

ìMining Miseryî article about Canadian nickel mining companies (Skye Resources, INCO) in Guatemala, by Maria Amuchastegui.

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MINING MISERY: GUATEMALA IS ONE OF MANY COUNTRIES THAT HAS ATTRACTED THE INVESTMENT OF CANADIAN MINING COMPANIES - BUT AT WHAT COST TO ITS PEOPLE?

By Maria Amuchastegui,
<http://www.thismagazine.ca/issues/2007/03/miningmisery.php>, Photos by James A. Rodriguez

The town of El Estor, on the shore of Lake Izabal in eastern Guatemala, was founded at the time of the conquistadores. The lake's strategic location on the Río Dulce, the gateway to the Caribbean, allowed its denizens to prevent pirates from entering the country. Today, it is an area dominated by banana plantations and cattle ranches.

The road to Chichipate, one of the traditional Q'eqchi' Mayan villages surrounding El Estor, is lined with majestic conacaste trees, their massive crowns sprawling sideways. Boys on bicycles carry bundles of firewood gathered from the mangle tree. Women in gipiles, colourful woven blouses, carry infants strapped to their backs. Some seven kilometres from Chichipate, an abandoned nickel mine looms. Now a ghost town, the vast complex once included a smelting plant, administrative offices, employee housing, a school for the children of employees, a golf course and a movie theatre.

Outside Chichipate, Martìn Col Caal, a 21-year-old subsistence farmer, is cobbling together a makeshift shelter, using tree branches and palm leaves, for his wife and two young children. About 200 other indigenous families are here in the grassy valley, dubbing their new home Barrio de la RevoluciÙn -- Neighbourhood of the Revolution. Today, a steamy day in September 2006, more than 3,000 indigenous people from Chichipate and El Estor have set up similar households on five different sites, defiantly claiming the land as their own, land they say was stolen from their grandparents in the 1960s.

Skye Resources, a Vancouver-based junior mining company, which bought the land from Canadian mining giant Inco in 2004, has different plans for the site. With the price of nickel at a 19-year high, Skye intends to re-open the mine in 2009, with construction slated to start this year. The indigenous occupants say they are not here to protest the mine--they simply need the land to subsist. But one of the five groups is sitting on a nickel deposit. Either the mining company or the squatters will have to go.

History is repeating itself in Chichipate. The families of the protesters have been living in the area since the 1930s, but in 1965 the government of Guatemala sold the land to Inco. When community leaders found out, they demanded the government give back the land. In the early 1980s, after much bloodshed, the government ceded an area smaller than the actual size of the village to the community; people living outside its confines were forcibly relocated. But now, with the community burgeoning and a shortage of arable land, Chichipate is not enough. "We just want a patch of land that we can leave for our children," says Col Caal. "We want the company to negotiate."

When the police arrived on a Sunday afternoon two months later, shooting 12-gauge shotguns in the air, the women and children began to cry. Using loudspeakers, the men asked the police under what legal authority they were acting. Police responded by lobbing canisters of tear gas. Col Caal's wife picked up their two small children, aged one and three, and ran in to the mountains. "The company talks to the president and to the mayor," says Col Caal. "Why doesn't it talk to us?"

Despite its history of intercepting plunderers, El Estor has been less successful fending off the latest fortune hunters.

Events like those in Chichipate have played themselves out across Guatemala as the government, strapped for cash and anxious to lure foreign investors, has sold off mining concessions -- tracts of land from which companies can extract mineral resources -- at a bargain U.S. \$120 per square kilometre. As of December 2006, according to Guatemala's Ministry of Energy and Mines, there were 356 mining licenses granted and an additional 250 concessions in the process of

being granted. Andr s McKinley, the Oxfam America extractive industries person, estimates the concessions cover more than 10 percent of the country, and that Canadian companies own 80 percent of them.

In a 2005 series called "10 Things Canada Does Best," The Globe and Mail declared Canada a world leader in raising capital for mining ventures.

Mining companies raised U.S. \$4.2 billion on Canadian stock markets in 2005, and 85 percent of mining deals done worldwide that year were based in Canada.

According to the Department of Foreign Affairs and International Trade (DFAIT), almost 60 percent of the world's mining and exploration companies are listed on the Toronto Stock Exchange or the Calgary-based TSX Venture Exchange. Canadian mining companies account for over 40 percent of global exploration budgets and nearly 3,200 concessions in more than 100 countries.

What Canada doesn't do best is hold these domestic mining companies accountable for the damage they do abroad.

The tale of Chichipate, a Guatemalan village whose fate is controlled by a Canadian company, is a study in the harm done by Canada's mining sector in developing countries. It's a story that traces the origin of one source of Canada's wealth and calls into question Canada's self-image as a champion of human rights.

The strength of the Canadian mining sector has its cultural roots in our traditional identity as hewers of wood and drawers of water. Our history as a resource-based economy has created a cadre of geologists, mining engineers, managers, investment bankers, industry analysts and brokers with technical expertise in mining.

But there are also structural reasons for Canada's dominance. "It's relatively easy to float a mining company on the TSE," says Jamie Kneen, communications co-ordinator for Mining Watch, an Ottawa-based NGO that monitors the Canadian mining industry. "The information requirements are lax compared to the United States." The New York Stock Exchange has stricter disclosure requirements about the environmental impact of a company's operations, and it forces companies to abide by U.S. accounting rules, which are more exacting than Canada's regarding how companies place a dollar value on mining assets.

The website of the Mining Association of Canada boasts about Canada's lenient disclosure requirements. The TSX rules, it says, are "designed around the needs of the mining industry."

As a bonus, Canada has tax loopholes that benefit companies

incorporated in Canada, with operations abroad. To avoid the possibility of double taxation, companies are assumed by the government to be paying taxes in the countries in which they operate. But because many companies make arrangements with host countries not to pay taxes there either, they don't pay taxes anywhere.

Guatemala, and towns like El Estor, is particularly attractive to foreign mining companies. While some, such as Inco, have a long history in the country, the real influx began in 1997, when, at the urging of the World Bank, the country changed its mining law to favour foreign investors. Under the guise of promoting foreign investment and stimulating local development, the new law removed limits on foreign ownership, reduced tariffs and set the royalties payable to Guatemala at only one percent of revenue. Even by developing-world standards, this is on the lower end of mining royalties. In developed countries, the rates are much higher: British Columbia, for example, where Skye is based, exacts a 15 percent royalty.

From his 12th floor office in the Pacific Centre, a gleaming glass and concrete edifice in the commercial heart of Vancouver, Ian Austin, the CEO of Skye Resources, is trying to raise U.S. \$1 billion. It's October 2006 and the land occupations in El Estor have been underway for a month. Skye has just completed a round of feasibility studies and now must raise capital so it can start construction on the El Estor mine. This could involve a share issue—selling stocks on the TSX -- or what Austin calls "strategic options." Translated, this means finding a buyer with deep pockets. "The thing about nickel mining is it's a very capital intensive business. It needs a lot of money," he says. Bay Street is buzzing with talk that Skye is about to be taken over by the Anglo-Australian behemoth BHP Billiton, the largest mining company in the world. Skye's shares have soared 640 percent over the past year on the strength of these rumours.

An Englishman trained in economics at Cambridge, Austin is a money man with deep ties to Inco, tapped to lead Skye in 2003 because of his ability to raise capital. Skye is very much a creature of Inco, and the fate of El Estor is still bound up with that of the historic Canadian miner. Skye paid for its purchase of the El Estor mine by selling its own shares to Inco, and Inco -- now called CVRD Inco -- owns a 13.93 percent stake in Skye. Under the agreement between the two companies, Skye must sell all of its nickel to Inco, and Inco must buy all of the nickel Skye produces.

Austin enjoys a good relationship with Oscar Berger, the president of Guatemala. Berger, Austin says, has urged him to provide services and infrastructure to the people of El Estor, something the government cannot afford to do. The president, he adds, has also asked him to help the government survey the land on which people are squatting so the government can give the people title to the land. "We're working

and funding some of these activities so that the government can actually improve the security of the people who are living up in the hills," he says. "The president is always on to us about that."

Austin downplays the importance of the occupation, saying that such tactics are common in Guatemala. In this country in which 1.5 percent of farmers own 62.5 percent of farmland, arable land often sits unused or is rented out for pasture by absentee landlords. Skye is one such landlord, its mining concession spanning kilometres of unused farmland. Austin emphasizes that the land belongs to Skye and says the company is prepared to take legal action.

The promised action occurred on November 12 in the hills above El Estor. The day before, a group of 30 families had occupied a sixth site, El Chupún, a private estate owned by Skye. El Chupún is located opposite a building that used to be a school for the children of Inco employees that now houses Skye's community relations office. Almost immediately, the local district attorney, Rafael Andrade, accompanied by 61 policemen, descended upon El Chupún to evict the settlers. When they asked Andrade if he had a signed order from a judge, Andrade replied that he didn't need one.

As soon as Daniel Vogt heard that an eviction was under way, he rushed to the scene. Vogt is a Catholic priest who is the director and founder of the El Estor Association of Community Development (AEPDI), an El Estor-based NGO. A native of St. Louis, Missouri, Vogt arrived in Guatemala in 1987 as a Claretian missionary. When his assignment ended and his religious order summoned him back to the U.S., he refused to leave. He had found his true calling: defending the culture and collective rights of indigenous peoples.

Vogt's chief complaint is that Skye has never properly consulted the community -- especially the traditional Q'eqchi Mayan villages surrounding the mine. He also charges the company has not disclosed what the impact of the mine will be, saying the environmental assessment was not completed until after the mining license had been granted, and that it was never translated into Q'eqchi or presented in a format that is accessible to a layperson. "It's more pages than two Bibles combined," says Vogt.

The company claims that it has consulted 3,000 people in 28 different communities about the mine, and that the response has been positive. Vogt, however, says the consultations undertaken by Skye were not meaningful, consisting of mining engineers giving technical presentations through interpreters, then asking people if they had any questions. If no questions were asked, then the company assumed consent.

Ian Austin says the Skye project will bring development to the El Estor region and insists the community is behind it. He estimates that the mine will create 1,000 jobs once it is operational. In a public relations push, Skye set up a foundation, called Raxche, which funds health, education and economic development initiatives. "What we're trying to do," Austin says, "is genuinely learn how we can best structure this project in a way that benefits all the various interests and still make it a viable business proposition which can justify the very large capital investment that will be required."

Vicente Bac, a community elder who is also the mayor of Chichipate, is cautiously supportive of the Skye venture. He encourages the community's young people to get an education so they will be qualified to apply for jobs at the mine. Speaking through a Q'eqchi' interpreter, Bac emphasizes his plans for the community and the progress that has occurred so far. The main road is covered in gravel, a contrast with the dirt roads that are the norm. A campaign to install latrines, with the support of Skye, was finished recently. These signs of relative wealth inspired jealousy in the other villages and led to rumours that Bac is on cozy terms with the company.

Others in the community are concerned that drinking water will be contaminated with the by-products of nickel mining, and that lake water temperature will rise after being used to cool the smelter. Skye plans to use water from Lake Izabal to cool furnaces in its processing plant at a rate of 200 litres per second. Under the terms of Guatemala's liberal mining code, companies have unlimited access to water within their concession, and local communities cannot charge companies for the use of the water.

The community is also worried about emissions from coal burning, a Skye innovation. Because Guatemala doesn't have a history of using coal, it does not have regulations regarding emissions.

Magali Rey Rosa, a spokesperson for MadreSelva, a Guatemalan environmental NGO, says Canadian companies operating in Guatemala have a poor environmental protection track record. She says Guatemalan environmental groups were hopeful when they learned the mining companies entering their country were Canadian because Canada has a better environmental track record than the U.S. Now they think differently: "They are just like Americans," she says.

Skye's presence in El Estor has divided the townspeople, who speak Spanish, and are better educated and stand a chance of getting a job, and the villagers, who speak only Q'eqchi and who are most likely to be displaced to make way for the mine. The feeling that the company isn't paying its fair share of taxes is widespread. In fact, until last year, Skye was paying \$50 a year in local taxes to the town of El

Estor (this has since risen to \$50,000 a year). Skye will get a free ride with its water bill, too. The townspeople collectively pay \$20,000 a year for water. The company, which will use 13 times more water than the entire town, will not pay anything at all.

"Let the company come," says Oscar Paz, a prominent local businessman and proprietor of a historic hotel on the waterfront, "but as a partner, not a modern pirate."

At the national level, the Skye nickel mine has provoked criticism from politicians outside El Estor. Julio Morales, a congressman who chairs the Commission on Energy and Mines, asked the government to cancel Skye's mining concession on the grounds that the environmental impact assessment was never approved by the Commission. Other politicians have criticized the low royalties paid to the government by foreign mining companies. Victor Sales, a congressman from the URNG, a political party made up of former guerrillas, put forward a motion in Congress calling on the government to increase the one percent royalty on revenue it currently charges. The motion never made it past the first reading.

At the heart of the mining debate is the definition of what constitutes development. For the World Bank and the mining industry, development consists of the short-term exploitation of natural resources at the expense of the environment and the local community. Local communities across Guatemala are questioning this model, holding plebiscites on whether to allow mining at all.

Besides, El Estor, unlike the hardscrabble towns of the western highlands, already has a vibrant economy, with the area producing 80 percent of the world's cardamom. Cardamom farming, a sustainable industry, generates \$1.2 million a year in revenue for the local economy, which is 50 percent more than the royalty that Skye would pay to the El Estor municipal government.

"Mining does not bring development," says Martìn Col Caal.

"Development comes from tourism and agriculture. Mining brings contamination of the environment and the persecution of community leaders, those who oppose the mine."

When the police arrived last November, Vogt attempted to defuse a potentially violent situation by convincing protesters to vacate El Chupûn voluntarily. They left, but later regrouped and confronted police. Two people were arrested and one policeman was hurt. Two others went missing.

Later that day, the police descended upon Barrio de la Revoluciûn, near Chichipate, and evicted protesters with tear gas. That night, Skye's community relations office and a hospital refurbished by Skye were burned down, as well as one of the homes owned by El Estor's mayor, Rigoberto Chub, an ardent supporter of the mine. The following morning, JosÈ Chocooj Pan, one of the men who had gone missing, was

found unconscious at the side of the road. He had been beaten and left for dead.

The history of Inco in Guatemala -- and that of its successor, Skye Resources -- is fraught with violence. In the early 1980s, community leaders tried to get the government to give the land back to them. "When our elders found out that this land belonged to the mining company, they began to petition INTA [the federal land registry] to give them the land," recalled Bac, speaking through an interpreter. "They went back and forth between Chichipate and the capital, making demands. A story appeared in the press that they were making a land claim. And so the company began to persecute them."

Bac's cousin, Pablo Bac Caal, was one of the leaders spearheading that action. One day, in 1981, Pablo went into town to get a permit to get lumber to build his house. On the way back, his car was intercepted and he was shot dead. Two other leaders, Benancio Asig and Hermelindo Pan, died mysteriously while they were in Guatemala City petitioning the land registry. Their bodies were never returned to Chichipate. The community was told that they had died of common illness. "When I found out that they had died, I felt a great sadness," says Bac. "The community had lost its leaders."

The United Nations Commission for Historical Clarification, created after the signing of the peace accords at the end of Guatemala's 36-year civil war in 1996, documented the killing of Pablo Bac Caal and many others. The commission's 1999 report, entitled *Memory of Silence*, describes other deaths linked to Inco, such as the 2001 gunning down of two law professors and a congressman who had formed a commission to study the terms of Guatemala's agreement with Inco.

On November 15, Vogt was to make a statement at the office of the prosecutor, Rafael Andrade. As Vogt arrived at the dilapidated office in La Tinta, a two-hour drive west of El Estor, he bumped into Sergio Monzún, Skye's general manager in Guatemala, who was leaving the building. The prosecutor proceeded to tell Vogt that the person who had just left wanted him arrested immediately under Guatemala's organized crime laws as the "intellectual author" of all the problems that have occurred with the mining concession in El Estor.

Vogt's encounter with the law is typical of a recent and disturbing trend:

the tendency of mining companies to demonize NGOs, blaming them for local resistance to mining projects. In July 2006, *The Wall Street Journal* published an article called "What do NGOs have against poor Guatemalans?"

that blames groups such as AEPDI and MadreSelva for fomenting opposition to mining. The article claims that Skye's project will bring much needed development to El Estor, and that it enjoyed widespread support in the community until Vogt led a campaign against

it.

The views in the article, written by a conservative Guatemalan journalist sympathetic to the mining industry, are echoed by the mining industry in Canada. The Prospectors and Developers Association of Canada recently commissioned a study showing that local opposition to mining was "caused," among other things, by NGO campaigns.

Blaming NGOs is a convenient way for companies to discredit genuine grassroots opposition by portraying it as coming from an outside source. But many NGOs do have a mandate to provide communities with information -- information that is not always forthcoming from the company -- and it is this intelligence that can tip the balance of community opinion against the mine. So it would be more accurate to say that NGOs empower communities to make their own decision about mining activities.

"I don't consider that my organization is leading any kind of opposition," says Vogt. "The communities have manifested that they are not interested in these mining projects. We support that position. We are committed to giving people information, to accompanying them, to facilitating, all of those kinds of things. But at the end of the day, the communities are the ones who have to make the decision."

Within Canada, civil society groups such as MiningWatch, the Halifax Initiative and Rights Action, have been instrumental in raising public awareness and in pressuring the government to hold companies accountable for social and environmental damage. In 2005, in response to pressure from civil society groups, the standing committee on foreign affairs and international trade issued a report on mining in developing countries. It recommended that the government provide incentives for companies to act in a socially and environmentally responsible way, and impose sanctions on those that do not.

The government ignored the recommendations in the report, but agreed to hold a series of roundtables on mining across the country. The final one took place in Montreal in November 2006, around the time that Martìn Col Caal and his fellow protesters were being bullied and tear-gassed.

One of the themes to emerge from these meetings was that voluntary codes -- non-binding guidelines on corporate social responsibility drafted by the mining industry -- don't work. For companies to be held accountable, the government has to enact binding laws. Another recurring theme was the need for the application of Canadian laws outside Canada's borders, given the weakness and corruption of many governments of developing countries.

The most important theme to emerge was Canada's duty, given the size of its mining sector, to take leadership in the area of corporate social responsibility. "If Canada wants to continue to be a leader in this domain, it should also be a leader in the promotion of corporate social responsibility," says Richard Janda, a law professor at McGill University who is a senior legal research fellow of the Centre for International Sustainable Development Law. "It's true that we have a small population, but in this particular sector we have a huge global footprint."

Meanwhile, back in Vancouver, the deal with BHP Billiton has fallen through.

With construction due to start in a few months, Austin had to find another source of capital. So Skye did what 85 percent of all mining companies worldwide do when they need to raise capital: it sold shares on the TSX.

In Barrio de la Revoluci3n another violent eviction is unfolding. A few weeks earlier, the protesters had moved back into their palm-thatched settlement, in defiance of the November eviction. Now, on January 9, 2007, the army, along with an elite squad of riot police, enters the site and encircles the few protesters present, confining them to the west side of the river. East of the river, brown smoke billows from an orange blaze. Fire envelops one home, and then another, until little remains but the charred remnants of a nascent village. Light showers turn into heavy rain, but the protesters have nowhere to go.

[<http://www.rightsaction.org/video/elestor/> = 9-minute documentary on forced evictions against Mayan-Q'eqchi' communities carried out for and by Skye Resources mining company, January 7-9, 2007]

Maria Amuchastegui is a Toronto writer on Latin American issues, who has written for The Globe and Mail, Toronto Star, NOW Magazine and The Beaver.

Her family is from the Andean northwest of Argentina, where several Canadian companies have mining projects underway.

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