

GUATEMALA: MINING, REPRESSION & IMPUNITY NORTH AND SOUTH

(November 10, 2009)

Below -- A series of articles as follow-up to the deadly shootings (at least one dead, 20 more injured) on September 27 & 28, near El Estor (department of Izabal), repression and violence related to the nickel mining interests of Hudbay Minerals (a Canadian mining company).

Though one of the killings is directly attributable to armed security guards hired directly by Hudbay Mineral's subsidiary in Guatemala (CGN, Compania Guatemalteca de Niquel), no justice has been done for the assassination of local teacher Adolfo Ich Chub, nor for the other people injured in the two shootings.

FOR MORE INFORMATION ABOUT MINING-RELATED STRUGGLES IN

HONDURAS & GUATEMALA: Annie Bird, annie@rightsaction.org, 1-202-680-3002; Grahame Russell, info@rightsaction.org, 1-860-352-2448

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INTERVIEW BY FRANCOIS GUINDON WITH RAUL, a Mayan Qeqchi man working for Rights Action, who was shot on September 28 (Translated from Spanish by Rosalind Gill, RGill@glendon.yorku.ca)

WHAT MESSAGE SHOULD WE SEND TO CANADIANS ABOUT THE PRESENCE OF THE HUDBAY MINERALS NICKEL MINING COMPANY IN EL ESTOR?

The company has caused us a great deal of pain. It has caused harm to the people, who are poor Guatemalan campesinos. I would like to send a message to the owner of the mining company to ask him to look at what is happening and search his conscience to see the pain he is causing us and how we are suffering here in Guatemala. I would also like to ask him to stop manipulating the Qeqchi people. Please respect our rights and recognize the harms the mining company is causing to Guatemalan campesinos.

I would also like to say that we are not going to take this treatment lying down. We are Guatemalans, born on this soil; we are not immigrants here. We were born here, grew up here and we live here. Now they are telling us that we are intruders; but this is not true.

We want the Canadians, who are the owners of the company that is operating in the region, to evaluate the situation to see if they are really doing the things they said they would do – such as create employment and contribute to community development – because they are not doing these things. There has been no community development and the company has not created jobs. In fact, the company is dividing the community, deceiving us and killing the poor campesinos who are the rightful owners of the land here in Guatemala.

I hope that our community receives justice for all the harms it has suffered.

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NICKEL FOR YOUR LIFE: Q'EQCHI' COMMUNITIES TAKE ON MINING COMPANIES IN GUATEMALA By Susan Fitzpatrick Behrens, Oct 25 2009, <https://nacla.org/node/6177>

On Sunday, September 27, a violent conflict broke out in El Estor, a municipality near Guatemala's Pacific coast, between members of a Qeqchi community called Las Nubes and private security guards of the Guatemala Nickel Company (CGN), a subsidiary of the Canadian mining company Hudbay Resources. Community members report that CGN's security forces kidnapped and killed Adolfo Ich Xamán, a local teacher and community leader, and gravely injured eight others.

Hudbay/CGN attributes Sunday's violence to "organized" sectors within the community and asserts that "CGN Personnel showed great restraint and acted only in self defense."

The conflict arose in the context of company demands for the resettlement of Q'eqchi' community members of Las Nubes, part of a more expansive process of expulsions CGN has carried out since 2005. Hudbay/CGN claims a legal right to the land occupied by the Q'eqchi' communities based on concessions inherited from its corporate predecessors, EXMIBAL, INCO and Skye Resources.

The company identifies the Q'eqchi' people as "invaders."

At about 11, the Sunday morning of the conflict, the governor of the department of Izabal came to the community center of Las Nubes accompanied by some 50 private security guards of CGN. Neither the governor nor the CGN forces had an expulsion order, but for the next four hours a "discussion" ensued, with the company calling for a "legal" resettlement. At some point, at around three in the afternoon, the guards opened fire on the community members resulting in the wounding of eight people.

Adolfo Ich Xamán, say community members, was not killed at that moment, but had been kidnapped and deliberately murdered by the guards.

Representatives of Las Nubes and some 20 other Q'eqchi' communities protesting the presence of CGN and the forced expulsions are demanding an immediate cessation of violent repression, an investigation into the killing and assaults of September 27, and a withdrawal of CGN from El Estor. They claim an ancestral and contemporary legal right to the land. The company, they say, is the invader. They assert that the Guatemalan constitution mandates respect for indigenous people's interests, requires consultation prior to granting mining concessions, and demands protection of national land.

[GENERATIONS OF STRUGGLE FOR LAND AGAINST MINING COMPANIES & MILITARY]

The recent violence in El Estor highlights the economic, political, and quasi-military forces against which impoverished Mayas in Guatemala are fighting to retain tenuous

control over their land, and with it, the right to subsistence and to cultural autonomy in the face of the expansion of mining, hydroelectric dams, and export crops.

In 1996, peace accords in Guatemala ended a 36-year civil war and, as two indigenous-rights activists remarked to me in a recent interview, "made the country safe for investment." The contemporary operations of Hudbay/CGN, they told me, are a direct product of the years of military repression and of the subsequent "peace."

Hudbay/CGN's corporate ancestry can be traced back to 1960, when a Canadian mining company, INCO, joined forces with the U.S. Hanna Mining Company to form EXMIBAL. In 1962, EXMIBAL filed for its first mining concession in Guatemala and began forcefully lobbying the military government for favorable conditions. In 1965, the company's efforts were rewarded with a new mining law favorable to private investors, and a 365 square kilometer mining concession in the area of El Estor. (A good recounting of this story and a general history of resource exploitation in Guatemala is in Luis Solano, *Guatemala: Petróleo y minería en las entrañas del poder*, Inforpress Centroamericana, 2005.)

Solano documents the way in which, to minimize its tax obligations, EXMIBAL hired the Institute of Investigation and Industrial Technology (ICAITI), a company receiving funding from USAID for a geological study of exploitable mineral deposits in Central America, to push the Guatemalan government to declare it a tax-exempt "industry of transformation." The classification was granted in 1968, even though the country's weak civilian government initially opposed it. As a result, EXMIBAL paid royalties of a mere US\$23,000 a year for the right to exploit El Estor's nickel deposits and to expel Q'eqchi agricultural communities.

When EXMIBAL sought to negotiate a new contract with even more favorable terms, it faced massive opposition. At a local level, Q'eqchi communities vigorously protested expulsion from their ancestral lands. At a national level, groups within civil society - with unions and faculty of the University of San Carlos (USAC) in the vanguard - developed an organized opposition.

Popular protest against the 1965 concession became so intense that EXMIBAL, in an effort to quell the public outcry, launched a costly and extensive public relations campaign. In 1969, USAC faculty formed a commission to analyze the terms of the concession and to demand an alternative. The commission, which presented a detailed study and recommendations, was (literally) short-lived.

In November 1970, Julio Carney Herrera, a lawyer and member of the commission, was assassinated. In the same month, Alfonso Bauer Paiz, another commission member and law professor, was shot but survived. In January 1971, Adolfo Mijangos, a third commission member, confined to a wheel chair, was also assassinated.

A month later, in February 1971, EXMIBAL came to an agreement with the government. The terms, not surprisingly, favored the company. In 1980, after three years of exporting nickel, EXMIBAL reported more than US\$10 million in profits, but as researcher Solano documents, the Guatemalan government did not receive a cent. EXMIBAL hid profits by establishing a shell company and shifting resources to cover "expenses."

These conditions made EXMIBAL a standard target of the leftist Guatemalan Guerrilla Army of the Poor (EGP) and of the Guatemalan Workers Party (PGT). But, as Solano reports, even the military government of Romeo Lucas García began to demand reforms. In 1980, Lucas García presented a new contract to EXMIBAL requiring that 5% of the value of nickel extracted be remitted to the country. In response, EXMIBAL suspended operations.

With the government refusing concessions, the EGP continuing attacks, and global nickel prices falling, EXMIBAL left Guatemala, but it retained its mining concession. During its years of operation, EXMIBAL had massively displaced Q'eqchi' communities, paid virtually no taxes, gained contracts resulting from the violent repression and assassination of local and national leaders, and devastated natural resources. But the company retained the right to "sell" its mining concession to the highest bidder after the military "pacified" the country by massacring some 200,000 people, most of them Maya.

In 1994, EXMIBAL returned, proposing to pay the cost of building two hydroelectric dams to generate low-cost electricity in the neighboring department of Alta Verapaz. In 1996, the year of the peace accords, the Ministry of Energy and Mines announced that it would "grant all facilities for the reopening of the company EXMIBAL."

In 1997, new mining legislation reduced the royalties mining companies paid to the government for the privilege of exploitation from 6% of the value of net production to 1%.

In 2009, Yuri Melini of the Center for Social and Environmental Legal Action (CALAS), who survived a still unresolved assassination attempt that has left him severely handicapped, working with members of civil society, found that seven of the articles of the new mining law partially violate Guatemala's constitution.

In 2003, the former director of INCO, which held 80% of EXMIBAL's shares, became president and chief executive of the Canadian Mining Company, Skye Resources. In 2004, just days before EXMIBAL's 40-year concession expired, the company announced the sale of 70% of INCO to Skye Resources, which, in turn, received a new three year exploration license with an option to renew.

Skye Resources, which later merged with Hudbay Resources, paid \$636,000 to Guatemala's minister of finances and \$127,000 to the municipality of El Estor. These fees, said to cover the royalties that EXMIBAL failed to pay between 1978 and 1980, allowed the company to take control of what Guatemala's *El Periódico* describes as among the ten largest nickel reserves in the world.

The company forecasts that its mining investments, called the "Fenix Project," will produce 50 million pounds of nickel a year with an export value of between \$200 million and \$300 million for 2010. In theory, it will provide \$54 million a year in taxes to the Guatemalan government, which originally held a stake of 30% in CGN - a stake that has been reduced to less than 2%.

The concession also granted the company the "right" to expel Q'eqchi' communities, whose land was effectively sold out from under them. This is a "right" the company has begun to exercise vigorously.

In 2005, nearly a thousand Q'eqchi' Mayan women and men marched through El Estor to the headquarters of CGN, protesting the government's granting the company an exploration concession without consulting their communities.

Representatives of the communities also sent a letter to the president of Guatemala, the minister of Energy and Mines, and Skye Resources. The letter condemned the failure to consult Q'eqchi' communities, denounced pressure by Skye Resource's Guatemalan subsidiary, CGN, on communities to leave their land, and criticized the massive deforestation and environmental degradation caused by mining exploration. The protesters demanded a suspension of the mining license and reparations for the damages done and condemned the company for "entrapping, dividing, and intimidating our communities."

In the four years since the Maya Q'eqchi's initial protest, CGN has put more pressure on Maya Q'eqchi subsistence farmers by expelling communities, promoting divisions, and threatening opposition.

Representatives of the Committee for Campesino Unity (CUC) and of Q'eqchi' activists in El Estor recount that neither government officials nor representatives of CGN appeared at a meeting to discuss the mine and relocation just months prior to the recent outbreak of violence.

Instead, community members assert that CGN used the presence of some 100 community leaders, who overwhelmingly rejected the mine, as an opportunity to gather their names, photograph, and film them. This information, fear the Q'eqchi' activists, will later be used by CGN's local forces of repression.

Unless and until a full investigation is conducted, the details of the conflict on September 27 will remain unclear and the people responsible for assassinating Adolfo Ich Xaman and injuring other community members will remain free. But it is clear that this "incident" is not isolated. CGN is one representative of a broader expansion of North American mining in Guatemala, which is devastating Maya communities and provoking large-scale Maya protests. Guatemala's Maya majority is again paying the price of "development." As one community leader explained to me, people need to understand that "it has to do with the so-called developed countries.... In exchange for maintaining their wealth, we have to die."

(Susan Fitzpatrick Behrens is Associate Professor of History at California State University, Northridge, and a NACLA Research Associate.)

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HUDBAY SEES MID-2010 DECISION ON GUATEMALA NICKEL PROJECT

By: Liezel Hill, 4th November 2009, TORONTO (miningweekly.com)

Canadian base-metals-miner HudBay Minerals expects to make a final decision on whether to proceed with the Fenix nickel project, in Guatemala, around the middle of next year, CEO Peter Jones said on Wednesday.

The company is trying to come up with a low-cost power solution for the project, which is bought last year when it acquired Skye Resources, and is also relooking at

the mine plan and reserves and resource calculations, all of which are expected to result in improved economics for the mine. An updated capital cost estimate is also being compiled and Jones said that the company will start looking at options to finance the Fenix project, including potential joint-venture partners "and other strategic options that could make Fenix more attractive for HudBay".

However, CFO David Bryson commented that these discussions will be somewhat limited by an existing agreement with Brazilian-owned Vale Inco, which has the rights to market ferronickel produced from Fenix. However, talks with Vale Inco have indicated that the larger miner will be open to a situation where it helps set up and structure an offtake agreement with another party that could also invest in the project as a strategic partner, he said. "The presence of those marketing rights does impact the attractiveness of Fenix to some of the nickel majors; I think that is a fair comment.

"But just in terms of the joint-venture offtake from someone who is not a nickel producer in a substantial way, I think that we do still have that option open," Bryson said.

Currently, however, the key focus is to secure and settle on a dedicated power supply for the project, which the company would like to have finalised by early next year, Jones indicated. It is considering thermal power options - either coal fired or pet coke - but there is also the option to participate in one of several hydroelectric projects that are moving through the development process in the region.

HudBay is also working to improve community relations around the project - violence flared up again in September over attempts to persuade people living illegally on the property to be relocated. "Discussions between ourselves and various stakeholder groups are ongoing and we are committed to broadening community support for our activities," Jones said.

[...]

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WHAT TO DO

WRITE TO HUSBAY MINERALS – WITH COPIES TO YOUR OWN POLITICIANS – ASKING THEM:

- To suspend all work at the Fenix Project mine site;
- To make public which of their private security forces were involved in the one attack, and possibly both attacks;
- To fully cooperate with any and all investigations – legal or otherwise – that look into these crimes.

HUSBAY MINERALS
Dundee Place
Suite 2501, Adelaide Street East
Toronto, Ontario, M5C 2V9, Canada

Peter R. Jones, Chief Executive Officer and Director
Michael D. Winship, President and Chief Operating Officer
John Vincic, Investor Relations and Corporate Communications, 416.362.0615,
john.vincic@hudbayminerals.com

CANADA PENSION PLAN (As of March 2009, CPP owned 882,000 shares, worth \$5,000,000)

Write to the CPP – with copies to your own politicians – asking them:

What is their policy in terms of investing in companies operating in violent and repression situations (as nickel mining in Guatemala has been for years)?
To withdraw their investments from HudBay;

CANADA PENSION PLAN Investment Board
csr@cppib.ca, 416-868-4075, Toll Free: 1-866-557-9510
CPP Investment Board
1 Queen Street East, Suite 2600
Toronto, ON, M5C-2W5

Write to your own pension fund, and ask whether they are invested in Hudbay.

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TO DONATE TAX-DEDUCTIBLE FUNDS to indigenous and campesino groups promoting their own community development projects and resisting the harms and violations of mining & hydro-electric dams, make tax deductible donations to "rights action" and mail to:

UNITED STATES: Box 50887, Washington DC, 20091-0887
CANADA: 552-351 Queen St. E, Toronto ON, M5A-1T8
CREDIT-CARD DONATIONS: <http://rightsaction.org/contributions.htm>

Upon request, Rights Action can provide a proposal of which community organizations resisting the harms and violations caused by mining in Guatemala and Honduras we are working with and channeling your funds to.

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FOR MORE INFORMATION about and/or how to get involved in efforts to support human and indigenous rights defenders in Guatemala, and in efforts in the USA and Canada to hold accountable North American mining companies and investors:
info@rightsaction.org, www.rightsaction.org