exports and imports of merchandise, services and intellectual property in a common market through tariff preferences, free zones trade, customs unions, and common tax policies. This treaty, designed to speed up trade, led the Mexican State to support the country's mining chamber to make labor contracts in the sector more flexible with the aim of weakening and eliminating unionism, while opening up foreign investment by modifying article 27 of the Constitution to commercialize social property.<sup>11</sup> This facilitated the growth of the mining industry at the expense of the affected population. (Azamar, 2020)

The exploration, extraction, and exploitation of all metallic and non-metallic mineral deposits can only be done through mining concessions granted by the Federal Executive through

11. As explained in chapters I and II of the Mining Law, as well as chapters I, II, III, V and VI of the Law to Promote Investment and Regulate Foreign Investment in Mexico, after 5-year of entry into force of NAFTA, any investor (regardless of his origin) becomes the absolute owner of the mining companies in which he invested.

the Secretaría de Economía. There are other federal agencies involved to a greater or lesser extent in the mining process (operation of national and foreign mining companies), in an area that already covers 22 million hectares in Mexico. These agencies are: the Secretaría de Medio Ambiente y Recursos Naturales (Semarnat), Secretaría de Hacienda y Crédito Público (SHCP), Secretaría de Desarrollo Agrario Territorial y Urbano (Sedatu), Secretaría del Trabajo y Previsión Social (STPS), Secretaría de la Defensa Nacional (Sedena), and Secretaría de Energía (Sener). The Comisión Nacional para el Desarrollo de los Pueblos Indígenas (CDI), Comisión Nacional del Agua (Conagua), Servicio Geológico Mexicano (SGM), the Instituto Mexicano del Seguro Social (IMSS), and municipal governments are also involved in the process.

This is in general terms how the mining process works. The mining companies request permission from the municipal authorities to modify the land use. The SHCP grants the fiscal registry to mining companies. It is also responsible for collecting the rights and taxes derived from the mining activities of the companies. The Sedatu grants legal certainty in relation to land tenure. The Registro Agrario Nacional (RAN) is responsible for the control of ejidal and communal land tenure. It is the entity that carries out the registration of decrees of expropriation of those assets. The CDI advises companies concerning the uses and customs of the indigenous peoples in order to avoid social conflicts, since a large part of the indigenous communities live in places that are attractive for mining activities. In addition, mining requires large amounts of water to operate, and this pollutes it. The Conagua regulates the rights for the use of water. The Conagua can grant or extend the titles of allocation or concession for the use of water. It also takes care of everything related to wastewater discharges. The Sedena is in charge of the authorization and supervision of

the use of explosives. It is responsible for granting permits for the purchase, storage and consumption of this type of material in the mining industry. The IMSS has the fundamental task of providing medical service and social security to its members, after managers of mining companies register their employees. The STPS provides job security to workers, which is important, since mining is a risky activity. This institution also authorizes the operation of containers such as boilers or other pressurized containers in order to monitor compliance with the standards (NOM-020-STPS-2011). It also examines that mining companies do not employ minors, and can authorize jobs for minors between 14 and 17 years of age. It also approves training plans and programmes. The Sener, being the entity in charge of directing the country's energy policy, participates when hydrocarbon deposits are found on the lands to be exploited by the mining companies. Finally, the SGM offers geological advice and environmental studies (Lira, 2018).

In each of these institutions, which intervene in different stages of the process of mining production by companies, it is possible to engage in corruption through bribes to the authorities in charge. This type of corruption, falling within the scope of extortive corruption, is not necessarily linked to that which arises from collusion between foreign (and national) businessmen and government officials who share the profits of mining businesses (collusive corruption); however, it is common that public officials linked to collusive corruption in mining give instructions to simplify the activities that are carried out by these institutions. This, in order to unlock intermediate mining processes that may prevent profits from appearing.

Mining is a highly privileged industrial sector in Mexico. It enjoys apparent laxity in the application of tax laws that protect and privilege it. In addition, according to the 2015 and 2016 reports of the Auditoría Superior de la Federación (ASF), a public oversight institution, the mining industry has failed to comply with important tax obligations, such as the payment of mining rights to which it is subject since 2014. The reports reveal that only 0.8 percent of the holders of mining concessions in Mexico made the payment of the special mining right and only 32.4 percent made the payment of the extraordinary right.<sup>12</sup>

The ASF also found irregularities in the submission of reports on production, benefit, and destination of minerals or substances, and in the reports of works, exploration and exploitation to which the concession holders are obliged. The submission of these reports is important, since it is a key step toward the identification of the mining companies that must pay mining rights. Not having this information makes it impossible to collect payments. The ASF determined that the Secretaría de Economía and the Sistema de Administración Tributaria of the SHCP, known as SAT, did not have a reliable database on current mining concessions. They have indicated that 23% of the concessions lack the identification that makes it impossible to collect taxes and rights paid to the holders of these concessions. So, for example, on the payment of the so-called additional right, the SAT did not have information to determine how many concessionaires were required

12. The Ley Federal de Derechos in its articles 268, 269 and 270 regulate the rights to which mining is subject: Art. 268. Special right: The holders of concessions and mining assignments must annually pay 7.5% of the taxable income.

Art. 269. Additional right: The holders of concessions and mining assignments that do not carry out mining activities within the first eleven years of validity of the concession shall pay an additional fee semiannually; an increase of 50% of the quota per hectare concessioned should be paid after the eleventh year of validity. There is an increase of 100% in the rights per hectare for concessions that are not explored or exploited for a period of two years starting from the twelfth year of tenure of the concession.

Art. 270. Extraordinary right: The holders of concessions and mining assignments must annually pay this right, applying a 0.5% rate to the income derived from the alienation of gold, silver and platinum during the fiscal year (Anuario Fundar, 2017).

to pay for it. This exceptional behaviour of the SAT allows us to affirm that mining companies are being protected from the payment of their fiscal obligations. The SAT is usually a very strict organism in its tasks on the collection of taxes to ordinary citizens.

In addition, by the end of the Peña Nieto Administration the Secretaría de Economía had not sanctioned mining concessionaires who had failed to comply with their tax obligations. In fact, according to the Mining Law, failure to comply with these payments is sufficient reason to initiate a procedure to cancel mining concessions. This has not happened. This proves how private capital enjoys great privileges. It can also be affirmed that the laws to which mining companies are subject always favour them. Proof of this is the preferential character given to mining activity in Article 6 of the Mining Law, which establishes that the exploration, extraction, exploitation and benefit of minerals are considered public utility activities, and mining enjoys special preference over any other use of land, which implies that all productive activities, except for the exploration and extraction of hydrocarbons and the generation and distribution of electricity, are subordinated to mining. This includes agriculture, tourism or any other industrial activity, and the uses of the territory by indigenous and peasant communities according to their customs and culture. Consequently, through the Mining Law, and contrary to the obligations of the state to guarantee the rights of indigenous peoples and communities, the interests of mining companies are prioritized. Likewise, the Foreign Investment Law in 2005 allowed companies the possibility



of making investments in the mining sector with 100% foreign capital (Cámara de Diputados del H. Congreso de la Unión, 1993<sup>13</sup>).

Under this regulatory framework, mining concessionaries do not respect territories of indigenous peoples, urban areas, social or private property, or protected natural areas and areas of importance to conservation of biodiversity. Therefore, the country's mining policy is not aligned with the international commitments on environmental, labour and protection of the rights of indigenous peoples. As if these were not enough, another condition favourable to mining established in the Mining Law is one referred to in the terms of the concessions. Mining concessions can last up to 50 years and can be extended for another period of 50 years. Thus, mining companies have a century<sup>14</sup> to extract the gold, silver and other minerals they require (Núñez, 2016).

However, the main attractive benefit to mining companies is not paying taxes, or paying very low taxes. We can use an example to show some of the advantages that mining companies have in Mexico which they don't have in their countries of origin: The Canadian transnational Goldcorp has several projects in Mexico and has become the main gold producer. In its country of origin, the company would never enjoy a 50-year concession with the possibility of renewal, and would have to follow strict environmental rules and protocols –i.e., the Initiative towards

13. Last reform published on June 15, 2018.

14. Violeta R. Núñez in her book *Minería Mexicana en el Capitalismo del siglo XXI* (2016) describes in detail how concessions can last up to 100 years. In an interview with this author (2019), she affirmed that the answer to the accumulation of land is due to the feasibility of speculating with them, the same with the prices of minerals in future markets. In this markets prices are fundamental. In these markets contracts are sold in the so-called Over the Counter or unregulated markets. This allows a great speculative process that is out of control of the financial authorities of the country. Many of the companies mentioned in this article participate in this type of future markets.

Sustainable Mining, prepared by civil society organizations and the federal government, requiring it to apply environmental protection and environmental protection programmes, as well as labour inclusion laws, among other things-. In addition, to extract the gold it would be forced to pay 2% of its operating income; 13% of its additional accumulated net income; two income taxes, a provincial one of 10% and a federal one of 15%.<sup>15</sup> Finally, it would also have to have obtained a social license of operation, and have paid permits and municipal procedural fees.

In Mexico, the same company is obliged to pay only the income tax (ISR) creditable according to the agreement of elimination of double taxation: that in which they pay the same tax in Mexico and in their country of origin. The Income Tax Law also provides for a fiscal stimulus consisting of the immediate deduction of the investments made by the mining company; up to 77 percent of the value of the capital invested.<sup>16</sup> Continuing with the same example, for the extraction of gold in Sonora - where the company has 70 900 hectares concessioned – in 2012 the company obtained a gross profit of more than two thousand million pesos, however, it only paid 5.75 pesos per semester for each hectare it holds; an amount that does not even reach one million pesos per year.<sup>17</sup> This payment is the equivalent to 0.039% of its net profits throughout the year. Finally, the low wages paid and the absence of social security for workers can be added to the company's savings (García, 2013).

15 The Mineral Tax Act of the British Columbia would apply in this case to determine taxes.

16 The current tax regime in Mexico applies equally to companies with Mexican or foreign capital. The only difference between the two has to do with the international treaties signed by the government to avoid double taxation (González, 2012).

17. As it is defined in article 263 of the Ley Federal de Derechos, "the holders of concessions and mining allocations shall pay the mining right semiannually for each hectare or fraction of land concessioned or assigned". The quotas range between 5 and 111 pesos (González, 2012).

In addition, the mining companies also obtain other privileges, such as federal resources to improve the infrastructure for the operation of mines, generally disregarding needs of the areas and communities where the mines operate (Tourliere, 2017). In fact, there is a great tolerance for failure to comply with the agreements promised the local communities to avoid affecting the companies (Cedillo, 2014). Mines also operate without any supervision or external verification. For example, mining companies themselves are in charge of monitoring the contamination they generate (Mendoza, 2013).

Furthermore, despite the discourse on corporate social responsibility (CSR)<sup>18</sup> that these mining companies hold as a policy, it is not difficult to verify that in the communities where these companies operate these policies do not actually apply. As confirmed by several researchers at the 4th National Congress on Climate Change Research in 2014, CSR actions in the mining sector in Mexico have not been successful, as practices that neglect environmental conservation prevail along with a lack of actions to trigger local economic development, which actually highlights the poor (and unethical) performance of these companies' environmental and social actions. (Pérez, 2014)

Last, but not least, another key incentive for investing in the mining sector in Mexico is the protection by the state repressive apparatus investors get in case of social conflicts in mining

18. There is something extremely conflictive in the discourse of socially responsible companies when trying to present themselves as positive entities in socio-environmental relationships through the voluntary signing of ethical codes, among other actions. When we analyze them in greater detail, we can observe that these discourses are really more insidious than a simple aesthetic performance: they are part of the speeches that promote not only deregulation, but also the establishment of a relationship between society and business where the State decreases to non-existent levels, proposing that it is nothing more than the market that regulates the relations between companies, society and the environment, leaving the surveillance in a group of supposedly responsible and well-informed consumers who would exercise by themselves the role of state administrations.

areas. The army and the police repress the comuneros, activists and trade unionists (Turati and Guillén, 2015). Sometimes companies even have private armies (paramilitaries)<sup>19</sup> or create alliances with narco groups<sup>20</sup> that allow them to attack activists against mining with total impunity.<sup>21</sup>

But, what is it that drives mining companies to act in this way? They act under the capitalist logic of obtaining the maximum profit with the least possible cost; but, what economic, political, productive and even diplomatic conditions push them to act the way they do while guaranteeing their safety and profits? To a large extent, the answer can be divided into three major factors: the strategic need for minerals for the development of the current stage of capitalism, the geopolitical struggle for mineral accumulation, and, finally, it has to do with the existence of crony capitalism, which is the central topic of this article.

19. The use of mercenaries by mining companies, both to protect their area of operations and to intimidate the local population, is not something exclusive to Mexico, these private armies are part of a global trend that has appeared in areas that have passed through decolonization processes. As Lieutenant Colonel Laborie Iglesias explains, numerous extractive companies are employing mercenaries to secure their investments, these mercenaries have experience in counter-insurgency since they are usually former soldiers of State armies that participated in colonial conflicts and bring with them their old methodology only changing their employer that it is no longer a State but a private company (it is also not unusual for the extractive company and mercenary group to be both parts of the same corporation). These mercenaries facilitate the corporations' control over natural resources within "weak States", thus favoring the privileged position of extractive companies. This association between multinational companies and mercenaries who participate directly in civil conflicts in developing countries is one of the causes of the lack of governance in areas rich in natural resources. This trend, which is not new in African countries according to Laborie, begins to appear in the Latin American and Mexican context. (Laborie, 2008)

20. According to Dr. Mendoza Cortés, the military capacity of these criminal groups has increased not only thanks to deserters from the armed forces, who have joined their ranks, but also to the training they have received from members of private military corps, who have provided them with training in various fields, such as tactics and combat techniques as well as operational, logistical, doctrinal, intelligence and technological capabilities, to the point of creating authentic private armies that become a danger to the State.

21. According to journalist Jesús Lemus, currently almost all drug cartels are involved in mining activities. In addition, Lemus describes that in the center and north of the country the mining companies have made alliances with the cartels of Sinaloa, Juárez, the Beltrán Leyvas, La Línea, Los Zetas and del Golfo, to "neutralize" opponents to their economic projects through persecution, harassment and execution mostly of indigenous groups. As the author explains, given the ease of obtaining the necessary concessions and permits to operate mines - since it is easy to buy the will of state officials, and the economic profitability is ample with minimal risk - an increasing number of drug traffickers diversify their activities to join the mining exploitation, bringing with them all their experience in kidnapping, extortion and homicide. (Lemus, 2018).

Explaining the first factor, it is obvious that the mining boom not only goes hand in hand with the increase in the price of metals, but also with the importance that they have acquired in industry and in the arms race, by becoming primary elements in the productive chain; either, as objects and tools linked to the production or as energy. This use of minerals in production does not occur spontaneously but is adapted to the needs of capitalist reproduction<sup>22</sup>, hence, at certain times a mineral may or may not be strategic. (Lopez-Bárceñas, 2017)

The second factor, the geopolitical one, shows that the current global economy model works for developed countries and rather harms those that are in the developing world, since it perpetuates the extraction of natural resources from the latter while the military, industrial and technological advance are concentrated in the developed countries, which require not only gold, silver, iron, copper, aluminum or nickel but also minerals for the advancement of new technologies, such as lithium, coltan, chromium, cobalt, fluorite and manganese. (Fuentes, 2020)

This explains how an enormous variety of economic diplomacy has been deployed to secure these geopolitical objectives and maintain the current advantageous order for these developed countries. Thus, the derived diplomacy seeks to preserve mining exploitation in favorable

22. In his book, "El mineral o la vida", López-Bárceñas finds various cycles of mining exploitation throughout the history of Mexico. He analyzes it in terms of the evolution of mining legislation and policies, together with the social resistance that these cycles have created and the forms of appropriation of minerals. He shows the systematic destruction of the property of rural communities with the aim of privatizing sources of wealth in such a way that the new owners can take advantage of the existence of a rural population that owns nothing but their work force.

conditions together with political and economic facilities when it comes to accessing strategic minerals to maintain their industrial advantage.<sup>23</sup> (Fuentes, 2020)

Finally, and the factor that we will analyze in greater detail in this article, is that of the alliance between businessmen and state officials, which can lead to the phenomenon known as crony capitalism, the collusive corruption that colonizes the State to subordinate the national interest and the social agenda at the service of factual powers.

Politicians, businessmen and organized crime groups have joined the mining business. For example, the fact that there is no a transparent and public database clearly showing the concessions granted by the government is part of the same problem. This lack of transparency allows companies to do whatever they want without assuming their legal responsibilities. These companies will ultimately produce economic benefits that would be distributed among the participants (public and private) involved in mining businesses. It is difficult to trace how mining profits end up in bank accounts of Mexican politicians; however, crony capitalism is one of the most palpable ways to explain the exaggerated privileges of a mining sector that clearly leaves no benefit to the country.<sup>24</sup> The construction of networks between businessmen, regardless of the nationality, and politicians, with elements of both groups obtaining individual benefits, is a practice that has lasted in Mexico over the years, independently of formal institutions, including

23. Obviously, this is not only a fight between developed countries to control the strategic resources of developing countries but also a fight between developed countries to monopolize and avoid interference from other countries within their areas of influence while seeking to extend these areas gnawing at other competing countries. A symbol of this struggle in our times is the famous outburst of the controversial businessman Elon Musk, who stated that the United States would support coups d'état so that his companies could access lithium where necessary.

24. Other explanations are related to: 1. Incompetence, 2. The desire to maintain good relations with Canada, the USA, etc., which would be compensated with geopolitical or economic gains associated to free trade.

laws and government agencies, which have supposedly tried to control these practices. This behaviour has played against strengthening the country's formal institutions.<sup>25</sup> In addition, as will be seen below, the practices of foreign investors, in this case Canadian, can be puritanical within their countries but in other countries, especially countries in development, they can act without limits contributing to the weakness of local institutions by using alternative ways based on privileges and exceptionalisms to operate their businesses abroad. Also, "malinchismo", a flattering attitude of Mexicans with respect to the Anglo-Saxons, allows these privileges and exceptionalisms and plays in some cases such as the one presented in this article on Canadian mining in Mexico against local institutional strengthening.

How does the corruption network operate among Canadian businessmen, national companies and Mexican governments? Everything begins with a whole network of straw men and speculators who obtain most of the mining concessions. The 10 individuals with the greater number of concessions acting as straw men end up transferring the operation of those concessions to national or foreign companies or speculating through a transfer scheme allowed by Article 19 of the Mining Law.<sup>26</sup> Speculators have up to 50 years to transfer their concessions. They will not transfer them until they obtain a price near to what they are expecting.<sup>27</sup>

On the other hand, mining companies operating in Mexico, whether funded by foreign capital, national capital, or a combination, are in themselves divided. This division is between so-

25. See ... (not cited to maintain anonymity)

26. Concessions cannot be sold (it is illegal), however, these transactions take the form of legal assignments in which there is a monetary exchange.

27. This scheme is similar to the one used by Canadian speculators in the real estate market in Mexico.

called junior and senior companies, the former being those that work in the exploration phase, and the latter those working in the production phase. This means that the junior companies are risk ventures focusing on the search for and acquisition of plots containing precious minerals, and in designing mining projects that allow for: 1. sale of the project; 2. exchange of shares; 3. other speculation activities based on the extraction processes. The senior companies focus chiefly on extraction and refining of the mineral. Many of the junior companies operating in Mexico are tied to the Canadian stock market of risk capital, including a considerable number of companies of great liquidity dedicated initially to the development of mining projects. Of the 1,520 mining companies listed in this specific market, at least 198 operate in Mexico. The companies tied to TSX Venture Exchange are not required to report environmental impact studies or to audit their own activities. This allows for an endless ‘fudging’ of vague data concerning mineral deposits, and results in eventual environmental damage in developing countries (Téllez and Sánchez-Salazar, 2018).

Through the study of various investigative journalism articles, as well as an analysis of Latin American scholars views on the modus operandi of mining businesses, it can be affirmed that there are at least two established strategies for setting up operations in Mexican territory. This is not to say that the strategies are applied mechanically or remain unaltered; on the contrary, they adjust or hybridize according to circumstances, social resistance of local inhabitants, or the force or absence of the state’s influence in the region.

The first model is the direct appropriation of mining areas by foreign companies through straw men, or shell identities. It is the simplest and most direct model. For example, the mining



company Blackfire Exploration obtained through its legal representative in Mexico, Jorge Jiménez Arana, who also acted as straw man, concessions in four different municipalities of Chiapas, equivalent to 580 304 hectares, an area similar to the size of the state of Colima (Vega, 2017). Fortuna Silver, another Canadian mining company, managed to deprive more than eighty thousand hectares of indigenous and peasant communities in Oaxaca by purchasing concessions from opaque companies.

These companies generally operate within poor or peripheral areas where the State presence is weak, or where it is virtually non-existent beyond its oppressive interests which, obviously, will support the mines whenever local inhabitants resist dispossession, divestment or exploitation by the mining companies.

The second model, ambiguous and replete with grey areas, not due to lack of data (this paper cites several), but rather to its variability, is that of associations between Mexican and Canadian companies. This occurs mainly in the Central-North of the country where the state's influence is more consolidated. The Canadian companies take advantage of the corrupt networks linking national entrepreneurs and public servants. Exemplary cases of alliances between Mexican and Canadian companies include those made with larger Mexican partnerships, such as Grupo México, owned by Germán Larrea; Industrias Peñoles, owned by Alberto Baillères; and Minera Frisco, owned by Carlos Slim. These alliances between Mexican and Canadian companies are those that benefit from absolute power of the Mexican state with which they are allied. The latter allows the use of its repressive and administrative apparatus, and, at the same time, may impose its ideology.

In fact, the Mexican mining companies that stand out in terms of the number of concessions they have for the installation of mines are Grupo México, Industrias Peñoles, Minera Frisco and Altos Hornos de México. Most of the mining projects these companies are involved in are almost always associated with subsidiaries of large transnational corporations, which take at least half of the profits.<sup>28</sup> However, it is not only these wealthy Mexican entrepreneurs who are associated with foreign companies in mining; there are many other minor Mexican entrepreneurs associated with foreigners in projects that are likely smaller but profitable. For example, the Canadian company Telson Resources and the Mexican consultant Reyna Mining, owned by José Antonio Berlanga Balderas, recently acquired the Campo Morado de Arcelia mine in 20 million dollars (Proceso, 2017). There are plenty of other similar examples. In addition, Mexican mining companies often have close ties with different political parties, as is clearly the case of Grupo México and Industrias Peñoles (Rodríguez, 2014). In fact, it is well known that mining companies belonging to Grupo México, such as Buenavista del Cobre, have financed political campaigns in Cananea (Lemus, 2018). Further noteworthy is the fact that Margarita Zavala, independent candidate for president in 2018 and wife of ex-president Calderón, received campaign financing from the country's major mining companies, among them those run by the Baillères family (Sin Embargo, 2018). These connections have served to expand the mining business networks of companies, which, as has been shown, transcend entrepreneurs of Mexican nationality.

28. The current Mining Law allows transnational capital to obtain concessions to carry out mining activities, as long as they request it through a subsidiary registered in Mexico (Lemus, 2017).

Foreign companies often use straw men and partner with Mexican companies to avoid being detected in operations that compromise their reputation or being subject to the Corruption of Foreign Public Officials Act (CFPOA) (Minería en línea, 2014). However, although the Canadian government passed this law in 1999 preventing Canadian companies from bribing foreign authorities, it has not been an impediment to their carrying out ambitious mining projects in Mexico.<sup>29</sup> In part, the association with Mexican companies and the relationship established by foreign companies with Mexican advisers, including lawyers, allows them to directly or indirectly establish agreements with public officials. It also frees foreign companies from impediments to polluting, violating human rights, or protecting their mines when facing actions by mining dissidents (Hudlet and Herrera, 2016).<sup>30</sup>

Research has also shown that the Canadian embassy in Mexico has contributed to the security of mining businesses with Canadian investment<sup>31</sup>, spying on activists and pressuring Mexican authorities to repress social mobilizations. Also the government of Canada does not ask its companies not to damage the environment or violate human rights in the countries where

29. The Corruption of Foreign Public Officials Act (CFPOA) was passed in 1999, It is only recently that it has been the subject of minimal enforcement efforts by Canadian authorities. There are essentially two offenses codified in the CFPOA. Under section 3, it is an offense to bribe a foreign public official as consideration for the official agreeing to an act or omission, or to induce the official to use his or her position to influence acts or decisions of the foreign state. It is considered an offense whether or not the bribe is actually paid or the action is actually carried out. Furthermore, both offering and accepting a bribe are considered offenses. Section 4 deals with accounting offenses, commonly referred to as “books and records” offenses. Offenses falling under this section include forging accounting records to facilitate or conceal the bribery of a foreign public official. The involvement of a Canadian company or wholly owned subsidiary of a Canadian company may be sufficient to trigger the application of the CFPOA. A convicted company may also be ordered to forfeit all proceeds – not just profits – obtained from the act of bribery.

30. Compendium of information presented by the Coalition of Civil Society Organizations to the ONU Working Group on Business and Human Rights on August 29, 2016, more than 100 organizations participated in the report, was compiled by Karen Hudlet of the Center for Information on Business and Human Rights (CIEDH) with the assistance of Marta Herrera.

31. The diplomatic support of the embassy is not only applied to protect the interests of these businessmen but also the geopolitical interests of Canada as a State.

they carry out mining activities (Working Group on Mining and Human Rights in Latin America, 2013). For example, documents from the Canadian embassy in Mexico show the support that the embassy provided to the mining company Excellon Corporation in 2012 to end a protest of miners and ejidatarios of La Sierrita, Durango, who demanded the clean-up of contaminated water and compliance with their labour rights (Turati and Guillén, 2015). In addition, there is evidence showing activists denouncing the systematic concealment of violations of laws by the Canadian government, through its embassy in Mexico, committed by its companies, despite numerous complaints of contamination and violation of the rights of land owners on whose property mining sites are located (Mariscal, 2018). In this sense, the objectives of the CFPOA are opposed to the economic incentives that the Canadian government has on mining carried out by Canadian companies abroad, which are evident from the actions that Canadian embassies carry out in different countries, including Mexico.

Corruption often occurs in the use of the Fondo to the Desarrollo Regional Sustentable de Estados y Municipios Mineros (mining fund) resources; one which directly affects investment in social projects and, therefore, the development of the communities where mining is practiced. The Mining Fund came into force in 2014, as a result of the reform of the Ley Federal de Derechos. This law establishes that the resources of this fund must be used to generate investments to promote social, environmental and urban development in regions where minerals are obtained. The Mining Fund is composed by the payment of rights to the mining activity. According to articles 271 and 275 of the Ley Federal de Derechos, 80% of the resources collected from the special, additional, and extraordinary rights must be destined to the Mining Fund, and this Fund must

distribute 62.5% of its resources to the cities in which mining activities take place. The remaining 37.5% must be delivered to the corresponding federal entity. The other 20% of the resources collected should be directed to infrastructure programmes already approved in the Federal Budget.

Regarding the resources involved in the Mining Fund, the ASF detected that Sedatu did not monitor the development of the financed projects. After reviewing 17 project files in 4 federal entities, the ASF detected that they lacked: programme of execution of works, register of physical and financial advances, other documentation for checking the degree of progress of the project, and the total cost of the project, among other things. As for 20% of the resources that should be allocated to infrastructure projects, the ASF found that no unit within the SChP had knowledge of the destination of the resources, and that this institution did not have a legal framework for regulating programming, budgeting, exercise, control and monitoring of the expenditure of these resources. This corruption and lack of concern for the development of the local communities where mining takes place is exemplified in such simple things as diverting resources to build roads to link mining companies, but not to link communities among themselves or with larger cities (Anuario Fundar, 2017).

The most serious negative consequences of mining within this corrupt system are mainly environmental. Mining activity also affects surrounding communities, usually indigenous, in many

ways something that is also ignored by municipal authorities<sup>32</sup>. When the report, "Emissions and transfers of pollutants in North America" (Commission for Environmental Cooperation, 2018), prepared by the Commission for Environmental Cooperation of Montreal, Canada, appeared, the disparity in pollution levels between Mexico and the United States/Canada was questioned. Maria Colín, of Greenpeace Mexico, stated that, "the corruption and impunity with which the large mining consortiums operate in Mexico allow their emissions of pollutants to the atmosphere, water and land to be much higher than in the United States and Canada" (Poy, 2018).

### **The current Federal Government Policy Towards Mining**

Concerning the current government policy, MORENA, the political party of Andrés Manuel López Obrador (AMLO), aware of the state of affairs mining was experiencing in Mexico, presented an initiative to reform the Mining Law in the Senate at the end of last year (García, 2018). The proposed reform basically sought to review and revoke the unexploited concessions, control a change in activities in the concession areas, and increase the weight of the input of communities who lived in mining areas most affected by the concessions. More specifically, the initiative sought to empower the Servicio Geológico Mexicano (SGM) so that it could carry out studies of social impact on the areas related to mining concessions, empower the Secretaría de Economía to declare unviable areas of mining exploitation or in conflict due to its negative social

32. In addition, the municipal authorities do not attend to the demands of the inhabitants of the areas where they carry out their mining activities. Such is the case denounced by the ejidatarios of Poxcuatzingo belonging to the municipality of Zacatlán, Puebla, who state that past municipal presidents have not supported them in the struggle in defence of land and water, they also mention that they know that the municipal authorities do not have the power to give all the permits to the mining companies, but they do have the power to supervise that the mining companies comply with their commitments to the population, a task which they ignore. (Municipios Puebla, 2020).

impact, and to cancel mining concessions for this reason. The initiative also sought to ensure that all mining projects met the principles of sustainability and respect of human rights of the communities in the regions they intended to develop, and require the owners of mining concessions to allocate resources for human and sustainable development in the localities where they carried out their activities. The initiative also sought to ensure that companies gave annual reports on the social impact of the mining area where they undertook their projects. If not, it was proposed that concessions be cancelled due to non-compliance.<sup>33</sup>

In February 2019, the current undersecretary of mining, Francisco Quiroga Fernández, whose background is in protection of mining investments, revealed that the Secretaría de Economía had a backlog of 20,000 administrative procedures of different kinds relating to mining companies in the country, and that the current federal government was already analysing the cancellation of five thousand concessions<sup>34</sup>. Likewise, the undersecretary said that at the moment the main objective of AMLO's government for mining was to establish regulations comparable to those of other countries in terms of taxes charged the companies. Also, it was intended that the funds raised by mining taxes and rights were channelled directly and transparently to mining communities. He plans to do this by restructuring the operation of the previously mentioned mining fund by giving the communities the resources from this fund directly, centralizing its

33. Different proposals for reforming the Mining Law have also been presented by other members of Mexican Congress. These have not proceeded nor have been filed. For example, in September 2018, the federal deputy of the Partido del Trabajo, Clementina M. Dekker Gómez, proposed that Article 6 should be reformed so that mining activity ceases to be preferential with respect to "the territories whose property belongs to indigenous communities" (Dekker, 2018)

34. Towards the end of 2020, the government of President Andrés Manuel López Obrador reduced by 20.8% the territory granted to the mining companies compared to 2018 at the end of the government of former President Enrique Peña. This means that in 2020, 16.8 million hectares were granted to the mining industry, a percentage that is a result of the review of requests for new licenses, but not as a result of the cancellation of concessions already granted (Sánchez, 2020).

control through the federal government and applying it to specific causes such as public schools' reconstruction (Soto, 2019). However, these types of policies of channelling funds directly to communities have not been very successful in other countries; Peru, for example.<sup>35</sup>

AMLO has so far maintained a double discourse regarding mining depending on the audience that listens to him. He says one thing to indigenous communities and communities affected by mining and another to businessmen. His position on mining by August 2019 is that mining companies must offer the same working and salary conditions to workers that are obtainable in the countries of origin of the foreign mining companies that invest in Mexico, although it did not present any law initiative that forced companies to act in this way. He also expressed concerns about environmental protection, although he has not been clear on how to achieve this. In addition, contradicting the undersecretary of mining, AMLO recently declared that the current mining concessions should be maintained but that he will not offer more (Expansión, 2019). This is another sign of pragmatism towards the private sector.

This pragmatism with which López Obrador handles himself in his dealings with mining companies and the tendency he has shown to collaborate with them led to the joint creation of

35. Upon considering this federal government policy proposal, it's worth noting the various similar projects created in Peru, a country where 25% of the GDP depends on mining-generated assets, all of which focus on release of a portion of profits from extraction directly to the municipalities where the companies operate. This has meant more frustration than satisfaction in the long run. In the majority of these projects, "mining royalties," "voluntary contributions," and "community trust funds," among other things, have been directed, supposedly, toward combating poverty and promoting social development, but they've failed due to local authorities' inability to manage allocated resources. Lack of planning in the allocation of resources has meant that funds are exhausted as they are spent on activities unrelated to the original social objectives, such as construction of stadiums and monuments, or implementing clientele policies. At the same time the companies located where these resources are allocated continue their projects without restrictions regarding environmental impacts, and thus assume they have carte blanche to continue polluting. This very misallocation, besides being a failure in the fight against poverty, has led to the creation of mafias and networks of corruption (Mogrovejo, Pimentel and Zúñiga, 2017; La República, 2017).



a "Mining Table" between mining businessmen and state officials in 2019 to study the needs of the sector and find ways to promote its growth. This Table was chaired in a dual way by both the well-known businessman Alfonso Romo, head of the Office of the Presidency, together with the then Undersecretary of Mining, Francisco Quiroga.

This collaboration does not seem to stop despite the fact that in September 2020 the disappearance of the Undersecretary of Mining was announced within the framework of the "austerity measures and administrative rationality", while giving the attributions, powers and works that the Undersecretary had to the Dirección General de Minas, la Dirección General del Fondo para el Desarrollo de Zonas de Producción Minera y la Dirección General de Desarrollo Minero. Along with this announcement, the Secretary of the Economy himself affirmed that the previous undersecretary, Quiroga, would continue working for the "Fourth Transformation" of AMLO and that the State would continue his work (Gutierrez, 2020). The sympathy that the aggressive mining companies have for this public official can be confirmed in the joint statement of the Mexican Mining Chamber, the Canadian Chamber of Commerce in Mexico and eight other associations in the sector, where they praised his role in linking state authorities and mining companies. (México Minero, 2020)

Those who did not congratulate themselves with the role of the "Fourth Transformation" in the link between public officials and mining entrepreneurs were those affected by the mines. The Red Mexicana de Afectados por la Minería released a statement that was widely circulated, in which they recalled the many years of the undersecretary's long career at the unconditional service of mining companies, promoting favorable conditions without caring about the racist

stigmas created against entire communities, the serious labor problems by positioning itself as an enemy of the unions, and the continuous violations of the human, social, environmental and cultural rights of the ejidatarios and anti-mining activists, which have been repressed. (Red Mexicana de Afectados por la Minería, 2020)

The truth is that despite the Covid-19 pandemic, mining investments in Mexico do not stop during 2020 and 2021, and in fact their profits still increased - despite some conflicts emanating from the payment of delayed taxes - without thus renouncing to their impunity. (Nuñez, 2021) (Carbajal, 2021) At this point, it is difficult to affirm that the so-called "Fourth Transformation" is an alternative to the mining model of the previous federal governments. Although new concessions are no longer awarded for now, existing operations continue and with them socio-environmental conflicts. His policy is reduced to a "fair" distribution of the resources of the Mining Fund while the companies continue to extract and devastate, and the opponents of this model continue to be criminalized and murdered.

Not even the Lithium nationalization proposal presented in the Senate by Alejandro Armenta Mier, with the support of numerous parliamentarians, belonging to the "Fourth Transformation", who propose considering this mineral as the property of the nation and as a strategic mineral, stops the collaboration with foreign private companies. (Senate of the Republic, 2021) It is stated that concessions will be given to these companies for the exploitation of this mineral. All this debate occurs while the Toronto-based lithium mining companies are already beginning the race to take over this mineral through projects that maintain the extractive, colonizing and crony model that we have already presented. (GeoComunes, 2021)

Perhaps AMLO's reluctance has to do with needing to secure Morena's political presence in the north before he takes on the mining sector, including big companies that might support PAN or PRI gubernatorial candidates. López Obrador's mining policies may be understood upon considering his need to win over Mexican entrepreneurs to his cause, while attempting to paint them in a positive light to a populace that mistrusts them. He does this through discourse of the so-called "social entrepreneurs," currently including Carlos Slim, many of whom have positions of influence in the so-called "Fourth Transformation." Even in the face of disasters such as the extensive spills of contaminants in the Sea of Cortés in July of 2019 caused by Grupo Mexico, there is no applied penalty except that limited to bestowing money as compensation to the affected communities (Hoy Los Ángeles, 2019).

## Conclusions

The main argument is that crony capitalism does not necessarily imply negative consequences for international business activities if other variables are controlled at the domestic level. However, this doesn't justify the existence of those grey areas. Crony capitalism affect other local aspects, such as social mobility, market competition, social stability and domestic security, among others. In other words, although crony capitalism may not impede international economic transactions, this does not imply that it has no negative social and economic consequences. In addition, there is evidence that the cleanest countries attract more FDI at the macro level than those that have more corruption. So, even though corruption may not affect operations of some international businesses at the local level, in general investors prefer to invest in a non-corrupt countries unless they obtain certain specific guarantees that play in the direction of maximizing

profits with less risk. The process of investing in a foreign country could include accepting things like associating with local entrepreneurs of less reputation is that does not affect profits. In that sense, I assume that generally ethical considerations don't play a role in business, although this could vary from entrepreneur to entrepreneur.

This paper contributed to two specific debates. One about the degree of crony capitalism present in Mexico historically. Some historians, such as Stephen Haber, argue that during the porfirian period, Mexico represented a clear example of weak institutions and crony capitalism; while other authors mention that the Porfiriato was a period of construction of institutions that were not present in Mexico between 1821 and 1876, and that the Mexican economic activity was more heavily regulated during that period than what Haber and his followers recognize. However, the reality is in the middle of what Haber and his followers have argued about crony capitalism in Mexico, and what the other authors analysed have claimed. In addition, the construction of laws favouring certain power groups hasn't varied considerably over time. In fact, in these days we can observe that in the creation of the new "anticorruption system".

The other debate is about the variables that are taken into account when investing in a foreign country. Country risk indexes are just one of the variables considered by investors, and they are much more important for speculators, who usually play with volatility around the world. In other words, country risk indexes only play a fundamental role in speculative transactions. In addition, local corruption and crony capitalism do not necessarily elevate the risk if they are under the control of local power groups, including government officials, who sometimes negotiate

directly with foreign investors. The answer on how foreign companies invest in Mexico has been exemplified in this paper by the case of Canadian companies.

The title of a recent article published in the periodical electronic publication, Sin Embargo, summarizes what is happening today in Mexico: “Corruption Grabs the Front Pages but Nobody Goes to Jail” (Rodríguez, 2015), referring to the fact that crimes are not prosecuted even in view of all the books and articles being published today in various media and by renowned academics. This speaks to the cynicism in contemporary Mexican politics. For example, during the administrations of Presidents Felipe Calderón Hinojosa and Enrique Peña Nieto of the Partido Acción Nacional and Partido Revolucionario Institucional respectively, the Brazilian company Odebrecht was linked to high-value bribes that allowed it to “win” Mexican public works contracts that generated benefits of enormous importance. Odebrecht participated, among other things, in the reconfiguration of three refineries: Minatitlán (Veracruz), Tula (Hidalgo) and Salamanca (Guanajuato), linked to the state-owned company Petróleos Mexicanos (PEMEX). In all of them there were direct awards, overpriced payments and irregular budget increases, and the highest-level government officials were aware of this situation and benefited from it.

This doesn't mean that scholars should stop writing as a means to exert pressure. However, the problem is deep, especially now that the profits of the organized crime are also favouring strong networks of “legal” entrepreneurs and politicians. In this sense, civil society must continue promoting a number of steps geared toward weakening corruption in the long term, from education, free expression, and supporting social movements with genuine and noble objectives.

Finally, it is noteworthy that some of the recent general conclusions reached regarding crony capitalism are that countries with the lowest level of corruption usually have more efficient bureaucracies and stronger institutions, as has been affirmed by the World Economic Forum. However, efficient governments are not a guarantee that crony capitalism is decreasing. Hong Kong and Singapore are saturated with millionaires in “crony” industries and have relatively efficient governments compared to other countries. Hong Kong even got the worst rating in the Index of crony capitalism of The Economist magazine, surpassing Russia, who got second. Meanwhile, Singapore ranked fifth place, surpassing countries like the Philippines and Mexico (The Economist, 2014).

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