

November 8, 2004

GUATEMALA: Canadian mining companies - supported by the Canadian embassy in Guatemala - push ahead with renewed nickel mining interests, despite local Maya-Q'eqchi' and national opposition.

Below, you will find a letter and report sent to the INCO and Skye Resources mining companies that have exploitation interests in El Estor, Guatemala, putting at risk the development and indigenous rights interests of rural Mayan communities.

Involvement by Canadian citizens and organizations is needed to help defend and support local community development needs in El Estor, Guatemala. Please read the information below and send your letters of concern to the offices set out below.

To make tax-deductible donations for the community development and indigenous organizations in Guatemala and Honduras, see below.

If you want on / off this elist: info@rightsaction.org.

Please re-distribute this information.

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El Estor, November 3, 2004

Mr. Scott Hand, Chairman & CEO
Inco Limited
Toronto, Ontario

Mr. David Huggins, COO
Skye Resources, Inc.
Vancouver, British Columbia

Dear Sirs:

Based on investigations conducted by our team as well as recent interviews with community leaders, AEPDI has prepared a report discussing some of the concerns that our organization and others have regarding the possibility of reactivation of nickel mining in our area. Included in the report are several recommendations for both of your firms that we believe represent best business practices to be implemented. As we have written in the past, our organization is willing to work with your companies towards the sustainable development of this region. We hope that this report can serve as a means to that end.

Sincerely,

Daniel J. Vogt, Director AEPDI, Asociación Estoreña Para el Desarrollo Integral, El Estor, Izabal, Guatemala.

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SKYE RESOURCES TO BUY EXMIBAL PROPERTIES AND LEGACY IN GUATEMALA

Recently founded, Vancouver based Skye Resources, Inc. on September 30, 2004 entered into an agreement with Inco, Limited to purchase Inco's 70% share in the Exmibal nickel mine and properties in the northeastern Guatemalan township of El Estor, abandoned since 1981. Under terms of the agreement Skye must raise Cdn \$20 million and be able to demonstrate that it can refine the lateritic nickel ore profitably either by using a still-under-development sulfuric acid leaching process or by refurbishing the diesel powered smelter left by Inco. For its part, Inco must have its mining concessions, covering nearly 400 km², that expire in August, 2005, extended or renewed for the deal to be finalized.

This paper prepared by the Guatemalan NGO, AEPDI, based in El Estor, analyzes the current and historical issues surrounding this transaction with emphasis on their effect on the local Q'eqchi' Mayan population living in villages on lands where mineral rights have been concessioned to Inco. Further, recommendations will be made to Inco, Skye and the Guatemala government as to best practices to be followed.

CURRENT ISSUES:

These can be grouped into the following categories: legal, socio-cultural and repression, environmental and economic.

* Legal Issues: From a point of view of legality, given that the government of Guatemala ratified Convention 169 of the ILO in 1996, an extension or renewal of the Inco mining concessions would have to meet the criteria and obligations contained therein. Foremost among them is the obligation for the state to establish a transparent mechanism whereby the local indigenous populations whose lands would be affected by the proposed mining project be consulted. This process must include steps whereby the communities are informed of the cultural, social, spiritual and environmental impacts of the project, and then along with the state and the company come to agreements on how or if the project is to proceed and under what conditions.

The serious complication regarding this point is that the Guatemalan government has never conducted such consultation nor has it established or regularized any mechanisms to guarantee transparency or verifiability. The current Mining Code, although promulgated in 1997, does not contemplate a consultative process before granting mining exploration or exploitation licenses. Recent investigations have produced the result that any legislation or regularization of a consultative process would itself have to be consulted with the communities before being officialized, if it is to meet with the guarantees of the rights enshrined in the Convention.

Thus, a significant investment in time and energy is required for the Guatemalan government and the interested companies to be able to meet its obligations before extending or renewing the Inco concession.

Given the current government's interest in mining development and pressures from the mining companies, there is a serious concern that "short cuts" might be utilized to expedite the extension or renewal process, which would result in the communities' rights being violated. It

is of particular concern that Skye has announced publicly that it expects to have the concessions matter resolved by December, 2004.

Social-Cultural and Repression Issues: Regarding these matters, the primary issue is that the nearly 400 km² of lands that Inco presently has for mining concession are not their private property. When Inco received the mineral rights concession in 1965, the majority of this land belonged to the Guatemalan government. The area was sparsely inhabited by a few Q'eqchi' villages and farmers.

However, at the present time, this same area is now the home to over twenty Q'eqchi' villages with a population of about 3,000 persons. All of these communities have legalized their land tenure, purchasing their holdings from the central government. In some cases, the communities are still paying their mortgages; in others the lands are completely paid for.

In contrast to other parts of Guatemala, the El Estor villages hold collective land titles. Adjudications among villagers are made informally and internally by the traditional leaders. In the majority of the villages which would be affected by the Exmibal mine, the principal cash crop is cardamom grown organically for export to the Middle East. These villages have made a crop transition from coffee to cardamom during the past ten years, and presently live at the best levels of any rural communities in the area due to cardamom's lucrativity.

The villagers have been informed by AEPDI's Defensoría Q'eqchi' program about the nickel mining concession and the companies' plans for reactivation. It is notable that the communities did not learn this information from the government or the companies. On various occasions, village leaders have unanimously rejected mining projects and demand that their land rights be respected.

These same rights have been threatened by both Exmibal and local municipal authorities. In late 2003, Exmibal began a process whereby its private property would be delimited. An engineering firm began working cutting a 2-meter wide swath to mark the boundaries of Exmibal's holdings. When the machete wielding crews encountered farmed fields, they likewise cut the same swath, destroying valuable cardamom, corn and other crops.

Despite requests by central government authorities to await a generalized remapping of the area to correct longstanding boundary overlaps among communities, farms and Exmibal, the company refused to comply. Exmibal has been unable to complete its resurveying project due to several communities' refusal to permit company personnel to enter their lands.

The issue is further complicated in that when the titles of the communities adjacent to Exmibal were investigated in the land registry in Guatemala City, the original documents had been mysteriously mutilated or destroyed rendering them useless for purposes of the communities' demands.

Further, the present El Estor mayor, Rigoberto Chub, is a vocal supporter of Exmibal and mining projects. He has worked closely with mining interests to convince the communities to

yield to Exmibal's demands and has threatened and defamed persons or organizations that work for the defense of the rights of the Q'eqchi' villagers.

Another important socio-cultural issue is the impact that an influx of outside workers once again move to El Estor. When the mine was operating more than 20 years ago, El Estor became a town of bars and brothels. Now, with the plague of AIDS raging in the region, many in El Estor fear the renewed mining will cause social degeneration and a proliferation of the fatal disease especially among the vulnerable indigenous population.

* Environmental Issues: Such issues pertain to the proposed atmospheric sulfuric acid leaching process that Skye has publicized as its means to extract nickel from its natural compounds. According to Skye, a new process, never used in the field, is pending patent and will allow for the company to produce nickel profitably. It is a serious local concern that the impacts of such an unproven process will not be readily known or measured and could result in dangerous results and high level risks for the population. This concern is aggravated by the well known weak capacity of the Guatemalan Ministry for the Environment and Natural Resources which has the responsibility to approve the Environmental Impact Study currently underway.

A further complication is that the mining concession is located in an area under special environmental legislation (Sierra de Santa Cruz) and that the mine processing plant is located on the shores of Lake Izabal near the Mouth of the Polochic River Natural Reserve. A part of the lake is also designated a protected area to conserve the endangered fresh water manatee and other species. Further, the lake provides fish which form a staple to the local diet and thus employs over 600 small scale fishers.

* Economic Issues: These concerns are analyzed from two perspectives: possible local benefits and the transaction's bargain basement price. Under the 1965 Mining Code, Exmibal paid no royalties to the Guatemalan government for the minerals it extracted. Under a then common industry practice, the government shared in 30% of the profits of Exmibal; although in its short years of operation no profits were generated.

Under the current mining law, companies pay a 1% royalty split 50-50 between the central and local municipal governments. Historically these types of agreements are fraught with complications since it is the same mining company that decides the worth of the product it extracts and that then provides the basis for the royalty calculation.

Villages or private landowners whose lands would be mined are entitled to nothing more than repair of damages, vaguely mentioned in the code. The current code also demands that landowners yield to mining interests if they oppose extractive activities on their property.

Reactivation of mining is touted as being the source of employment in the El Estor area where such opportunities are scarce. The local mayor speaks of thousands of jobs, and the companies maintain silence as he promotes mining on the basis of fictitious information. Given the uncertainties regarding the scope of the mine project, it is difficult to estimate what employment opportunities will be created and how many of those will benefit the local population.

However, during the Exmibal boom period, large numbers of foreigners and non local Guatemalans were employed in the mine operation; and the few indigenous workers generally were temporary and given menial jobs. When outside "market conditions" caused Exmibal to close, the non locals exited El Estor en masse, provoking the closure of numerous businesses, a crash in the price of real estate and long lasting despair.

It is, however, almost certain that the local jobs to be created will mostly benefit the town's population and that the rural indigenous population will be largely excluded due to its overall lack of basic academic and technical preparation, and historical factors like discrimination and marginalization.

WHY THE DISCOUNT PRICE?

According to historical documents, Inco invested over \$275 million (nearly \$1 billion in 2004 dollars) in its Exmibal project during the 1960's and 1970's. The Exmibal properties include about 16 km² of private property on which are located the open pit mine, smelter and office complex, 700 building housing complex, hospital, school, shopping center and 9 hole lakeside golf course replete with clubhouse and accoutrements.

Although much of the infrastructure is badly deteriorated and/or obsolete, the properties include several valuable facilities like an all weather landing strip, docking and huge warehouse installations, lakeshore holdings and large wooded areas. Also, the soon-to-expire mining concessions are considered a property of Exmibal.

The transaction announced by Skye calls for an overall purchase price of only Cdn \$20 million. The obvious question is why the deep discount? Does the discount account for contingent environmental and health related liabilities? Does the discount reflect a fair market write-down of the properties?

Depending on the real reasons for the discount, it could arguably be a better deal for lasting, sustainable development in the region that the Guatemalan government buy back the land for the same price to have it for future projects unrelated to mining.

THE HISTORY OF EXMIBAL IN THE REGION

Historical issues related to the Exmibal deal can analyzed in three categories: socio-cultural/human rights, environmental and economic. The Exmibal project was controversial when it began and has remained so.

When the company arrived in El Estor, it created a mining boom town, especially during the construction phase that lasted over ten years and generated thousands of jobs. When Exmibal announced its "temporary closure" in 1981, that would last over 20 years, no social provisions were made and El Estor quickly degenerated into a bust town.

Socio-cultural / Human Rights Issues: The principal consideration is that of Exmibal's participation and complicity with the Guatemalan military and paramilitary forces during the civil war that ended in 1996. Although not exhaustive, the United Nations' Truth Commission

report, published in 1998, specifically links Exmibal personnel and installations to human rights violations that include murder, kidnapping and torture. (See Cases 1145, 1149, 9401 and Illustrative Case 100 in the report.)

Inco management has consistently denied that the Truth Commission report contains any such mention and has refused to engage in any dialogue about reparation to the victims of these abuses or their families. Likewise, they have not responded to repeated calls for financing an impartial investigation to analyze the reported Exmibal involvement in these crimes and make appropriate reparation. It should be mentioned that since the mine's closure until today, the facilities are guarded by heavily armed Guatemalan soldiers.

* Environmental Issues: Longstanding concerns relate to the tailings piles and now dried tailings ponds produced by the ferro-nickel smelting process as well as the uncovered and unreclaimed open pit mine. Because Guatemala's environmental code does not require it, no study has been made of possible health or environmental impacts of these discontinued operations. Inco has refused to conduct such a study, arguing that there is no need for it. Likewise Inco has refused to clean up its industrial waste or reclaim mined areas stating that they have not finished their mine project.

Nonetheless, should the Skye transaction be finalized, the question as to who will clean up the waste from the obsolete smelting operation arises. As mentioned earlier, is the clean up accounted for in the discounted price of the properties? Also, what is Skye's technical and/or financial capacity to undertake such a clean up process? Does the Guatemalan Environmental Ministry have the technical expertise and political clout to ensure that the clean up is done responsibly? Will the Skye deal allow for Inco to definitively walk away from its clean up and reclamation responsibilities at Exmibal?

* Economic Issues: In addition to the environmental issues that have serious economic implications, another financial issue is that of past debts with the Guatemalan government. According to documents dated in 2002 from the El Estor municipality and the Ministry of Energy and Mines, Exmibal owed the Guatemalan government several millions of dollars in back taxes and other fees. According external auditors' reports examined by AEPDI, the company has consistently refused to pay said amounts despite a Guatemalan Supreme Court ruling against them. It would seem incongruous that somehow the Exmibal concession could be renewed or extended without the cancellation of this longstanding debt.

RECOMMENDATIONS TO SKYE RESOURCES, INC. AND INCO LIMITED:

It is urgent that both companies publicly disclose their plans to the El Estor town and rural populations and to the respective governmental authorities. Such disclosure must include detailed information about the plans for mining and areas to be affected, an independent analysis of the foreseen impacts of the proposed refinement process, and realistic estimates about employment. Such information would provide part of the data needed by indigenous villagers in their study of the project, prior to any consultation process.

The companies should publicly commit to respect for the rights of the indigenous population that could be affected by its mining plans, work closely with the Human Rights Ombudsman's Office and NGOs to ensure that such plans meet the legal and ethical requirements contemplated in Convention 169 and other legal instruments ratified by Guatemala, and publicly renounce violence, intimidation, corruption and other practices that manipulate communities and decisions.

Inco should support an independent study of environmental and health impacts of its closed mine operations, as well as another investigation regarding the activities of its personnel during the civil war and documented cases of participation and complicity with human rights violations. Should these studies reveal legal or ethical liabilities, Inco should make a good faith effort to make necessary reparations.

Skye should provide for the necessary time to permit the full exercise of the rights of the indigenous population to engage in dialogue regarding the mine project. Further, Skye should be respectful of the decisions that the communities make and should refrain from pressure tactics.

RECOMMENDATIONS FOR THE GUATEMALAN GOVERNMENT:

It is urgent that the government establish the transparent and verifiable legal mechanisms required by Convention 169 so that the rights of indigenous communities be respected. Such mechanisms must be established and followed prior to the renewal or extension of the Exmibal concession.

The current Mining Code should be reformed to include the following of the legal procedures to be established regarding processes of information and consultation of indigenous communities whose lands would be affected by mining projects, an increase in the royalty to be paid by mining companies including a part that would directly benefit affected indigenous communities, and the suppression of the mining companies' superior right of domain and passage on private property.

All mining concessions in the country should be analyzed to measure the possible impacts on indigenous communities. In cases that warrant such action, suspension or cancellation of mining concessions should be effected if other corrective or mitigating means cannot be implemented.

Prior to any renewal or extension of the Exmibal concession, debts pending payment by the company should be paid and an escrow account established and funded by Inco to provide for the clean up of its earlier operations. The amount of the fund should be based upon independent analyses of the environmental and health impacts.

As a condition of any renewal or extension of the mining concession, an account should be established and then funded by Inco to provide for economic reparations to victims and families of human rights abuses linked

to the company. The government should monitor an independent investigation to ascertain the full extent of these abuses.

[Report prepared by Daniel Vogt, Director of AEPDI, Asociación Estoreña Para el Desarrollo Integral in El Estor, Izabal, Guatemala. For further information contact the author at (502) 7949 7334 or 7949 7579 or dvogt@intelnet.net.gt]

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LETTERS OF CONCERN:

Please email, fax or mail your letters of concern to the addresses and offices below. In your letters please insist on the recommendations for the Skye and INCO companies, set out above.

SEND LETTERS TO:

Mr. Scott Hand, Chairman of the Board
INCO Ltd.
145 King St W., #1500
Toronto, ON, Canada, M5H-4B7

Mr. David Huggins, CEO
Skye Resources, Inc.
900-570 GRANVILLE STREET
VANCOUVER, BC, CANADA, V6C 3P1
Phone: (604) 602-7534
Fax: (604) 682-3941
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Sandra Scott, director of investor relations, sescott@inco.com
Catherine O'May, manager of shareholder services, comay@inco.com
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- donate on-line in the USA: www.rightsaction.org

- CFC # 9914

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CONTACT US:

- to come to Central America on a fact-finding educational delegation

- to be a community development and human rights accompanier in Guatemala

info@rightsaction.org/ www.rightsaction.org

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