

URGENT SITUATION

SKYE RESOURCES NICKEL COMPANY & VIOLATIONS OF INDIGENOUS RIGHTS IN GUATEMALA

Rights Action forwards this report concerning the urgent situation involving Skye Resources nickel company and Mayan-Q'eqchi' people in Guatemala.

FACT-FINDING MISSION: From November 22-25, Rights Action is joining an emergency group that will travel this week to El Estor, to interview victims of the illegal and violent evictions, as well as NGOs, and hopefully government and Skye Resources company officials. We will send an update upon return.

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LAND CONFLICTS IN EL ESTOR, IZABAL, GUATEMALA & THE RIGHTS OF THE MAYA Q'EQCHI' PEOPLE (Report by the Defensoria Q'eqchi', November 19, 2006)

SUMMARY:

In the municipal jurisdiction of El Estor in northeastern Guatemala, Maya Q'eqchi' communities represent more than 90% of the population. They are scattered over an area of nearly 3,000 km² in more than 100 villages as well as the town of El Estor, totaling over 35,000 persons.

The Guatemalan Ministry of Energy and Mines has granted more than 1,000 km² of the area of El Estor to international mining companies* for the purposes of exploration and exploitation of nickel using a strip mining process.

Nearly all of these areas are lands on which indigenous communities live and work. Some have titles to their lands, but many are still in the process of collective titling of the lands they possess. In addition to mining licenses, the Canadian miner, INCO Limited holds title to several large land tracts amounting to nearly 100km² outside the mining areas.

Since September 17, 2006, several groups of indigenous families began to occupy lands that INCO claims as its own. INCO has granted these same lands to Compañía Guatemalteca de Níquel (CGN), a subsidiary of Skye Resources of Vancouver, British Columbia, for the restart of nickel mining in El Estor.

Since the occupations began, Skye officials have been adamant that the company would not negotiate or dialogue with anyone who breaks the law.

This has led to a stand off.

On November 11, another group of Maya Q'eqchi' occupied lands on the outskirts of El Estor across the road from the abandoned mine housing complex. On November 12, that group and two others were evicted. This sparked a reaction among the indigenous communities and others that later would lead to the burning of some mine company buildings and one of the houses belonging to the local mayor.

BACKGROUND:

The history of nickel mining in El Estor began in 1955 when Hanna Mining from Cleveland, Ohio, USA discovered nickel deposits. In the ensuing years Hanna and INCO developed the Exmibal mining project and in 1960 acquired a large finca from the Guatemalan state that had been previously expropriated from a German railroad company which had planned a never developed train connection to El Estor.

In 1965 Exmibal acquired its license to mine nickel for a period of 40 years in an area of nearly 400 km². Nearly all of which were lands covered by the license were possessed by indigenous communities as their historical territory.

As the mine project developed, the company demarked its boundaries and evicted communities living on the lands. This resulted in violent conflicts that were repressed by the Guatemalan Army and are documented in the 1999 United Nations-sponsored Truth Commission report.

Exmibal developed the nickel mining project and began production in 1977.

The company ceased operations in 1981 allegedly due to the collapse of international nickel prices as well as the hike in the price of oil. Diesel was used to power the pyrotechnic process of nickel refinement.

From 1981 until 2004, the mine project was dormant. The Guatemalan Military Police guarded the land for the company during that extended period of time during which there were numerous reports of the installations being used for torture, murder and contraband.

In 2004, INCO sold its mining rights in El Estor to Skye Resources but retained title to the lands. Exmibal returned its mining license that would have expired in 2005 to the Guatemalan Ministry of Energy and Mines in exchange for a new exploration license covering an area of nearly 250 km².

This area is mostly on lands possessed by 16 Maya Q'eqchi' communities. No previous consultation with the indigenous communities was undertaken. The communities have repeatedly stated that they do not wish their lands to be mined.

The granting of this license represents a clear violation of Convention 169 of the ILO (International Labour Organization),

ratified by Guatemala in 1996, an international treaty with the force of law that requires the state to consult indigenous communities when and if mining or other projects would affect their lands or impact their lives. The farm worker union, FTCC has presented a claim alleging this violation to the ILO in Geneva. The claim, called a representation, has been admitted and is presently being investigated by the ILO.

Since exploration drilling began in early 2005 there have been numerous conflicts between the company and communities over boundaries and the impacts of the exploratory drilling program that have affected community water supplies and traditional foot access to the communities.

From late 2005 into 2006, the company undertook the elaboration of its Environmental Impact Assessment. The document was not translated into the Maya Q'eqchi' language nor made available to the communities whose lands and resources would be affected. In April 2006 Skye was granted an exploitation license in the same area of nearly 250 km² of mostly community lands without having implemented any transparent or verifiable consultation mechanism.

On September 17, 2006 five groups numbering some 300 families occupied lands that the company claims as its own. Two of the groups have occupied lands near Cahaboncito in Alta Verapaz. Those groups claim that the same lands were taken from them when the mine project was begun over 40 years ago.

Another group occupied lands near the village of Chichipate, 15 km to the west of the town of El Estor with similar historical claims. Two other groups, mostly of townspeople, occupied an area near the company airstrip and an area to the north of the abandoned company housing complex. INCO's and Skye's representatives in Guatemala filed charges against the groups in September.

Until November 12, the authorities had not intervened in any of these land occupations, and the total number of those occupying the disputed lands had grown to nearly 1,000 families.

In the early morning hours of November 11 a group of about 30 families occupied an area across the road from the company housing complex on the outskirts of El Estor. About an hour later, police clashed with the group.

A few hours later there was a skirmish with some company employees and at one point a group of persons held a bus transporting CGN workers.

In the late morning representatives from the Secretariat of Agrarian Issues met with the group's leaders and also leaders of the other occupying groups along with the police. Some community leaders stated

that there was a tentative agreement that at least some of the occupied lands would be evacuated so as to initiate a dialogue with the mining company.

On the morning of Sunday November 12 a prosecutor from the Ministerio P'blico, Rafael Andrade, arrived in El Estor and with about 60 police proceeded to notify the group on the outskirts of the town that they were in flagrant violation of the law and as such had to abandon the site. Waldemar Barrera, head of the human rights ombudsman's office in Puerto Barrios (140 km from El Estor), telephoned Arnoldo Yat, Coordinator of the Defensoría Q'eqchi' to inquire about a possible forced eviction. Yat and Fr. Daniel Vogt, Director of the organization went to the site, questioned the prosecutor about his actions and sought to aid in defusing the situation so that violence would be avoided during the eviction.

By midday, the group had left the site calmly carrying with them their makeshift materials. However, an ever growing group of townspeople, some carrying machetes, began to gather and throw stones at a pickup truck from the company. Yat and Fr. Vogt left the scene when the group appeared to become violent in reaction to the police and the eviction carried out.

As the day passed, the police went to the site occupied by the airstrip, and forcibly evicted its occupants using tear gas. At 7:00 pm, they went to Chichipate where they likewise fired tear gas into the settlement to evict its inhabitants.

In all of these incidents, there were verbal reports of one policeman hurt by a thrown stone, two or three persons arrested and two disappeared (both later discovered: one was seriously beaten, allegedly by the police, discovered by the ombudsman's representative on Monday the 13th; the other reappeared on his own). Groups of people erected roadblocks and burned a kiosk used for training sessions at the office of community relations of the company.

On Monday November 13, representatives from the human rights ombudsman's office and the Defensoría went to the evicted sites and interviewed witnesses about the actions of the police and prosecutor. In the afternoon, there were clashes with groups and police and in the late afternoon, the community relations building and the recently renovated but not yet occupied hospital of the company were burned.

The police remained in their station as a mob roamed through the town and set fire to one of the local mayor's houses (used for social events). Both Arnoldo Yat and Fr. Vogt received calls and verbal reports that their homes and the office of the Defensoría were going to be burned, and that their lives were in danger.

On November 14 a large number of police came to El Estor and restored

a tense calm. That same day, 4 of the groups agreed to leave the land they had occupied and dialogue with CGN. Previously the company had stated that its condition for dialogue was the abandonment of the occupied sites.

In the afternoon of the 15th, Arnaldo Yat and Fr. Daniel Vogt were summoned to appear at the Ministerio P'blicoís office in La Tinta on Friday the 17th to declare as witnesses regarding the disturbances that had occurred.

Previous to the disturbances, the Catholic bishop of the local diocese of Izabal, Gabriel PeÒate, had convened a meeting inviting the Secretariat of Agrarian Issues, the Presidential Human Rights office, the human rights ombudsmanís office, Defensoría Qíeqchií, NGOs and community group leaders, as well as CGN, to a meeting for dialogue on November 16 at the local Catholic parish. CGN did not participate.

Shortly after the meeting had begun two machine gun armed police arrived and inquired who had convened the meeting. When the bishop stated his responsibility, the police called him away and questioned him about the nature of the meeting stating that they were acting on orders. The results of the meeting were to reconvene still another meeting to try to convince CGN to dialogue, as well as to assure the community leaders that there were several institutions working to find a non violent and just resolution to the problems at hand.

On the morning of the 17th upon arriving at the Ministerio P'blicoís office, Fr. Vogt and Arnaldo Yat, accompanied by a representative of the ombudsmanís office and their lawyer, met Sergio MonzÛn, General Manager of CGN as he was leaving the same office accompanied by three other men. Greetings were exchanged.

Upon entering, Fr. Vogt and Yat met with the prosecutor, Rafael Andrade, the same person who had conducted the forced evictions several days before. He said that MonzÛn and his companions wanted Fr. Vogt and Yat to be arrested because they are the ìintellectual authorsî of the whole conflict regarding the companyís lands. The prosecutor stated that MonzÛn and his companions also wanted Fr. Vogt and Yat to be detained immediately under the provisions of laws regarding organized crime. Andrade further stated that although Fr. Vogt and Yat had been called as witnesses, they were being investigated as suspects because there was information that was not in the charges filed, which indicated that the Defensoría had fired arms during the disturbances and also instigated the conflict. Andrade stated that he was conducting a full investigation and that for the moment Fr. Vogt and Yat would not be arrested, but that they were under suspicion. Both gave their testimonies as to the events that had transpired.

CONCLUSIONS:

The violent events of the past days in El Estor could have been minimized if not avoided entirely had there been direct dialogue between the groups demanding land and the mining company. The communities have been willing albeit with resistance, to accept the company's terms, but CGN continues to reject direct dialogue with those they claim break the law.

The violence that erupted was provoked by the forced evictions carried out without court orders. Those occupying the lands believe that their rights were violated and that the evictions were carried out in an irregular manner using excessive force, and even in the darkness, against civilian populations.

There is a lack of due process in the manner in which the evictions were conducted, given that the prosecutor chose to obviate the charges that Skye and INCO had already filed against the groups occupying the different sites.

Instead of proceeding through the courts, the prosecutor, with the company's approval, took direct action and evicted some of the sites based on an incorrect interpretation of a flagrant crime.

Further, there can be no objectivity in the investigation of the acts of violence and damage that was the fruit of the reaction to the evictions, when the same prosecutor who conducted the forced evictions is also conducting the investigation.

The statements made by the prosecutor as well as his warnings of possible future arrest of Fr. Vogt and Arnolando Yat amount to intimidation and threat.

At the root of the land conflicts in El Estor as well as in other parts of Guatemala, lies discrimination and the state's historical non recognition of the permanent sovereignty of indigenous peoples over their lands, territory and natural resources.

DEMANDS:

A transparent mechanism in which CGN, governmental authorities competent in the matter and communities with land demands dialogue to find a nonviolent and just resolution to the historical land tenure conflicts in the area.

A thorough and independent investigation of all the acts (both of the police and prosecutor as well as the communities and others) that resulted in serious personal injury and damage to private property. Those who are found to be responsible should be properly and justly sanctioned according to the law.

The careful monitoring of the situation in coordination with security forces to insure the protection and respect of the rights of all persons in El Estor without discrimination.

Implementation in law and practice of Guatemala's international commitments guaranteeing the respect of the human rights of indigenous peoples as well as their permanent sovereignty over their lands, territory and natural resources.

THE INTERNATIONAL MINING FIRMS ARE: BHP Billiton of Australia, that operates under the name of Mayaniquel (formerly Jaguar Nickel); Skye Resources of Canada, operating under the name of Compañía Guatemalteca de Níquel; and Nichromet of Canada, operating under that same name. It is important to note that BHP Billiton is owner of 16% of the shares of Skye Resources.

Only Skye has exploitation licenses as of 2006.

Prepared by the Defensoría Q'eqchi', El Estor.

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