

Henrik Wiig

Promoting Respect for the Collective Rights of the Q'eqchi' Population

An evaluation of AEPDI in El Estor, Guatemala

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Abstract: The Norwegian government supports local Non-governmental organisations (NGO) that take part, directly or indirectly, in politically sensitive conflicts in developing countries. It is hence a concern to the Norwegian government and society whether the organisations receiving support use methods we find acceptable. The tension between indigenous groups and the mining industry in Guatemala is in general high, and in the Eastern district of El Estor there have been several violent episodes between Q'eqchi Maya Indians and the international mining companies with licences to both explore for and exploit nickel in the area. Most of these episodes are connected to the quite common phenomena of land occupation by the indigenous population. This report is an evaluation of the work of The Estorian Association for Integral Development (AEPDI) which works closely with the indigenous population. The report emphasises the highly conflictive environment and weak position of Guatemala to properly analyse the background of both the mining conflict and the way AEPDI acts in this situation. This evaluation was commissioned by the Royal Norwegian Embassy in Guatemala.

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Preface

Many projects in the Norwegian indigenous program in Guatemala are administrated by the Royal Norwegian Embassy in Guatemala. The Norwegian Institute for Urban and regional Research (NIBR) was contacted directly and commissioned by the embassy to carry out this evaluation of one of these projects. The Estorian Association for Integral Development (AEPDI) is a relatively large NGO in the mainly Maya Q'eqchi Indians dominated district of El Estor in the Eastern Province - an area ridden with conflicts between indigenous groups and mining companies.

The evaluation was carried out by Researcher Dr. Henrik Wüig who did field work in both Guatemala City and the district of El Estor in July 2007. NIBR expresses thanks to the embassy, represented by the indigenous Program Coordinator Miriam Bolaños and Counsellor Håvard Austad, for all practical support in the evaluation process, and to AEPDI for assistance during the fieldwork.

Oslo, January 2008

Arne Tesli
Research Director

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Acronyms

AEPDI	Asociación Estoreña para el Desarrollo Integral (Estorenian Association for integral development)
CASIF	Comite Coordinador de Asociaciones Agricolas, Comerciales, Industriales y Financieras (Coordination committee for agricultural, comercial, industrial and financial associations)
COCODES	Consejo comunitario de desarrollo (Community Development committee).
CODEDES	Consejo departamental de desarrollo (Department development committee)
COMUDES	Consejo municipal de desarrollo (Municipal development committee)
CGN	Compañía Guatemalteca de Níquel (Guatemaltecan Nickel Company)
EXMIBAL	Exploraciones y explotaciones mineras Izabal (Izabal Exploration and Exploitation Mining Corporation)
NIBR	Norsk Institutt for By og Regionsforskning (Norwegian Institute of Urban and Regional Research)
RGP	Registro general de la propiedad (General land register)
RIC	Registro de informacion catastral (Register of cadastral information)

Summary

Henrik Wiig

Promoting respect for the collective rights of the Q'eqchi'population"

- An evaluation of AEPDI in El Estor, Guatemala

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The Norwegian government supports local Non-governmental organisations (NGO) that take part, directly or indirectly, in politically sensitive conflicts in developing countries. It should thus be a matter of concern that such Norwegian funded organisations use methods that the Norwegian government find acceptable. The tension between indigenous groups and the mining industry in Guatemala is in general high, and in the Eastern district of El Estor has there been several violent episodes between Q'eqchi Maya Indians and the international mining companies with licences to both explore for and exploit nickel in the area. Most of these episodes are connected to the quite common phenomena of land occupation by the indigenous population. This report is an evaluation of work of The Estorian Association for Integral Development (AEPDI) which works closely with the indigenous population. The report emphasises the highly conflictive environment and weak position of the Guatemalan state to properly analyse the background of both the mining conflict and the way AEPDI acts in this situation. This evaluation was commissioned by the Royal Norwegian Embassy in Guatemala.

Informe ejecutivo en castellano

La Embajada Noruega en Guatemala apoya a la ONG *Asociación Estoreña para el Desarrollo Integral* (AEPDI) con aproximadamente 100.000 dólares al año para fortalecer su organización e incrementar su capacidad de capacitación y liderazgo a la población indígena Q'eqchi' del departamento de Izabal. El programa se denomina *Promoviendo el respeto de los derechos colectivos de la población Q'eqchi'*. La población indígena constituye aproximadamente 90 por ciento de la población de la municipalidad de El Estor, donde la mayoría son campesinos económica y políticamente marginalizados. Una misión importante del AEPDI es asistir a las comunidades indígenas en sus negociaciones con los grandes terratenientes y el estado para obtener títulos de propiedad de la tierra que necesitan para subsistir. La entrada de la compañías mineras ha añadido una nueva dimensión al tradicional “conflicto agrario” en la zona. AEPDI juega hoy un papel importante no solo como mediador entre los indígenas y los mineros, ayuda también a organizar las comunidades para que ellos puedan obtener mayores beneficios de las oportunidades que se presenten. Se ha producido varias invasiones en el terreno de la compañía canadiense Compañía Guatemalteca de Níquel (CGN), que por su lado acusan a AEPDI de apoyar tales actividades ilegales e incluso iniciarlas.

Durante la visita de campo este consultor no pudo encontrar ninguna evidencia de actividad ilegal por parte de AEPDI. Sin embargo, la organización no informa sobre el derecho del estado a expropiar terreno privado para admitir el acceso a las compañías de explorar (y explotar) minerales si el propietario se opone. Eso es importante porque muchas comunidades no entienden por qué el estado esta ortogando licencias de exploración en las mismas tierras donde ellos, después de una lucha larga, ha obtenido titulo de propiedad. Según las comunidades el “estado es falso” en dar derechos a dos partes por el mismo pedazo de tierra. Esa falta de información intencional – los dirigentes de AEPDI saben que la ley de expropiación estatal existe y entienden muy bien el rol clave que pueda jugar para garantizar el acceso a las compañías privadas en las zonas donde tienen licencia de explotación, pero todavía dejan de informar sobre ello – puede ser el origen de mucho de la conflictividad en la zona. A la vez, circunstancias atenuantes para explicar este “pecado de omisión” es que el estado pocas veces ha utilizado este derecho porque esperan que las compañías y los propietarios lleguen a un acuerdo voluntario.

El proyecto actual tiene tres componentes, i.e. (i) capacitar a 100 personas (mínimo de 40 por ciento mujeres) sobre derechos colectivos en tres distintas partes de El Estor, incluyendo hacer un plan de acción sobre como defenderlos, implementar dos de actividades de defensa y al final organizar una reunión con las autoridades municipales, (ii) Formular un plan de acción municipal basado en los tres planes formulados en los cursos y (iii) hacer un curso de formación de lideres y lideresas

para 40 personas sobre como participar y contribuir en los tres niveles en organización en el municipio, i.e. comunal (COCODES), municipal (COMUDES) y departamental (CODEDES). AEPDI trabaja satisfactoriamente con los distintas partes del programa y ahora ha terminando los cursos de capacitación.

AEPDI también esta participando en la “mesa de diálogo” entre las comunidades, la municipalidad y las compañías mineras donde se espera que ellos jueguen un importante papel en facilitar el diálogo entre las distintas partes. Se ha producido resultados en varios casos de conflictos concretos anteriormente, pero las reuniones se han detenido por falta de progreso en algunos conflictos, especialmente aquellos sobre tierra agrícola.

Presionar fuertemente a la compañía con invasiones ilegales parece ser la forma más efectiva de obtener beneficios de la compañía para la población local, sea que reclamen terrenos de substituir o trabajos asalariados. Los que no actúan, no obtiene mucho. Sin embargo, con la experiencia de que medidas legales e ilegales de presión es la única forma de obtener beneficios, puede provocar todavía mas conflictos en el futuro. Buscar un acuerdo general en la zona entre los distintas partes para que toda la población disfrute de los beneficios de la minería debería ser la estrategia por parte del AEPDI y las compañías mineras.

1 Introduction

1.1 Background

The indigenous population in Guatemala are mainly peasants. Access to land is a crucial element in their livelihoods. Mediating in land conflicts with the large (and often absent) landowners or the state has hence always been a core activity of The Estorian Association for Integral Development (AEPDI – Asociación Estoreña para el Desarrollo Integral), a regional Non-governmental organisation (NGO) which support the indigenous Q'eqchi' population in EI Estor municipality of the eastern department of Izabal.

The recent entry of large mining companies in El Estor has added a new dimension to their struggle for land. Rocketing world mineral prices now makes the mining of the nickel deposits in El Estor profitable, and the peace agreement between the guerrilla and government has made it possible and politically acceptable for international companies to operate in the area. Several communities are claiming land for farming and housing in the registered private property of the Canadian owned Guatemalan Nickel Company (CGN - Compañía Guatemlateca de Níquel) where exploitation is planned. Furthermore, a large part of the indigenous population resent the exploration concessions given to the mining companies on a larger area outside the company's own property, even though the company will probably need their consent to start the exploration.

In this rather conflictive environment AEPDI now offers information, legal advice and organisational assistance in order to strengthen to the local indigenous population ability to negotiate with the mining companies. The Norwegian embassy supports financially a program on collective land rights in AEPDI, an issue which increasingly sensitive in several aspects. This report will not just evaluate whether AEPDI fulfils the agenda set in the project agreement with NORAD, but also try to analyse whether AEPDI's activities are in line with what the Norwegian government perceives as both desirable and acceptable forms of social struggle in the given Guatemalan context.

1.2 Purpose of the evaluation

This background of conflict for the work of the organisation has implied that this evaluation puts more emphasis on explaining the context where this organisation operates in order to evaluate whether their actions can be characterized as acceptable to receive official Norwegian monetary support, rather than doing a detailed

description of their program and whether the implemented according to the details of the contract and project description.

The rising tension between the mining companies and the indigenous population in El Estor at the beginning of 2007 has resulted in violent episodes. Indigenous land invaders were evicted forcefully by the police from company territory, in some cases without a warrant. Company engineers has been physically attacked by local indigenous community members while they were doing their job in the field. The mining companies accused AEPDI of organising illegal actions and furthermore to stir up local resistance against their activities by purposefully spreading wrong information. The Norwegian embassy, as a responsible donor behind AEPDI, had to take these accusations seriously. The possible threat of violence from either side could have disastrous implications in a country where a bloody civil war ended just a decade ago. An evaluation was commissioned even though AEPDI was included in the evaluation of the indigenous program in Guatemala only a year earlier by a mixed team, (see Axel Borchgrevink et al., 2006). This was done to have a second opinion from an outsider who had no previous connection to the given situation.

The emphasis on establishing how the organisation takes part the current conflict between local communities and the mining companies came to light through discussions with the embassy personnel and did not play a mayor part in the Terms of Reference. The ToR did not ask for an inception report, probably because of the limited size of the project. The dissemination of the findings of the project has been presented through discussions as oral communication has been regarded as an equally important output from this project as the written report itself.

1.3 Method

Interviews with key informants on all sides of the conflict during an eight day visit in Guatemala July 2007 are the main basis for information collection and analysis. When writing this report, I have relied more on interviews than written material to sum up the situation. The methodological idea was to present conclusions and analysis to the informants on both sides, to see whether they shared the same understanding of the conflict and its origin. It is surprising how they agreed to most of the basic facts and analysis presented in this report, even concerning the ILO §169 convention. This is not necessarily in contradiction to the fact that they still defend their positions and actions taken.

A three days visit to El Estor was conducted to have meetings with AEPDI, the mining company CGN and the local indigenous population in general to hear their view or experiences. The remaining time was spent in Guatemala City. AEPDI put together the program, with the exception of a visit to the CGN mineral exploitation field and company offices, and arranged for all practicalities. Even though this implied that AEPDI had a possibility to influence the agenda of the visit, did this consultant feel that he had free access to make interviews with the people he needed to meet. However, time constraints and language barriers made it difficult to really get good contact with the local indigenous population who mainly spoke the local language.

Reports, articles and other written material were also used for the analysis, as well as video recordings and photos of historical incidents presented by both sides.

2 Norwegian indigenous program

One way to evaluate whether AEPDI acts in accordance with standards expected by Norway, would be to compare its program and strategy with the strategy of the Norwegian embassy. This turned out to be difficult, because there are no clear written guidelines for the indigenous program in Guatemala. The guidelines given in (MFA, 2004) are too general to give a good indication of for instance what interpretation of “collective land rights” Norway supports. Some Norwegian informants regard as irrelevant as it is up to the local indigenous groups to decide what policy goals they would like to pursue. This is probably an unattainable ideal as there are great differences within the indigenous groups regarding the way ahead, and they seem to lack a representative decision body. When Norway hence supports specific organisations, it implies a support of a specific standpoint which inevitably influences the equilibrium within political discussions among indigenous group. If support were given to another group, the resulting power balance might tip in another direction. This is important, as there are many different interpretations of “collective rights to land” also among the indigenous population, differences in standpoints that are discussed in a more general framework in the coming sections.

“Repaso programa Noruego de pueblos indígenas en Guatemala” (MFA, 2003b) is the main document discussing the Norwegian strategy for the indigenous program. It is only a proposal for reorganisation of the indigenous program, but has later informally been adapted as the de facto strategy. This document proposes to narrow down to two major activities, i.e. (i) bilingual education and (ii) indigenous communal lands and the environment. The discussion and interpretation of the latter point is however unclear as neither the terms “collective” nor “land rights” is defined nor discussed thoroughly. Through discussions with the embassy and AEPDI it became clear that both put less emphasis on “territorial” claims (at least at the current stage of society building) than to protect the rights for indigenous people to *land they already possess* against encroachment. The indigenous groups are normally more at risk than other groups in the society.

However, it is difficult to separate formalization of property rights from indigenous nation building, as such formalization is in Guatemala a de facto “political” issue, due to the lack of a reliable register and the fact that many different parties can make claim to the same piece of land. Furthermore, the formal laws and rules are very unclear in Guatemala, which implies that nearly any organized activity can be regarded as “political” in the sense that its intention will be to influence law and practices. Due both to problems in defining the legal owner and the lack of legal power of society to guarantee such rights, property rights to land is directly linked to physical power at the local level, and thus normally outside the legal system. It will hence be of no surprise if the indigenous population now starts to use whatever means they have available, legal or illegal, to counteract the existing power balance.

3 AEPDI and the Norwegian funded program

3.1 The organisation

AEPDI has grown to become a rather large NGO with 28 full time employees, financed by several international donors to provide services to the indigenous communities in terms of education, facilitating coordination and institution building amongst the Q'eqchi'. However, like most other organisations, AEPDI do have their own idea of how indigenous society should be organised and which political aims they would like to achieve. It is hence difficult to draw the line between “assisting” and actually “organising” the indigenous groups, and my impression is that AEPDI does some of both, as they are responsive to peoples' opinions, but at the same time has a clear idea of where they would like to lead them. This distinction between assisting and actively organising is especially important when conflicts such as the one between the indigenous population and the mining companies in El Estor arise. The companies blame AEPDI of agitation and using untruthful arguments to put an, in other respects, benevolent local population against them.

There are three main components in the AEPDI activity, namely (i) access to justice, (ii) education, and (iii) art (probably culture). The first program is the most important and is named “The Q'eqchi' Ombud” (*Defensoría Q'eqchi'*). This has become a synonym for AEPDI among the local population.

AEPDI was founded by the American catholic priest Daniel Vogt who was posted in El Estor in the 1980'ies. When his church wanted to repost him to another parish, he resigned in order to continue working with the q'eqchi' in the municipality. He has now returned to the Catholic Church as priest in Puerto Barrios, and has left the daily management of AEPDI to the organisation coordinators in El Estor. However, he is still the director, and has a firm grip on the organisation when it comes to decisions of important matters.

3.2 The collective rights project

Similar to other indigenous organisations in Guatemala, AEPDI also refers to the ILO §169 convention as the main instrument for opposing mining activities in El Estor, (OHCHR, 1989). The convention establishes that indigenous populations have the right to be consulted on issues that concerns land (private property) and

territory (area where they live in general). The specific case of subterranean resources is defined in article 15, point 2:

In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

According to this ILO §169 convention does the indigenous population of El Estor has the right to be consulted about the mining activity that will take place in the municipality. Approximately 90 percent of the population in El Estor is assumed to be q'eqchi'. Based on my interviews, all parties agree on the fact that such consultations did not occur in a satisfactory manner. AEPDI has raised a complaint to ILO on this issue in El Estor. This international body accepted to look into the issue in 2006 but has not reached any conclusions yet, see (ILO, 2007). According to the Guatemalan Ministry of Energy and Mining such consultations did not form part of the recently reformed national Mining Code at the time when exploration concessions were given.

While ILO §169 states that indigenous populations have the right to be consulted, it does not equate this to a decision-making right or power to actually decide on the prospects of specific projects. The article in question only states that indigenous populations should have a "fair" share of the benefits from such projects without giving any specific indications on how that shall be measured.

Signing an international convention should ideally imply that the national laws are amended to be consistent with the convention. If this happens, there is no need for people to refer to the international convention, as it is sufficient to apply the national laws. However, such changes do not necessarily take place, and in the case of Guatemala this process is very slow. According to informants, the inclusion of indigenous rights according to ILO §169 is very limited in Guatemalan law. The additional problem of validity of national legislation relative to international conventions therefore arises¹.

¹ There is an ongoing discussion in Guatemala on how to interpret discrepancies between international conventions and national law in Guatemala as article §46 in the constitution states that signed international conventions take precedence over national law. However, the ILO §169 convention itself was ratified by Guatemala explicitly stating that it should not be interpreted in contradiction to the constitution, which hence represents a "Catch-22" situation and by ILO and indigenous activists regarded as an empty phrase. However, in as in all such cases will the interpretation of the national courts in the end be decisive. To this consultant's knowledge has there only been one case in the Supreme Court in favour of supremacy of the ILO §169 convention, but it seems not to have set precedence due to the rather specific circumstances of the case and considerable resistance towards such interpretation in both the legal and political system in general. It is hence not

The Norwegian funded project is, based on its description, directed more towards *general* collective rights rather than collective *land* rights. The program has two major components: (i) general capacity-building of indigenous community leaders, and (ii) to facilitate communication between indigenous population (leaders) and the official local political system (NORAD, 2006). Most of the activities described in the implementation plan have been carried out with the participation of a considerable number of local community members. AEPDI thus seems to have accomplished the project tasks in a satisfactory way.

My role as a consultant in this specific context of a conflict of interests between the mining companies and the indigenous population has been to assess the information and interpretations that are mediated to the indigenous population in connection with project activities. What does AEPDI actually communicate to the indigenous population in their leadership courses? Does the information constitute a comprehensive representation of their rights according to national and international law, or is it a biased and partial representation? Has the information been intentionally misleading? These are relevant questions to ask due to the seriousness of their potential consequences: organised resistance among the indigenous people against mining companies and land owners in general, and even land occupations and violence. Furthermore, AEPDI was de facto de only source of information on the mining project for the local indigenous population as they were able to communicate in their language (initially CGN and the government only communicated in Spanish) and as such hence carries a high responsibility for providing accurate information and to secure a correct interpretation of the information given.

Most of the course material, other written documents and oral presentations that this consultant has come across have a balanced and sober presentation of the facts in the mining situation, and the level of agitation is within reasonable levels. However, there is one important exception: there is no reference to the national state's right to expropriate land and property whenever that is needed to develop the country. A state's right to expropriate is based on the argument of necessity for the common good, that is, to improve the living conditions of all inhabitants. This fundamental issue appears to have been neglected by AEPDI. The organisation has spread the view that the owner of a title deed, being either an individual or the collective, could not be obliged at a later stage to sell to the state or to allow certain activities to take place on their land, if the state so demands.

This issue is vital, since Guatemalan law only gives the title deed owner the right to exploit land resources on the surface, while the subterranean resources belong solely to the state. The use of the surface is normally a precondition for the access to the latter, and the state, either directly or in alliance with private entities, thus has the legal tools to enter by force if the title deed owner does not give his/her consent. Without such law, the land title deed owner would have the power to prevent the state from exploiting its resources and become defacto owners also of the subterranean natural resources. AEPDI knows about the existence of the expropriation law and its relevance in the current situation. By omitting to inform the indigenous population about the expropriation law, the organisation fails to provide a

just questionable whether the ILO §169 prevents land expropriation by the state, but also if it interpreted to do so, whether it has precedence over the national law.

complete view of the elements necessary to evaluate the situation. AEPDI is hence intentionally spreading a misconception in the indigenous population by leaving out information they know is necessary for the indigenous groups to make up their own minds about the situation they are in and their proper rights, as AEPDI admit giving such information will not support the organisation's interpretation of indigenous rights.

However, this "sin of omission" can be explained by the current political practises, and the possible explanations will be given here. First, expropriation is not considered to be a serious concern as it is hardly ever practised in Guatemala today. There is simply no tradition for such forceful state intervention. As some informants (possibly exaggerating) says: "the state rather build a highway around a property whose owner refuses to sell voluntarily, rather than to expropriate the land". However, whether the state actively uses this possibility will depend on the political context, which is highly susceptible to regime changes. Furthermore, the threat of expropriation might actually be used today in a "stick-and-carrot approach" leading people to sell or allow access voluntarily under the treat that expropriation might take place if the owner refuses to sell. Second, the Mayan culture and cosmovision does not separate between landed and subterranean resources and is hence in contradiction to the formal national laws. Being indigenous activists they simply hold their own perception as more relevant. And third, the ultimate aim of AEPDI is to create self-governing indigenous reservoirs with defined geographical boundaries controlling both landed and subterranean resources.

During the interviews AEPDI members expressed considered the second and third to be important and their lack of information regarding the expropriation law could thus be regarded as a form of civil disobedience. According to the director and founder of AEPDI, Daniel Vogt, the Canadian model – were the indigenous communities in a way become virtual separate states within the nation – was an ideal to be followed in Guatemala. He indicated that this kind of territorial decision rights were the ultimate goal for AEPDI. This ideal, however, is highly problematic, as it is a product of the Anglo-Saxon law system, which recognises the title deed owner as the only proprietor of subterranean resources. This is in contrast to the Latin American and European system. This is however under pressure as cultural pressure from the north increases and with it, the perception of justice. The AEPDI view and goal could be respected as a political statement and as such also acceptable for the Norwegian government. However, the questionable issue is whether it is an acceptable strategy *not* to inform the affected people and communities on current legislation in order to speed up a process of social, political and juridical change.

The human rights based approach of the Norwegian government in Guatemala, and the support for "civil society organisations... evaluated on their possibilities for social mobilization and for playing a pro-active role vis-à-vis the State" (MFA, 2003a). To have this as a basis for choice of collaboration partners does not necessarily mean that the organisations actually share the Norwegian government's vision on explicit issues. Supporting only organisations that share our values and visions might be considered locally as improper involvement in local politics by a foreign government. This is especially important in Guatemala where there is high degree of fragmentation within the indigenous population about the future goal and political aim.

(Santiago Bastos, 2005) identifies a variety of positions regarding the future development of this complex country, taking into consideration elements such as the nation, the state organisation, rights promoted and cultural diversity (table 3.1 below). The different political positions go from the left to the right, with the current unified central state refusing any cultural rights on the one extreme, and a federal state of Mayan nations based on collective property rights on the other.

Table 3.1 *Proposals on the diversity of the nation, classification from (Santiago Bastos, 2005)*

	Nationalism Segregation	Assimilation Universal	Multicultural Individualism	Multicultural Collectivism	Nationalism Indigenous
Nation	Unique Guat.	Unique Guat.	Guat. Nation Ind. comm	Guat. Nation Ind. Comm	Maya nations Guat. State
State	Central	Descentral	Descentral	Autonomy	Federal
Rights	Individual Restricted	Individual Universal	Individual	Specific collective	Collective
Cultural Diversity	Superior vs. inferior	Only folkloric	Cultural rights	Cultural and political rights	Cultural and political rights

According to the above classification, AEPDI can be considered as an organisation whose program belongs in one of the two positions on the right side of the table. They emphasize the collective rights above the individual rights when it comes to land, e.g. they support the rights of the community in general and restrict the rights of individual owners to enter into contracts with mining companies. This can also be seen in the way they support groups in some community who uses “collective rights” as an argument to stop other fellow community members from letting mining companies to undertake explorations on what is considered their private land. AEPDI also defends the idea that indigenous populations should obtain territorial control, either as property owners with the right to refuse the entry of the state or as defacto owners of the subterranean resources too. Whether the result would be a federal state or a unique state with some autonomous territories depends on the size of the land that in the end will come under indigenous control. The indigenous population constitutes about half the population in Guatemala, but land belongs disproportionately to the ladino population – this is also the case in El Estor. The Q’echi’ population constitutes about 90 percent in this municipality, but are left to farm in the inaccessible mountains or to work as employees for the large ladino-owned farms on the fertile valley bottoms. What does the AEPDI position actually imply in the Guatemalan context? If self-determination was to be restricted to areas owned by the indigenous population today, the result would be relatively small indigenous reserves in an overall multiethnic state. However, if historic control and population densities should decide, Guatemala could soon end up as a confederation of 22 independent indigenous states, given the limited sense of community between different Mayan groups. Then, even if private property rights for the current ladino land owners are respected, its content might be hollowed out through local regulations, e.g. higher taxation rates on property or income.

3.3 Project implementation

The AEDPI project description contains three clearly main components :

- Capacity building got 100 persons/individuals (40% woman) on collective rights in 3 sectors of El Estor (i.e. Bongo, Benque and Sexan) to: (i) develop an action plan to defend the collective rights in indigenous communities, (ii) implement two specific activities (*acciones concretas*) in this action plan, and (iii) organize a meeting with municipal authorities.
- Formulate a municipal action plan based on the three sector action plans, and communicate this to the public in general.
- Leader formation for 40 persons/individuals from El Estor (40% woman), especially directed towards making contributions towards the three levels of councils, i.e. the communitarian -COCODES, the municipal - COMUDES and the departmental – CODEDES

Capacity-building in the three sectors has been implemented as planned. The project facilitators travelled to distant communities where people from the surrounding communities also joined at weekend gatherings. Participants were provided with food and shelter, and video projectors were used to facilitate communication. It has been more difficult, however, to initiate the formulation of real action plans beyond the bulletin board level, and the facilitators have not been able to call for a meeting at the municipal level. The consultant was not able to identify what specific activities had been implemented from the action plans.

The second point is not yet implemented, as AEPDI is still in the process of coordinating the proposed action plans at the regional level to achieve consensus at municipal level.

The third point has been implemented. AEPDI has organised the announced number of leadership courses in their central offices in El Estor since the start of the program.

The planned public campaign to make the population aware about their municipal action plan has not yet taken place as the report is not finished yet (as of July 2007 when this consultant carried through the fieldwork). Such delays are common for this kind of projects, and using sufficient time is probably necessary in order to achieve consensus regarding this rather complex issue.

AEPDI is also expected to support and take part in a roundtable to solve concrete challenges and issues between the municipality, the mining companies and the indigenous communities, led by Archbishop Peñate of Puerto Barrios. Several meetings have taken place, but the activity ceased summer 2007 when no solutions were reached regarding some some specific issues and cases².

² At the time of writing this report, the round table reactivated and some agreements were reached.

3.4 AEPDI representativity

AEPDI's position as a local NGO is unique, as it is integrated both to the local population at the same time as it holds good contact with international indigenous activist organisations. AEPDI is neither a purely grassroots movement nor a top-down attempt to organise the locals. This combination owes much to the founder Daniel Vogt, who integrated the local population into the organisation at an early stage while keeping a tight grip on activities at the same time. Furthermore, AEPDI actively seeks support from international organizations; amongst other by letting the Indigenous Law Resource Centre based in Washington D.C. take the case of Sexan to the Inter American Court of Human Rights.

Based on the field visit, it is the consultant's impression that AEPDI is perceived by the local q'echi' population as being a representative of their interests. The attendance at the gatherings observed during the visit was considerable, with at least 100 individuals at each event. Most people interviewed outside the organisation also considered AEPDI to be an organisation well rooted in the indigenous population. However, the organisation only works in the Izabal department and has few contacts and activities in the core q'echi' area of Alta Verapaz.

4 Q'echi' vs. Mining companies in El Estor today

4.1 Historic background

There are several issues from the past that have led to the current conflict situation between the local populations and the mining companies. Nickel was found in the area a long time ago, but its exploitation started only as late as in 1977. As world mineral market prices slumped a few years later and operations turned out to be unprofitable, the mining company chose to close down in 1981. During this period, the municipality had lived through a bonanza with a huge influx of people, people who was now left without any compensation and felt deceived. The methods used by Exmibal – the preceding company to construct and run the exploitation site in Cahabonsito Norte property – is described as conflictive. There were several disappearances and probably killings of people resisting their activities, causing anger and resentment among the local population. The ongoing civil war and the rather racist approach of the ruling class in Guatemala at the time formed the context for these reproachable events.

4.2 The Guatemalan land register system

All Guatemalans seem to know about and discuss “The agrarian problem”, a concept that seems to comprise everything that is perceived to be wrong in rural areas. The more technical problem of defining property rights to land is thus often mixed with distributional considerations – which actually are a political issue.

Most land of commercial interest had already been registered in the 19th and early 20th centuries in the General Land Register (*RGP* – Registro General de la Propiedad), and its preceding equivalent. This register is, however, not really reliable for a variety of reasons. The *RGP* consists of large books kept by public officials, where each plot of land is registered with the three dimensional identity of *Finca*, *Folio* and *Libro*, meaning proper name, page of the book and then the district book as the reference. The information given can be very limited; geographical coordinates are imprecise, if they exist at all. This is due to the fact that land was initially handed over with a pen stroke to influential people who did not necessarily ever make use of it. If property remains unknown to the formal owner's inheritors, the term “absentee owners” assume a different connotation, as owners are actually absent. Sales, partitions and other changes are furthermore recorded in consecutive lines in the

RGP, which implies that the new entities do not necessarily contain information of the entity of origin. If needed, each page in the book must be turned to find the right reference. This becomes even more complicated as pages might have gone missing through time, possibly torn away by corrupt officials or anyone with access to these public books.

The Register of Cadastral Information (RIC – Registro de Informacion Catastral) is the new governmental entity in charge to develop a modern electronic cadastre for land properties. Their technical approach to collect information consists on walking from plot to plot in certain regions, defining the owner through interviews in the field and then verifying the claims and displayed title deeds with information in the RGP. Whenever there is a discrepancy, the field is left unregistered until the courts can decide on the matter. This seldom happens, as it would imply an overload of the current Guatemalan legal, and the plot is hence not formally registered. The intention is hence to create special land courts with a lower level of formal judiciary positions to judge and further streamline the cases to be able to reach decisions in short time. A new land law describing how to settle cases within the different categories is needed and has been underway for a long time, each time stopped by one party or the other. The reasons for this are actually political, reflecting real choices on how to construct society – and not just the more technical issue of identifying owners.

The last draft for a new land law included historical rights to the indigenous population. If approved, it would lead to an extensive redistribution of land in Guatemala. This *de facto* land reform was stopped by the powerful landowner lobby within the national employer's organisation CACIF by referring to faults in the institutional procedure. The overall impression among observers is that none of the sides really wants to go through with a process of formalizing land property at the moment. The indigenous/small-scale farmers and their organisations because they are afraid that the current land distribution will be cemented, and the large scale land owners because their ownership will be questioned if one starts to dig too deep into the issue on how it was acquired and into deeper moral issues. Status quo seems to serve both sides at the moment, with unclear property rights and inefficient land use and markets as the result. From an economic national perspective, any clarification on the issue of land property would lead to higher efficiency, as a defined owner would have higher security of investment. Furthermore, land as a production input would be distributed through the market mechanism to its most efficient users. Social sciences researchers are now involved in estimating the cost of such lack of secure property rights.

4.3 Mining as a national income source

Natural resources have an enormous potential to bring income and prosperity to the countries that possess them. Globalisation, with entry of labour affluent countries like China and increased international trade in general, has made scarce natural resources relatively more important than other inputs in the production process. However, a fair distribution of the income from these resources is often difficult to achieve. At best it is only confiscated by national elites. At worst, the very fight for the natural resource income creates corruption and an inefficient state organisation,

and if this negative effect is strong enough, the total effect will be negative for the specific country. In academic literature this is known as “the resource curse”.

Guatemala is a country rich in mineral resources, but has unfortunately not been able to really take proper advantage of those. Most mines and open pit explorations are rather small and based on traditional technology. The current government is now encouraging large mining companies to enter the country. They have received exploration concessions for nearly ten percent of the surface area in the country, and they are given tax concessions, speedy processing of applications and the like in order to facilitate the process for those companies willing to invest in the country.

With rising mineral prices on the world market, several international mining companies have entered Guatemala. The enormous deposits of nickel in El Estor (about 20 percent of the known nickel reserves in the world) have been known for a long time but the low grades of mineral concentration in the ground and the previous unfavourable political situation in the late 1970s and early 1980s implied that they were not competitive at the world market. As the prices fell in the 1980s, the only mine in El Estor closed down in year 1981 after only 4 years of operation – in spite of the million dollars investment in a “greenfield” industrial installation.

A new interest in the Exmibal mine came early this decade when the nickel price hovered around 3 USD/lb. The profitability of the project has risen proportionally to the world market price which peaked at 25 USD/lb spring 2007, something which illustrates the enormous income potential of this project³. Expected earnings could be so high that it should be enough to benefit everyone involved in or directly affected by the project.

Mining is mostly a cottage industry in Guatemala, and the sector constitutes a small share of Gross Domestic Product (GDP) in the country. However, high expectations are also reflected in the fact that mining companies are willing to pay an annual fee for exploration rights. This implies that companies have high hopes of actually finding extractable and profitable sources of gold, nickel, platinum, etc. However, only the Marlin gold mine, operated by a multinational company, has started something that can be characterized as a large-scale modern capital intensive mining operation in the country, while CGN in El Estor is the second in line.

This background probably influences the current CGN concessions, agreements and behaviour. The government seems to be engaged in the process to ensure the success of the project, as success paves the way for other large scale projects to be realized. The government is willing to give “concessions” to both the local population and the companies, even at the cost of potential income for central government. For the mining companies, the deal offered by the Guatemalan government appears good since only a small part of the “natural resource rent” (i.e. the profit after deducting labour costs and a reasonable return to invested capital) goes to the state and is rather kept by the company. This can be seen as an economic reward or incentive for the company to comply with both official and unofficial expectations to make their activity more palatable.

³ The price is however cut in half in the latter months due to the world financial crises, but is still probably a highly lucrative project.

Corporate Social Responsibility (CSR) implies that the companies invest “voluntarily” in the local population, covering everything from training and employing locals in the activity, to handing out goods and services to individuals and public infrastructure. However, the same could theoretically be accomplished by local taxation of the company, where the municipality or other public institutions could be the ones to give the services instead of the company. What solutions that in the end gives the most to the local population depends on the efficiency of the public administration vs. the company’s own efficiency. The International Organisation of Standardization (ISO) is now developing a guidance standard on Social responsibility that will be published in 2009 as ISO 26000, but this is purely voluntary on the part of private companies.

Environmental considerations have also become an important aspect to consider and adapt to compared to only a few years back. Environmental impact assessments are required, and international, national and local activists have now the power to stop otherwise profitable projects. The Guatemalan government is hence probably willing to forego tax income to increase the companies’ income to help them cover unexpected environmental costs.

The main point is that the deal made between a multinational company and the government is actually flexible and negotiable, depending on circumstances on the ground. Theoretically we have the following relationship: The stronger the expectation of claims from the local population, the more will the company expect to pay to them, the better must the initial deal be for the company, and the less of the resource rent will be given to the national population at large, represented by the state, the real owner of sub-terrain resources. In this overall picture there is thus no real antagonism between mining companies and the local population even though their interests seem to be opposite. In the end it is the central government – not the companies nor the local population – that bears the consequences due to a of weaker bargaining position.

4.4 Operating companies

The mining companies operating in El Estor have local Guatemalan inspired names, but it is no secret that they are direct subsidiaries of large multinational companies, often with several organisational layers of “independent” stock companies.

The most important counterpart for AEPDI is the *Guatemaltecan Nickel Company* (CGN – Compañía Guatemalteca de Níquel) which took over the Exmibal mine and the large Cahaboncito Norte ranch where the deposits are found. CGN’s total exploration concession for minerals is 248 km², encompassing large swats of land that is registered to both indigenous communities and other private owners. CGN is as subsidiary 100 percent owned by the Canadian multinational *Key Resources*, which bought all concessions and properties from the former operator *Exmibal* (actually a company owned by the Canadian company *INCO*). However, even though the mine is formally sold, INCO has a detailed and formalized business agreement with CGN. They have the right (and duty) to buy all minerals extracted at a preset price, something which is more or less equivalent to outsourcing operations, paying a fixed operation cost; the one to really take the risk with fluctuating world market prices is

INCO. The local population is aware of this link, and holds CGN responsible for both the abuses committed by Exmibal and the closedown of 1981, which led to a contraction of the local economy.

The other important mining agent in El Estor is *Mayaniquel S.A.*, an integrated part of the Colombian mining company Cerro Matosos S.A., which again is a fully owned daughter company of the world largest mining company, BHP Billiton.

4.5 Land occupations

Even though a large part of AEPDI's work is to assist and settle conflicts between the traditional (and often absent) large land owners and the indigenous communities living on or close to their land, the conflict and negotiations with the mining companies have received public attention lately. The most spectacular ones (attracting international press and US TV-documentary makers) are six different incidents of land occupations by local Q'eqchi' on the former Cahabonsito Norte ranch registered as property of CGN. Each incident has its own background and there is not necessarily a connection between them. However, most properties are close to the main road in the area, and it seems that access to communication and a place to settle down mean more than access to agricultural land.

- Case 1: The “Lote 8” community rented land for farming from Exmibal. Part of this area is important for future mining operations by CGN. One local group has accepted resettlement to another farm outside the area, while another group is fighting to keep what they currently consider to be their land.
- *Case 2: Cepila* is a land occupation by small scale farmers close to the road
- *Case 3: Santa Maria* is a special case, as a local politician in Izabal claims this to be his land and he has hence “invited” poor people to live on it.
- *Case 4: La revolucion* consists of young people originally from the main urban area Chichipate who have settled along the road to get land when they set up a family of their own.
- *Case 5: Las Nubes* is land occupation on the north side of the territory, where local farmers enter to log the original rain forest and plant cardamom while keeping their settlements outside.
- *Case 6: El hospital* is an area close to the town of El Estor, and which could be regarded as normal land occupations, as is common when Latin American cities grows organically.

Population growth is the main driving force behind these occupations. Each generation of q'eqchi' normally leave their original communities to form new ones on virgin land, avoiding land fragmentation in their original communities. The q'eqchi' have a long tradition for migration, expanding their territory when the population rises and contracting their territory when the population is decreasing. It is hence difficult to establish what their “historic territory” really is.

This kind of flexible use of land is not easily compatible with a modern property rights system. From a formalistic/legalist point of view these occupations seem to be

fairly clear-cut cases, as they take place on land for which CGN has a title deed. The border of the Cahaboncito Norte property is relatively clear. It was established by the field measurement of the governmental institution RIC when CGN applied for the exploration permits. There is only uncertainty of borders in the case of Las Nubes, since there is a triangular discrepancy between the maps and the borders as they are described in the RGP. Unfortunately, nearly all land rights can be contested in one way or another in Guatemala, due to the unsatisfactory situation of the land registry, as previously discussed. The attainment of title deeds under suspicious circumstances adds another dimension to the problem of establishing ownership.

The AEPDI leadership emphasises that they respect private property rights that are backed by title deeds in the official RGP. In our discussions they agreed that most incidents of land occupations are done by people who have no formal claims to the land, and seldom have specific historical rights above the general notion of being an indigenous Q'eqchi. However, AEPDI provide support to land occupants in different ways, based on two different motives. It is considered to be the duty of any religious person to support the poor in their fight for land to feed themselves. More important though, is the enforcement of the rule-of-law. The landowner needs a formal warrant from the judiciary system to evict any invader on private land, and this is often not respected neither by the company nor the police. AEPDI will hence morally support any land invader until such eviction orders have been made available to secure that the rule of law is introduced as the standard in this traditionally lawless district.

According to CGN, AEPDI actively supports land invasions, and the company accuses the organisation of initiating them, at least indirectly by not condemning their actions. Furthermore, given that eviction warrants are issued upon individuals, new occupants might come to replace those evicted, adding considerable time to obtain necessary warrants and mobilize the police to enforce them. The request for eviction orders for each case - where information such as place, name and time have to be provided - seems to be formalistic and ineffective in the Guatemalan context.

Giving the limited scope of this assignment, it is difficult for this consultant to establish whether AEPDI actively encourages illegal land invasions (and hence could be held responsible in a court of law), or whether their support is well within the limits of the law. The only hard evidence given by CGN are photos that show the AEPDI director trespassing on CGN property for a few hours in order to administer a catholic ceremony to one of the groups of land invaders. Even the company does not pay much importance to this trespassing itself, but perceives this to be proof of active involvement.

More interesting though, is that land invasions seem to be effective in the sense that CGN is willing to negotiate with the occupants rather than rely on the expectation that their formal property rights will be enforced by the police and the judicial system. Company representatives say that occupants either want land or work. Therefore, CGN often buy land outside the area to be offered for resettlement to the occupiers at heavily subsidized prices, or they employ the same people in small scale works if they move away voluntarily. The company does not necessarily admit either legal, historical or moral rights to the occupants, but feels obliged to give concessions

to occupants who make active use of civil obedience and in some cases make physical threats to company employees.

4.6 Resistance to exploration

Another important dimension in the conflict between the mining companies and the local q'eqchi population in El Estor is exploration activities. The granted concession area for CGN is 248 km² and Mayaniquel has a similar size, extending far outside the properties that actually belong to the companies. The allocated rights are opposed by the indigenous population at large, as they do not understand or accept the idea that the government might give others rights on privately owned land.

This question is, however, just of theoretical interest in the CGN case, as the company has not yet started to explore the area outside their own property. However, the indigenous communities feel uncertain about the future. They also feel deceived by the state, who – at last – has granted formal title deeds to the community land, while at the same time also giving rights to mining interests on the same land. AEPDI challenges these rights and is about to launch a formal complaint for a specific community to the Inter American Court of Human Rights. In this way they have been assisted by the Indigenous Law Centre in Washington D.C. This case has at least two dimensions. One is the rights for the indigenous community to obtain formal property rights to the given piece of land based on use and historic rights. The other is whether the state can give rights to outsiders to enter and explore without the consent of the owners. No reason was given as to why AEPDI chose to bring this specific case – where the two issues are mixed – to the international courts rather than trying a case where the property right issue is clear.

Moreover, the actual practise of the Guatemalan state is not to force the property owner to accept the company exploration activities. The companies thus need some kind of permission to start the exploration drilling from the land owner, but in many indigenous communities it is not clear who has the right to grant such permissions. There has come to serious conflicts in the case of Mayanickel's concession area. Some indigenous community members have protested against the company entering even though they got the acceptance of the individual land owners. Land is often owned collectively in those indigenous communities where the formal titling process and down payments of costs were collectively done. However, peasant households split the land among themselves as separate entities, planning to formalize individual ownership once the means and the opportunity arise. The company has often made separate arrangements with individual households, something that is often questioned by other community members. The community is also often split, even in cases where some kind of collective agreement has been reached is obtained by the company after deep disagreements between different groups. The groups are often divided by generational differences, and conflict lines follow families and lineages. A conflict between individual and collective rights persists within indigenous communities, one that is not very clearly defined in either the formal Guatemalan law nor indigenous customary law.

A specific variety of this individual/collective right has actually taken place between villages in the north-eastern part of El Estor. When Mayanickel entered to explore

for minerals in the community closest to the entry road, heavy quarrels within the community occurred, other communities in the area opposed the decision, arguing that it was not up to a single community to decide in this kind of important matter. AEPDI supports this kind of grassroots opposition, and it seems like the organisation tries to guide people towards a perception of collective property rights and collective decision-making, rather than a more individualistic approach. One indication of this is that they assist in the first transfer of private or state owned land to collective ownership, but does not continue to do so if the community later decides to formally split the land into individually owned parcels.

4.7 Environmental impact

The previous mining operations of Exmibal had disastrous impacts on the environment. Most of the critical issues now seem to be resolved, and the current operation had to go through serious modifications in order to achieve the operation permit. The most important environmental concerns are now satisfied. Only one of the two layers of minerals will be exploited, leaving the other layer (which requires a more contaminating process) untouched. A new electricity line will be built to supply much of the electricity needed directly from the national grid. With less electricity produced locally, the need for cooling water for the plant's ovens is reduced considerably. Another reason is the recirculation of cooling water, now down from 2.000 to about 600 liters a second that has to be tapped from Lake Izabal. That is probably without any real environmental impact for a lake that has considerable influx of water in this rainy district of Guatemala. The company has also promised to cover up and reforest the surface once it has finished in a given area. Similar commitments have been made regarding the mineral remains from the plant collected in slag hills. Another issue is the transport to ship out the final product. The government did not accept the company's plan to take the finished product directly from the plant by ship on Lake Izabal and Rio Dulce. The company will now use large scale trucks both to bring inputs and the product out by road from Puerto Barrios instead, leaving the lake untouched. No environmental concerns have so far been raised about the expected increase in heavy truck traffic on this relatively small road.

The most important issue is still the potential leaking of contaminated water from the open pits. The company claims this will be no problem as long as they can control how the catchment areas above the open pits are used, this representing the real reason for not giving in to the land claims made there. The environment is not really considered to be an important issue to bring against the mining companies anymore as local opposition puts more emphasis on indigenous rights instead.

4.8 Positive local and national effects

Like any other modern capital intensive mining operation, the direct effect on the local economy is not really of major importance. Approximately 400 people are employed at CGN today. That is number that will rise to about 1500 workers during the construction phase, before the workforce stabilizes at about 800 persons when

the mines and plant are fully operational. Furthermore, most of this workforce will probably come from the outside El Estor, due to the low education level of the local population. Few locals actually aspire to get permanent employment in the company, it is rather a question of piece works, e.g. planting forests and assisting in simple operations when needed.

Regarding local effects, the different ways companies “voluntarily” assist the local population seem to be more important. This can be considered as the equivalent to a local tax. CGN has a long list of different ways of contributing to local development. They have also just started a Foundation for Social and Economic Development⁴ together with six other large export oriented companies in the area. The agreement was also signed by the vice Minister Eduardo Stein as “honoured witness”. The content of their activities is still to be defined.

The company has also agreed to pay a “voluntary” resource tax after “negotiations” with the government depending on the world market price on nickel. When the price reaches 7 USD/lb, the company will pay an extra tax of 1.5 percent of gross income, rising stepwise to a maximum of 4.0 percent when the price is above 22 USD/lb. The contract terms are otherwise not different from any other non-resource based company, something that implies that a large share of the resource rent probably falls to the company and not the population of Guatemala. The government has actually been heavily criticized for not claiming the import duties on capital equipment, but this is common for capital intensive industries in developing countries.

⁴ The full Spanish name is “Fundación para el fomento de los recursos naturales y el desarrollo sostenible de la cuenca de Polochic”.

5 Conclusions

AEPDI seems to be a well functioning organisation that is perceived by the local q'eqchi' indigenous population of El Estor to represent their interests, both in negotiating land rights with government and private landowners as well towards the mining companies that have re-entered the region to explore and exploit the large nickel resources available in the area. The content of their Norwegian funded project on indigenous "collective rights" is however closely related to a political agenda as it involves land and territories. AEPDI's aim is to work for the development of independent indigenous territories based on ethnicity, also controlling the subterranean natural resources. The organisation further pushes the right of the collective to decide on land matters at the cost of the individuals' rights. By funding this project, Norway is hence supporting a rather radical position. To illustrate the serious implications of such a stance, we find it is not coherent with the rights of the indigenous people in our own country. The Samí people are part owners of Finnmark Property (Finnmarkseiendom) together with the Finnmark County Municipality. However, this land property is in general considered to be similar to any other private property, as the state still has the right to expropriate land if it is considered to be in the public interest. According to the general law the state is still the owner of valuable underground resources like minerals⁵, oil and gas.

Being led by a highly skilled American, the organisation is very professional in its dealings with donors and government, both when it comes to reporting and in terms of ensuring that the means applied are within the law. It would be a paradox if competing national NGOs with a less radical position are not financially supported on the grounds of organisational weaknesses and/or a more confrontational approach. The compelling advantage of AEPDI is that they try to create consensus, among others by participation in the "dialogue table" headed by Archbishop Peñate. The dialogue table is composed by civil society organizations, the Catholic Church, the mining company as well as leaders of the surrounding communities, aiming to avoid violence and to create win-win situations for the mining company and the communities around. However, like in all negotiations there is a "threat point" (i.e. what happens if an agreement is not reached) which is decisive for the end result. It might thus be a part of AEPDI's strategy to make the current situation as bad as possible in order to put pressure on the mining company.

Guatemala is one of the 17 signatories to the ILO §169 convention, which is considered the main instrument to protect the rights of the indigenous population in

⁵ The Finnmark Law, which followed the creation of the Finnmark property, opens for a higher compensation to the property owner if the state decides to extract minerals than what is normal, but this rule does not include oil and gas extraction.

the world. However, the convention has been criticized for being vague on specific issues. It is stated that indigenous peoples are supposed to have the right to take part in decision-making processes that concerns them. However, such processes often limit themselves to being formal consultations, and once they have been carried out, a government might decide according to the country's own laws and practices. The rather few signatories to ILO § 169 is indicative to the fact that there is no global consensus about the right of indigenous peoples to have special treatment compared to non-indigenous populations. This leaves the ILO § 169 more as an ideal to work towards rather than something actually expected to be fully implemented in difficult social and political reality such as is often the case in developing countries. Furthermore, the prerequisite of adjusting the national legal framework to comply to the convention is not necessarily implemented. In spite of the mechanism established to monitor the process, there are no effective sanctions for those countries failing to implement the convention. The voluntary approach concerning issues of indigenous rights is further stressed in the recently adopted non-binding *UN Declaration on the rights of indigenous people* which states ideals for national laws and practices to be followed.

In the view of this consultant, when Norway embraces the indigenous agenda referring to the ILO §169 convention it actually adopts a *de facto* activist approach. On this basis, it makes sense to be rather flexible when it comes to how local populations and organisations choose to practise and interpret national and international law, as well as the methods they choose to influence the practice of other actors.

The misperception that ILO §169 gives an absolute right for indigenous people to decide over a given territory independent of national laws, while ignoring the state's ultimate right to expropriate land for the development of the nation, seems to be widespread – also in Norad. It is hence necessary to re-examine this view, if one is to have a realistic assessment of what is possible and feasible to achieve in complex societies such as Guatemala. While indigenous groups today may seem to have the power to stop mineral exploration with support from international donors and activists, they do not have the power to reach agreements with mining companies that might give them a fair share of the riches, either directly at the local level or through the national population in general. The end result is that the wealth of natural resources often remains in the ground, and is thus of no use, neither for the rich nor the poor.

Furthermore, it is important to support the development of indigenous organisations that can truly be regarded as their own. The fact that AEPDI was built up and is still being run by an American priest is problematic as this may lead the activity in a direction that is not truly representative of the interests of the local population, both when it comes to what they would like to achieve, and in terms of the means applied to achieve these ends. The director fo AEPDI, being a well educated American knows how to communicate with donors, companies and government much better than other local organisations that might be more representative of the population at large, but which have more organisational limitations. The Norwegian support to AEPDI may thus be considered to have hence a biasing effect towards a more western-style organisational model, ones that is better fit to comply with financial clarity and reporting routines.

Norway has launched several initiatives to strengthen Corporate Social Responsibility in developing countries. To secure that the local people get a share of the natural resource income, CSR might become a *de facto* substitute for the enforcement of the rule of law and governmental tax systems. In CSR there is an inherent tendency towards negotiations between the locals and the companies, where the ability of the locals to potentially hurt the company, e.g. through strikes, occupations and even kidnapping (e.g. similar to treats to Statoil in the Niger delta), enters as a bargaining chip. It should thus not come as a surprise for donors supporting local organisations if these actually start using all tools available for them. Unfortunately, in the world of CSR, it is the ability of the local population to obstruct the company that is the most effective way to obtain benefits.

This consultant hence recommend to continue the financial support for AEDPI since the organisations seems to work well and does not involve directly in illegal activity to achieve protect and promote the collective rights of the indigenous population in El Estor.

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Appendix 1

Terms of Reference

Evaluación de Impacto del Proyecto Promoviendo el Respeto a los Derechos Colectivos del Pueblo Q'eqchi' en Izabal AEPDI GTM-2687- 06/016

1. ANTECEDENTES:

El municipio de El Estor, Izabal, está ubicado en el nororiente del país, con una población aproximada de 40,000 habitantes, del cual el 90% son de la etnia Q'eqchi', que viven en condiciones económicas y sociales precarias. La población indígena de esta región tienen una de las peores tasas de alfabetismo y de retención escolar en el país. En El Estor 41.5% de los hombres indígenas son analfabetos y 35.5% de las mujeres comparado a la estadística nacional de 57.5% y 36.4% para los hombres y las mujeres, respectivamente.

El municipio de El Estor es la única región en el departamento de Izabal con una población predominante indígena. El área es dominada por grandes fincas bananeras y ganaderas, y una mina de níquel abandonada, con una población dispersa en más de cien comunidades y la cabecera municipal, en un territorio de aproximadamente 2,600 kilómetros cuadrados.

La experiencia de la Asociación Estoreña para el Desarrollo Integral AEPDI, se basa en el trabajo desarrollado en el campo que coordina la Defensoría Qeqchi que da seguimiento a procesos de promoción y defensa de los Derechos del Pueblo Qeqchi del país desde 1987. Desde el surgimiento de AEPDI su lucha ha sido proclamar la igualdad entre pueblos, culturas y género, por lo que se ha tenido una perspectiva de género y participación equitativa elemento valioso para los proyectos que impulsa.

Es de mucha importancia para AEPDI el seguir promoviendo el respeto a los derechos colectivos del pueblo Maya Q'eqchi' en Izabal. El proyecto se basó en capacitar a 100 personas (40% mujeres) en cada uno de los tres sectores en el municipio de El Estor. Al final cada sector habrá elaborado un Plan de Incidencia consensuado con sus demandas y necesidades priorizadas. De estos planes se elaborará un Plan de Incidencia Municipal. Al mismo tiempo, se tomaron en cuenta las agendas de desarrollo y los planes de incidencia para elaborar una Agenda de Desarrollo Indígena, divulgada a través de volantes bilingües y spots radiales. También se llevó a cabo una serie de talleres, capacitaciones y escuelas de formación involucrando a participantes de las comunidades que se atienden. Con esto se

pretende elevar el nivel de formación de líderes y lideresas sobre sus derechos colectivos y la creación de espacios de diálogo y propuesta con las autoridades locales sobre estos temas.

Objetivo General del Proyecto

Promover el respeto a los derechos colectivos del Pueblo Maya Q'eqchi' en el Departamento de Izabal, especialmente los derechos de la mujer Indígena, buscando la participación a todo nivel y contribuyendo a la eliminación de discriminación.

1.1 Objetivos Específicos del Proyecto

- Fortalecer la capacidad de los grupos organizados que trabajan con AEPDI y la legalización de sus tierras por medio del acompañamiento de la Defensoría Queqchi así como la planeación y ejecución de proyectos y programas a nivel comunitario.

- Informar a la población acerca de la importancia de la implementación del Convenio 169 de la OIT ratificado por Guatemala.
- Crear aliados políticos con organizaciones locales a nivel municipal , nacional e internacional
- Promover y fortalecer la participación de la mujer en todos los niveles.
- Promover y fortalecer la participación AEPDI con organizaciones miembros en consejos de desarrollo comunitarios y urbanos.

1.2 Resultados Esperados del proyecto

- Las líderes y lideresas comunitarias locales conocen las herramientas legales en las cuales convocan a la participación ciudadana
- La implementación de una comisión de ciudadanos que hacen auditoría social a la municipalidad y participan en los COCODES , COMUDES Y CODEDES (consejos municipales de desarrollo a nivel local, municipal y departamental).
- Los derechos colectivos de los pueblos indígenas están siendo defendidos por los líderes comunitarios
- Las mujeres participan activamente con una red de apoyo y comunicación entre las comunidades.
- Existen espacios de diálogo y propuesta con autoridades y candidatos; organizados por líderes formados.

2 Propósito de la Evaluación externa :

El propósito de la evaluación externa es revisar si el programa ha sido ejecutado de acuerdo a lo planteado en el proyecto, tomando como referencia GTM-2687-06-016. Revisión de las metas y resultados del programa así como la medición del impacto del programa y la incidencia de políticas a nivel local , nacional e internacional

3. La Evaluación deberá tomar en cuenta los siguientes puntos:

- El grado en el cual el programa fue diseñado para cumplir con las metas, objetivos y resultados esperados.
- Investigar acerca de la situación actual que afecta a la población Qeqchi en el Estor
- Sostenibilidad del proyecto en el mediano plazo
- Relación con otros donantes y alianzas estratégicas de AEPDI

4. Las Recomendaciones serán para:

- a) NORAD, Agencia Noruega para el Desarrollo, Oslo.
- b) Programa de Pueblos Indígenas, Embajada de Noruega en Guatemala.
- c) Asociación Estoreña para el Desarrollo Integral, (AEPDI)

5. Perfil del Consultor

El consultor debe tener nivel de Ph.D. o Maestría en Ciencias Sociales experiencia en organizaciones indígenas y temas relacionados con legalización de tierras. El consultor/a debe tener al menos 5 años de experiencia en i) Planeación local de proyectos, monitoreo y evaluación de impacto; ii) organizaciones locales y descentralización y iv) análisis costo-beneficio de los proyectos.

6. Programa para el Consultor durante el mes de mayo 2007

La evaluación se llevará a cabo durante dos semanas.

No. De días	Tarea/
5	Entrevistas con el personal de AEPDI y con otras instituciones en Izabal
	Entrevistas y trabajo de campo con la Población qeqchi.
	Entrevistas con los actores en el tema de la Minería
	Entrevistas con otros donantes que apoyan el trabajo de AEPDI
	Desarrollo de la Evaluación y Recomendaciones

7. Informe

- El consultor es responsable por el informe independiente que no necesariamente refleje las opiniones de la contraparte AEPDI, NORAD o la Embajada de Noruega en Guatemala.
- El Informe deberá ser entregado en formato electrónico y una impresión en papel a la Real Embajada de Noruega.
- El informe deberá tener un resumen ejecutivo en español y un informe final incluyendo el trabajo de campo que se ha realizado y conclusiones; así como lecciones aprendidas y recomendaciones, en el idioma Inglés.

PRESUPUESTO:

La Embajada de Noruega se compromete a financiar el costo de la consultoría que incluye honorarios del consultor, boleto ida y vuelta a Noruega, trabajo de campo, viáticos e impuestos.

Guatemala 20 de abril del 2007

Agenda

Agenda for Henrik Wiig, Guatemala July 2007, Evaluation of Royal Embassy of Norway's program GTM-2687 06/016

Martes 10

22:00 Llegada a Ciudad de Guatemala

Miércoles 11

08:00 Byron Villeda, director de FUNDAECO

12:00 Michael Lindgren, Oficina del Alto Comisionado de Derechos Humanos

14:00 Alejandro Argueta, abogado de asuntos laborales, trabajando por Ministerio de trabajo evaluando la queja de AEPDI a ILO

16:00 Ella de Vogd, Embajada Países Bajos

Jueves 12

15:00 Salida a El Estor en auto

Viernes 13

09:00 Arnoldo Yat, coordinador del programa Defensoría Q'eqchi', AEPDI

10:00 Roberto Dala, CGN, Gerente de El Estor, visita planta y zona de extracción.

13:00 Reunión grande con distintos líderes y representantes de comunidades en conflicto con compañías mineras

16:00 Coordinadores y empleados de AEPDI

Sábado 14

08:00 Visita a comunidad Cemuc 5 en la montaña de El Estor, reunión con líderes y población

Domingo 15

08:00 Regreso a Ciudad de Guatemala con Daniel Vogd, director AEPDI.

Lunes 16

09:00 Regina Rivera de Cerezo, Gerente de Relaciones Corporativas de CGN y Hank Morris, consultor en CGN

- 12:00 Karin Slowing, director del INDH, PNUD
- 14:00 Lic. Walter Hernandez, coordinador asuntos agrarios de ONGs
- 16:00 Jorge García Chiu, Viceministro de Energía y Minas

Martes 16

- 10:00 Sergio David Funes, director general de CEIDEPAZ
- 13:00 Mariel Aguilar, directora de Asuntos Agrarios
- 15:00 Representantes de la Embajada de Canadá

Project description in NORAD-AEPDI contract

Annex I to contract dated 28.07.06 between NORAD and AEPDI

PROJECT DESCRIPTION

GTM-2687 06/016

Promoting respect of collective rights among the Qeqchi population.

(Name of project)

1. Description of the Project

- a) Project Beneficiaries
 - Qeqchi population from El Estor and Livingston Izabal.
- b) Overall Goal
 - To promote the collective rights of the Qeqchi community in the department of Izabal especially the rights of women.
- c) Project Objectives
 - Promote Women's participation in decision-making positions within their own communities.
 - Encourage Qeqchi' women's participation in communal, municipal and regional Development Councils.
 - To evaluate the level of educational capacity for women leaders of rural communities about their collective rights.
 - Generate spaces where women can begin a dialogue with local authorities, and Development councils to plan their projects.
- d) Expected Results
 - Collective Rights are being promoted by the community leaders
 - To develop a plan to influence in the municipal authorities in El Estor
 - Lobbying to implement, execute and follow up of public policies related to collective land rights.
- e) Activities
 - Following up workshops with 40 women previously trained
 - Sistematization and Impact Studies

- Training with different sectors in El Estor
- f) Time Frame
The Project will start in July 1st, 2006 and will end in July 1st, 2007

2. Budget (including auditing fee)

Budget Component	Amount in NOK
Auditing fee	20 000
Personnel	240 000
Workshops, Materials and Seminars	330 000
Administration	60 000
Total	650 000

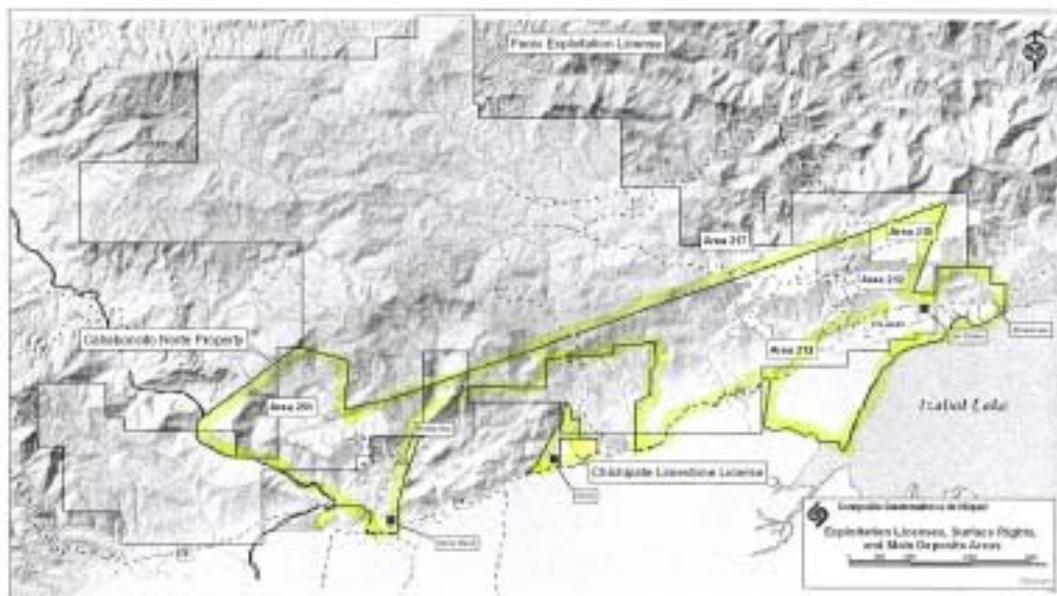
3. Plan of Finance

NORAD contribution not to exceed NOK 650.000.00 The total amount will be disbursed in two installments. The first disbursement of NOK 487,500.00 will be disbursed after signing the Agreement and the second disbursement of NOK 162,000.00 after the progress reports are approved in November 2006.

Nickel prices



Map



The Fenix exploration concession area of 248 km² and the CGN registered land property, notice that large chunks of the previous Cababonsito Norte ranch has been handed over to others during the latter decades.