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GUATEMALA & the PRICE OF NICKLE

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THE PRICE OF NICKEL

May 21, 2004, by Kevin Pepper

[<http://www.oxfamamerica.org/advocacy/art7269.html>]

[In northern Guatemala, the intrusive operations of nickel mining companies are posing a serious threat to Mayan communities. The El Estor Association for Integral Development (AEPDI), an Oxfam partner which has been working in the Izabal region in northeastern Guatemala since 1999, is on the doorstep of taking the case to the highest court of international law.]

Guatemala is exceedingly rich in metals, particularly those that fetch the highest prices on the metals market: gold, silver, copper, and nickel. There are currently more than 160 active mining concessions in Guatemala, granted by the Guatemalan government to foreign investors, chiefly Canadian and US nickel and gold mining companies, according to the Guatemalan Ministry for Energy and Mines.

The Guatemalan government is pawning off their rich natural resources for clearance prices, and foreign investors can't buy up the land rights fast enough. Land is going for the bargain price of \$120 per square kilometer for mineral exploration, and mining companies only have to pay a 1 percent royalty on their revenue.

In dozens of communities, such as El Estor in northeastern Guatemala, the Mayans who live on the lands being mined are paying the price. Despite

national and international legal protections, Mayan lands continue to be unlawfully plundered. "Guatemala is being concessioned away," says Daniel Vogt, Director of the AEPDI. "It's a fire sale, a giveaway."

As Mayans are forced off their lands they have to abandon their homes, schools, churches and crops to make space for mining operations. In a country where already thousands of indigenous people are suffering from a lack of food and adequate health services, the displacement and environmental destruction inflicted by mining operations is devastating.

Unlike the US and Canada, where land ownership generally includes subsurface rights, under the Guatemalan constitution all subsurface minerals belong to the state. Therefore the government can sell mining or oil drilling rights for lands underneath communities that own the land on the surface.

Despite this license, however, the Guatemalan government is still required by international law to consult with and gain the approval of the communities whose land is being mined or drilled.

According to a United Nations treaty, called ILO 169, which was signed and ratified by the Guatemalan government in 1996, indigenous people have the right to "participate in the use, management and conservation" of their territory, as well as reserving the right to reject a governmental mining concession on their lands.

Of El Estor's 40,000 inhabitants, about ninety percent are Q'eqchi Maya.

With the illegal granting of mining licenses by the Guatemalan government since 1999, about 20,000 Q'eqchi' stand to lose their lands when mining companies move in on their land, and many hundreds of thousands more in the rest of Guatemala.

THE CASE OF THE ATLANTIC PETROLEUM COMPANY

In 1998, the Guatemalan government granted an area of 312,000 acres in the

El Estor region to the Atlantic Petroleum Company (APC) for a period of 25 years. Government officials carried out closed negotiations without any consultation with the Mayan communities who lived from the fish caught from the lake where the oil extraction was to occur.

Working with a network of environmental, indigenous and local organizations, AEPDI invoked ILO 169 to form a strong legal argument for the rights of local communities to keep APC out of the lake, and brought enormous political pressure to bear against the operation.

On May 23, 2002, former Guatemalan President Alfonso Portillo revoked the oil concession which had threatened the municipality of El Estor. The decision was a victory for the thousands of people who would have suffered from the effects of oil extractions in their communities.

THE GROWING THREAT OF MINING CONCESSIONS

Today, the Mayans of El Estor—and across Guatemala—face a growing threat.

Six mining companies, four of them Canadian companies (Inco, Jaguar Nickel, Goldex Resources, Radius Explorations) and two American companies (Glamis Gold and ITH Chemical) have purchased up to 160 mining concessions for lands belonging to Mayan communities across Guatemala.

AEPDI cannot hope to fight and win 160 legal battles for every unlawful concession; instead, they are setting their sights much broader, and much higher. The organization is taking the case to the Inter American Commission on Human Rights in Washington D.C., protesting the Guatemalan government's concessions on the grounds that they violate the rights of Mayan spirituality. According to Mayan religion, strip mining is considered to be a profanation of the earth, and such activities are an anathema to the Mayan spirituality that values humanity's harmony with the cosmos.

"Governments have long opposed the granting of special rights to their indigenous populations," explains Vogt. "Therefore the best legal

grounds to defend the Mayan's lands is to demonstrate that the selling of subsurface mineral rights violates the right to Mayans to believe in a world where humanity and the earth are integrally related and also to defend that belief."

The Commission can recommend that the Guatemalan government take certain actions, but it has no power to sanction. Should the government not take actions to revoke the concessions, AEPDI will take the case before the InterAmerican Court of Human Rights in Costa Rica, which does have the power to sanction Guatemala.

"Should the legal arguments be focused on environmental grounds," Vogt explains, "one has to face the reality that each side will have studies that justify their positions and the authorities are faced with choosing who to believe. On the other hand, Mayans' rights to believe in a certain manner are easier to defend as a legal principle."

THE ENVIRONMENTAL IMPACT OF MINING

A thin layer of topsoil covers rich nickel reserves, adding value to an already resource-rich territory. Rigorous strip mining in the past has already degraded the fragile El Estor ecosystem, eroding the topsoil in mountain passes inhabited by Mayan communities. Many of the mountainsides have been deforested, causing landslides and a litany of environmental hazards.

Mayan lands are all too often churned into chemical waste, and exposed to toxins. Nickel is a toxic substance and can cause cancer if inhaled in the form of nickel dust. It is also a heavy metal that pollutes water and forms residuals in persons that ingest it.

Mining companies have developed a highly effective loophole to dodge their environmental dirty laundry. Mining companies sell spent mines or their mining rights to small companies on the verge of bankruptcy,

effectively
sweeping their huge environmental catastrophe under the rug.

To combat this travesty, AEPDI is commissioning an environmental impact study of the effects of past mining activities. The results can be used as a powerful tool to lobby for support against the mines.

EL ESTOR ASSOCIATION FOR INTEGRAL DEVELOPMENT (AEPDI)

As the legal case moves forward, AEPDI continues to defend Mayan communities on several fronts, including: attending stakeholder meetings with Canadian companies, telling them about the impact their mines are having on the lives of thousands of people in Guatemala;

organizing the Q'eqchi into a unified front to help the Mayans gain sovereignty over their lands. AEPDI seeks measures to protect communities from the effects of pollution, discrimination and politically-motivated violence that they have suffered in the past. With AEPDI's spearheading, the National Council of Indigenous Peoples in April publicly rejected mining in lands of their communities and called on the Guatemalan government to halt mining operations underway and the granting of new mining concessions;

strengthening the Guatemalan justice system by monitoring the formal legal system, influencing public opinion and policy at local and regional levels;

supplying legal interpreters (Q'eqchi'-Spanish) and trainers for elders in rural communities, teaching conflict resolution and other useful skills;

focusing on the educational development of the Q'eqchi population with a focus on young people and adults through a distance education program. The program offers an accelerated education track, focusing on literacy. This program teaches an awareness of environment, culture and language and seeks

to build the self-esteem of the students.

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TO SUPPORT THE Q'ÍEQCHI'Í INDIGENOUS COMMUNITIES OF EL ESTOR

Come to Guatemala on fact-finding delegations and visit with AEPDI,
and
other communities, to learn more about these issues;

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