

Shadow Report to the III Guatemala State Party Report on the International Covenant on Economic, Social and Cultural Rights (March 2014)

Executive summary

Introduction

The Guatemalan civil Society submits this Shadow Report to the Committee on Economic, Social and Cultural Rights (CESCR) in order to provide information and contextual analysis for the review process of the third periodic report of the State of Guatemala in relation to the level of compliance with the International Covenant on Economic, Social and Cultural rights (ICESCR).

The report is the result of a joint collaboration which includes more than 60 national and international organizations, networks, cooperatives and trade unions who are engaged in the monitoring, researching, and the promotion and protection of economic, social, cultural and environmental rights (ESCR) in Guatemala.

The report provides a general contextual analysis of the implementation of ESCR, and in addition, an analysis of the level of achievement of each of the rights contained in the ICESCR. The report concludes with a series of key recommendations for the State of Guatemala in order to overcome the main factors that cause ESCR violations in the country.

The economic, social and political context in Guatemala

The State of Guatemala has been structured in a way that guarantees certain privileges to a small group of people at the expense of the majority of the population. From the start of the State as a republic, the Guatemalan government has been causing and perpetuating exclusion, racism, patriarchy and the inequitable concentration of wealth. This has resulted in widespread human rights violations which affect civil, political, economic, social and cultural rights.

Furthermore, the State has established a development model that denies inclusive development and the incorporation of important segments of the population in the development process to ensure dignified livelihoods for individuals. Guatemala is marred by high levels of inequality, it is estimated that a mere 20% of the population accounts for 60 % of the country's national wealth. Consequently, Guatemala has a Gini coefficient of 55.9, ranking it among the three most unequal countries in Latin America, and among the ten least equal countries within the world, in terms of income distribution.

The United Nations 2013 Human Development Report ranks Guatemala at 133rd place in the Human Development Index, representing the lowest levels of human development in the region after Haiti. In addition to poor income distribution, low indicators in health and education cause Guatemala to be the Central American

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country with the lowest levels of human development. Paradoxically, Guatemala's GDP per capita is higher than regional neighbouring countries such as Honduras and Nicaragua.

Land tenure and land ownership concentration in Guatemala is estimated at 84% resulting in the highest levels in Latin America. Consequently, approximately 92.06% of small farmers have access to only 21.86% of the arable land, while 1.8% of commercial producers occupy 56.59% of the land.

Furthermore, the Guatemalan tax system is characterized by a low level of revenues due to the systems inadequate functioning and its regressive nature. This has resulted in low levels of social investment and public expenditure. The State's fiscal policy is weak and too inefficient to meet the challenges of overcoming poverty, thus failing to be an instrument and a promoter of development such as established in the Constitution of the Republic (CPR) and the Guatemalan Peace Accords.

While there have been legal amendments to the tax system, these have been insufficient to amend its unjust and inequitable nature. Furthermore, the tax model of the State of Guatemala allows for tax exemptions and privileges which ensure national and international private capital to obtain the maximum amount of profits.

The situation is compounded by inadequate mechanisms to promote income redistribution in the country. In recent years there has been no significant social spending, which has denied the achievement of the social goals established in the Peace Accords. There has been inadequate investment by the State to guarantee the fulfilment of human rights in areas such as, for example, health, education, housing, rural development and access to justice. The realization of human rights has been particularly inadequate in rural areas and indigenous territories. As a result Guatemala is the country in Central America that invests the least in health, education, housing and justice. Consequently, the State's public policies in these areas do not guarantee the protection of the Guatemalan population. Examples of this: approximately 50% of children under 5 years suffer from chronic malnutrition, Guatemala has the lowest rates of school attendance in Central America, and there is a housing deficit of over a million and a half.

An additional mechanism of income redistribution is wages. Guatemala is the country with the highest income inequality due to the significant disparity between the minimum wage and higher incomes. Only 40% of the working population receives a higher income than the minimum wage. In addition to this, aggravating the situation is that the minimum wage is not high enough to cover the cost of the Basic Food Basket (CBA).

These issues have been compounded by the extreme crisis existent in Guatemala's models of democratic representation and development. The imposition of an economic model driven by extractivism (mining and monocultures) has generated little resources through taxes and royalties, exploits the labour force, driving communities

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off their lands, and expropriating ancestral lands of indigenous peoples. The situation exacerbates the already widespread poverty and extreme poverty in the country.

The current crisis is also evident in the increase of remittances which constitute the largest foreign currency income in the country, well above the income of non-traditional, agricultural exports, such as, coffee, sugar, banana and palm oil.

In this context, there has been a reestablishment of the military oligarchy, which aims to co-opt public institutions in order to control the exercise of power and impose what is known as an agenda of profit for big business. This agenda is officially known as the National Competitiveness Agenda, as it is driven by the Government of the Republic.

As a result, communities and social movements, people and citizens have expressed their social demands to the Guatemalan State. Its response has been an increase in repression and criminalization of these groups. This has caused more than 600 human rights defenders to be victims of attacks during 2013, reaching the highest figures since the signing of the Peace Accords.

To conclude, the Guatemalan State has ensured the privileges of a small but powerful segment of the population at the expense of denying the realization of basic human rights for the majority.

ICESCR Article 1 - Indigenous peoples' right to self-determination

Despite the existence of national legislation that enshrines indigenous peoples' collective rights, indigenous peoples have not succeeded in attaining their entitlements as rights holders. The indigenous communities continue to be subjected to widespread human rights violations, to both their individual and collective rights, and to their political, economic, ideological, social and cultural structures. Human rights violations take place through historical and continued dispossession of indigenous lands, wisdom, science, culture, art and cosmogony and the imposition of an economic system that does not take into consideration their traditional ways. The introduction transnational mega projects on indigenous territories is a specific example of this excluding economic system.

The subsequent response in form of indigenous resistance and the defence of their territories have resulted in an environment of criminalization, persecution, intimidation, discredit and even murder of their leaders. The State does not show a commitment to protect indigenous peoples' individual and collective rights against violations committed by third parties, but rather protects private interests by using repressive measures against communities such as declaring a state of siege. Such tactics have caused serious human rights violations to fundamental rights such as the right to life, liberty and security. Furthermore, the measures have had a particularly severe impact on indigenous women as they have been subjected to various forms of violence.

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Indigenous peoples' rights, in particular the right to autonomy and self-determination, are violated by the inadequate recognition of their ancestral authorities, forms of organization, land tenure, the overall lack of consultation mechanisms and the denial of their right to determine the type of development they wish to have on their lands. Furthermore, trespass, encroachment, folklorization of indigenous peoples' values and principles, and the introduction of dynamics that are foreign to indigenous peoples' practices by public and private, national and international companies. Specific examples include the introduction of GM seeds and the expansion of monocultures that exacerbate poverty and violate food sovereignty and consequently create general dependency patterns. The State response to these issues is through the inadequate implementation of welfare programmes such as the government's "Zero Hunger Plan" and "bono seguro". These programmes fail to tackle the structural causes of social exclusion and dispossession.

The State's neoliberal policies and its market-based vision are based on the concept of accumulation of capital which threatens indigenous peoples' cosmic vision and their ways of life. In addition, these policies impact indigenous peoples' natural resources such as water, forest, air, earth and all microorganisms, and their vision of life in balance and harmony with Mother Nature, all living creatures and the planet.

The Guatemalan State does not prioritize, nor is it concerned about, national legislation or international instruments which enshrine the individual and collective rights of indigenous peoples. Despite several attempts, the current government has failed to articulate a policy that will manage to guarantee the collective rights of indigenous peoples. It has also failed to generate spaces in which indigenous peoples can actively participate in decisions that affect them.

Section 2 - Tax policy in Guatemala and its impact on human rights

The Guatemalan State has been characterized by a weak tax system undermined by low revenues and a regressive nature. The result has been persistent tax inequity. Added to this, the existence of legal mechanisms that grant privileges, exemptions and exceptions, as well as mechanisms that facilitate fraud and tax evasion, cause public resources to be drained. Consequently, the public budget is low, hampering any effective social spending and causing the non-fulfilment of State obligations concerning human rights.

The Guatemalan government revenues registered an average of 12.5 % of GDP from 2006 to 2008. However, following the financial downturn that hit the global economy since 2008, a decrease in revenues could be observed from 2009 (11.1 % of GDP). Since 2009 there has not been a sustained recovery in order to be able to reach levels prior to the crisis. In February 2012 a tax increase was approved intended to increase the tax burden of the State. It was hoped that the tax burden could be increased significantly and steadily, consequently strengthening the State's social investment and establishing a more equitable tax system for the Guatemalan society. However, the tax reform however did not generate the expected success. Despite some positive developments, such as increased revenue from income tax (ISR), data from the

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Ministry of Finance indicate that the tax burden barely reached 10.9% of GDP (the same as in 2012).

Since 2006, public investment has failed to increase from the average of 14.2 % of GDP. Comparatively speaking, this rate is the lowest in Central America. There is a stagnation of public social spending at 8.5 % of GDP, down from 8.7% and 9.0%, figures which were observed between 2009 and 2010. Towards the end of the previous government administration and the beginning of the incumbent administration (2011-2012), public social spending suffered a significant decrease which has caused great concern as it may cause considerable impact on the human development indicators in the country.

The largest amount of public social spending, measured in percentage of GDP, has always been targeted at education, although there has been a visible stagnation since 2009 (3 % of GDP). Social protection schemes (which include conditional cash transfers) are approximately 2.5 % of GDP. These remained stagnant until 2013. There has been a decreased investment in health with an average estimate of 2.1 % of GDP and no encouraging developments in 2013. Investment in housing was drastically underfunded in 2011 but has been improving, especially within the context of the earthquake that hit the west of the country in late 2012.

Inadequate social investment is a problem that must be added to the other issues that result in the denial of the realization of economic, social and cultural rights, especially in rural communities, indigenous and urban peripheral areas. One of the issues is the low efficiency in social spending, since resources are not always used appropriately. In addition, there is little ability to execute resources in a timely, consistent, efficient and effective manner. This is particularly the case with the welfare programmes implemented during the last two government administrations. Unnecessary costs such, as those for the advertising and promotion of certain social programmes, continue instead of resources being invested in the implementation of the programmes.

There remain significant constraints to the implementation of social programmes and coverage of such programmes in remote areas, in particular those places that lack the basic infrastructure to facilitate access to public services such as health care and education. Despite significant progress concerning access to information, mechanisms persist that prevent free access to public information in particular concerning budgetary facts and figures.

Article 3 – Non-discrimination and equality of rights for men, women and communities of sexual diversity

Throughout this decade, Guatemala has created various laws, policies, national plans and specific mechanisms for the advancement of women. These achievements have been the result of over two decades of demands, proposals and strategies implemented by women's organizations and the feminist movement in Guatemala.

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Despite the achievements in terms of policy making, there is still a significant disparity between policy goals and the reality that women experience living in Guatemala. There are still large gaps in the exercise of rights between men and women in key aspects of life, such as participation in the labour market, land ownership, income, literacy rates, access to justice and political participation. Women continue to experience high rates of maternal mortality and serious obstacles in the exercise of their right to autonomy and self-determination, freedom from violence, discrimination and racism, freedom in the exercise of their sexual and reproductive rights, among others.

Far from advancing towards the achievement of equality for women, what is actually observed is a clear retrogression in the human rights of women. There have been important changes in the nature and *rationale* of the mechanisms for the advancement of women, such as the National Coordinator for the prevention of domestic violence (CONAPREVI), the Presidential Secretariat for Women (SEPREM) and the Indigenous Women's Ombudsman (DEMI). These changes have weakened the above institutions and caused important breaches to international standards and laws, policies and plans, resulting in severe setbacks in the lives of Guatemalan women.

Added to this, there persists a policy of criminalization and prosecution by the government against social movements that has resulted in the defamation of women's and feminist organisations, a situation that is apparent in the various speeches that SEPREM has circulated in various spaces and mass media, as well as in documents issued by the current government.

In Guatemala, Sexual and Gender Diversity Communities have been warned to secrecy and concealment, and are neglected by the State. Although the Constitution recognizes that all human beings are free and equal in dignity and rights, it only explicitly refers to equal opportunities and responsibilities between "man and woman", thus leaving unprotected those who, because of their status of intersex, cannot, nor should, be classified as male or female. Trans-sexuality, sexual orientation, gender identity or sexual identity are not recognized either.

Discrimination and violence, as consequences of homophobia, are pressing challenges to human rights. These challenges are deeply rooted in society and fostered by the weak ability of the State to ensure the welfare of its inhabitants, in particular those who live in poverty, extreme poverty and who are socially marginalized. In 2013, the State of Guatemala refused to sign two Inter-American documents, adopted by the Organization of American States for the protection of sexual orientation and gender identity, arguing that the Guatemalan society is too conservative to address these issues.

Articles 6, 7, 8, and 9 - The right to work, the right of everyone to the enjoyment of just and favourable conditions of work, trade union rights and the right to social security

In Guatemala there persists a situation of systematic violation of labour rights as recognized in various ILO documents. According to national statistics, informal

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employment amounts to 78.9% in rural areas and 82.6% in indigenous areas, while underemployment is estimated at 20.6% of the population in urban areas. There exists a general failure to comply with the minimum wage. According to the National Survey of Employment and Earnings (ENEI), in 2012 less than 20% of the employees were receiving an income higher than minimum wage. In sectors such as agriculture, the average monthly income does not reach half of the minimum wage.

In relation to working conditions, the figures of non-compliance are very high. The ENEI 2013 reveals that 65% of the working population has no employment contract, 5.7% has a contract and the 29.3% has a contract of indefinite duration. It is estimated that at national level 64% of the working population do not receive the yearly “bonus 14” and/or other benefits. This situation is exacerbated in rural areas where a mere 24% of employees receive these statutory benefits. Regarding social security, according to information provided by the Guatemalan Institute of Social Security (IGSS), in 2012 the 81.1% of the Guatemalan population was not affiliated nor received any coverage by the IGSS. This means that a mere 18.9% (2,843,467 people) are protected by social security and that only 12.22% (1,185,866) of the economically active population is affiliated.

The reason for this general non-compliance is not due to an inadequate legal framework, but due to the significant weakness of the State, in particular the Ministry of Labour, to enforce the labour standards in the country. Due to financial, institutional and policy issues, the General Labour Inspectorate (IGT) fails to fulfil its role of monitoring compliance with labour standards by the private sector. This fact creates a situation of enormous impunity that many tend to exploit in order not to respect labour rights. One of the most pressing issues is that the IGT does not exercise its authority to sanction when it has determined the existence of a labour misconduct. In addition to this, it is extremely difficult for the workers to obtain justice.

The report makes visible the critical situation particularly faced by workers of the agricultural and textile industry sectors, as well as domestic workers. It describes the impact that work based on productivity goals has on labour rights, especially in the agricultural and textile industry sectors. Moreover, it talks about child labour in rural areas, the legal and de facto discriminatory treatment, the violence and abuse suffered by domestic workers, the absolute in compliance with their labour benefits and social security rights, the invisibility of the women as agricultural workers, the wage discrimination faced by the textile industry workers, as well as the living and working conditions of migrant farmworkers, among other aspects of serious violations.

In addition to the above situation, there are persistent anti-union practices applied by employing sector and a general context of severe violence that trade unionists and members of workers' organisations continue to be exposed to.

Article 10 - Right to protection and assistance to the family, motherhood and childhood - Violence against women – Communities of sexual and gender diversity

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The Communities of Sexual and Gender Diversity (lesbian, gay, bisexual, transgender and intersexed - LGBTI) are not integrated into Guatemalan society. This is evident by the Articles 78 and 173 of the Civil Code which stipulate that only heterosexual couples may have access to protection of the family. Such exclusions distort and limit the rights and freedoms guaranteed in the Constitution and allow the persecution, de facto criminalization, and the commission of hate crimes based on a) sexual orientation, b) gender identity c) sexual characteristics of the victims. Such crimes are not typified as a criminal offence in the Penal Code.

The Law against Femicide and Other Forms of Violence against Women, adopted in May 2008, is at early stages of application. As a result, the rates of Violence Against Women (VAW), are far from reducing and are critically increasing. In the absence of official statistical records of the rates of VAW, each institution manages its own data, which rarely coincide. It is unknown whether the figures represent same or different women, and great part of the information is outdated. Therefore, it is indispensable to comply with article 20 of the Law which mandates the creation of a National Information System on VAW.

Some facts: in 2012 the Public Prosecutor recorded 51,790 complaints, confirming that in that year the VAW was the crime most reported at national level. The Judiciary reported that in 2013 it received 38,964 complaints, 76% more than the previous year (22,109). In 2013, only 1,582 judgments were issued (4% in relation to the complaints presented that same year), raising impunity at an estimated level of 96%. The National Institute of Forensic Science - INACIF - reported that in 2013, 748 women were violently killed, 77 more than in 2012. And although official data account for a decrease of 6% in violent deaths in general, this figure only applies to violent deaths of men. In reality, violent deaths of women revealed an increase of 11 %.

Despite these figures, Guatemala remains without a violence prevention policy. The National Plan for the Prevention of Violence against Women (2004-2014 PLANОВI) – including its evaluation and update – has been paralyzed due to the weakening of CONAPREVI (2012) by SEPREM.

The institutions responsible for the implementation of the Law against Femicide and PLANОВI do not prioritize enforcement policies in their operational plans and budget. Holistic care, prioritized by both PLANОВI and the Law against Femicide through Support Centres Integral- CAIMUS - has not received sufficient support in order to expand its coverage to become nationwide. There are only 7 centres, which, although they should count with public funds, have suffered serious budget limitations and cuts of up to 50%.

Article 11 – The right to an adequate standard of living (food, land, water, housing and climate change)

According to the latest UNDP estimates (2012) the multidimensional poverty index (MPI) reached in its average intensity 62% of the national population, while that of extreme intensity reached 30%. In rural and indigenous areas the MPI in its average

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intensity respectively reached 87% and 83% of the population, while that of the extreme intensity exceeded 49 % and 47 % of the population.

The creation of the Ministry of Social Development in February 2012 seemed to be an important step in creating an institutional framework for social policy in the country. However, the Ministry of Social Development has failed to generate an effective social policy and continued to implement social programmes developed by previous governments. Furthermore, there has been a significant reduction in the coverage of the Ministry's social programmes, as well as a freeze on available funds and severe issues with its resource allocations.

The Conditional Cash Transfer Programmes (CCTP) reached their highest budget in 2010 (Q1, 139 million) but have since 2011 experienced a drastic decrease in budget due to the opposition of the Guatemalan Congress. However, the steepest decline took place in 2013 through the budget that was approved by the current political party's majority in Congress. The 2014 budget for the CCTP program "Bono seguro" was scarcely enough for the delivery of three payments of an average of Q150 for those families enrolled in the programme.

The housing deficit in Guatemala exceeds 1,400,000 homes. Despite new legislation on housing, housing programmes have failed to expand their coverage, improve their performance and have not in a reasonable manner tackled the large housing needs that exist in Guatemala.

Right to food

Guatemala suffers from high rates of malnutrition. These rates have been internationally recognized and have led to two specific missions by the Special Rapporteur on the Right to Food (in 2005 and 2009). During the 2005 mission of the Rapporteur Jean Ziegler, Guatemala was recognized as the American country with the highest levels of chronic malnutrition, twice as severe as other American countries. Furthermore, the Rapporteur expressed concern about the high risk of Guatemala in failing to meet the Millennium Development Goal No. 1 on eradicating extreme poverty and halving the proportion of people who suffer from hunger.

The food problem in Guatemala is determined by the widespread social inequality which maintains half of the population in poverty and high food vulnerability. Three major factors contribute to this situation. These are land management issues, the growing use of GMOs in agricultural production, and the depletion and pollution of rivers and lakes.

In Guatemala 2% of the population own 65 % of the land. Currently the situation is worsening due to the increased accumulation of arable land and the eviction of campesino families by companies cultivating monocultures such as sugar cane, palm oil, rubber, coffee and bananas. The current food and agriculture policy, which is

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favourable to the use of genetically modified resources, is to capitalize on the country's rich biodiversity. Legal instruments are used to prevent the protection of the right of indigenous peoples to use and control native seeds and practice their traditional farming. In addition, there is an unsustainable use of water through the over-exploitation of groundwater; the pollution of water sources; the diversion of rivers and digging of new mechanical wells; by hydroelectric plants and large sugar cane plantations. The impacts on the right to food are linked to issues such as the depletion of fish, the high poverty levels of the population, and that small farmers are left without adequate access to water sources for their crops and personal use.

Among the positive actions concerning the right to food in Guatemala is the government's commitment to pay part of the agrarian debt through the purchase of 256 properties for communities that were granted loans by the Land Fund during previous governments.

An additional positive outcome is the court ruling that favoured four families with children affected by malnutrition in the town of Camotán, Chiquimula. These cases constitute the first judicialization of the right to food in Guatemala. However, the continued challenges in the country have led to an increase in vulnerability of the national population.

During the first two years of the current government, the food and nutrition issues have remained highlighted in the national political agenda. The government developed the Zero Hunger Plan which is supposed to be based on the Brazilian model. However, the impacts of the Plan are questionable as there are too many problems evident in its execution. The discussion has been limited to the increase of hunger cases; setbacks in institutional performance and low budget execution; an increase in food vulnerability in prioritized areas; allegations of political clientelism in the management of food assistance programs; in addition to the weak functioning of the instances of information which were created for the monitoring of malnutrition cases.

Land is a key issue for the realization of ESCR in Guatemalan society. This is particularly the case concerning food security and the realization of the human right to food of the population in poverty, extreme poverty and marginalized groups, as proposed in the Voluntary Guidelines on the Governance of Land, Fisheries and Forests in the context of National Food Security. Among others, the importance of land is highlighted by the fact that 70% of national food production comes from poor peasant households.

The unequal structure of land tenure is exacerbated by a new wave of land concentration for growing sugar cane, palm oil, rubber and teak. These new trends of land concentration caused by large national and/or foreign companies are supported by the State. For the original land holders, the indigenous peoples, it is practically impossible to access arable land without State support.

The tension over the land concentration issues is manifested in land conflicts. Along with other factors, it is estimated by the Secretary for Agrarian Affairs that the number of conflicts has increased between 2004 and 2013 from 972 to 1.403 conflicts. Despite

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of some conflicts being resolved every year, the number of new conflicts is greater which consequently affects 8.74 % of the population. The inadequate response of the State and private actors has led to a worrying criminalization of the social demands around land and territory, a pattern which is repeated around the country. Between January and September 2013, the murder of 18 community leaders and 37 assassination attempts were recorded.

The government response has not met the commitments expressed in the Peace Agreements, nor the Constitution of the Republic of Guatemala. To this date the government has not approved the proposed National System of Integrated Rural Development, law number 4084. The policies and programmes designed for the rural economy do not meet the expectations of people whose rights are violated by living in poverty and misery.

The Land Fund has created many problems where farmers find themselves in debt as they are unable to pay back the credit they received under the Fund to buy land. While some of the problems of the so-called agrarian debt were recently resolved, new land-access policies do not achieve the expected results. This is also due to a lack of budget and public will. In addition to this, Guatemala has no agricultural policy and the advances of the Land Registry (RIC) are unsatisfactory and there has been no recognition of indigenous lands.

The Right to Water

Access to water is an important human right and the UN defined it as a Millennium Development Goal (MDG) to by 2015 halve the proportion of people without sustainable access to safe drinking water and basic sanitation. It is estimated that since 1990, when approximately 63 % of the Guatemalan population had access to improved water sources, this situation should be improved to 81.5% by 2015. Following improvements in 2000 (72.6 %) and 2006 (78.7%), it seemed possible to meet the 2015 MDG target, however, in 2011 access fell to 75.3%. It is important to highlight the significant gap that exists between the urban and rural access; 90.5% and 58.2 %, respectively.

In Guatemala even those who have access to "improved water sources" face severe problems: half of the water systems lack adequate levels of chlorine, one in three is affected by bacterial contamination, half of households have no access to water for approximately 11 days per month and have only 7 hours of access other days. To conclude, the term "improved water sources" is relative and applies only to a small part of users.

Problems related to the availability of water have a wide range of causes: the distribution of the water annually available shows large seasonal and geographical variations and is impacted by floods and droughts. In some areas unfair distribution of water was recorded. This is the case in for example in areas surrounding industrial monocultures. Highlighting this is the fact that the irrigation of sugarcane crops consumes 457.8 % of the water that used by households. When water is diverted or its

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normal course stopped, the situation is further aggravated by pollution caused by inadequate industrial processes. Various monocultures have similar adverse impacts on water, for example; palm oil and banana among others. Other conflicts are generated by extractive industries such as mining.

The problems briefly mentioned are a result of the lack of adequate legislation on water and its use, as well as, the effective prevention and punishment of water pollution. Certainly, the Constitution of the Republic of Guatemala includes provisions which state that the development, use and enjoyment of water should be in accordance with public interest and available to society. However, constitutional protection is rarely announced in actual practice - landowners often assume they are owners of the water which passes through their property. This is a violation of constitutional provisions and is largely due to the absence of a Water Law and any leading authority on the subject. Multiple bills have failed or remained inactive due to the lack of a broad consensus among the various sectors. Regulating water usage involves considering various interests, worldviews, social practices, national and local authorities, among many other factors. However, to date there have been no efforts to achieve such a consensus.

At the institutional level a situation of lack of coordination, lack of accountability and any effective check remain persistent. Small efforts by the Executive to present a brief National Agenda on Water and an Irrigation Development Policy do not tackle the underlying problems. These are small steps, which often lack genuine political will and an adequate budget to achieve the necessary structural changes to guarantee the right to water in Guatemala.

Article 12 - The right to health

The State of Guatemala violates the right to health by failing to develop a national policy that addresses the challenge of solving the historical and structural crisis in the health system; a crisis characterized by segmentation due to the existence of several subsystems (public, private profit and non-profit, community) that generates profound inequalities in access to care and coverage in holistic health of the Guatemalan population. There is also an increasing fragmentation, expressed in the existence of a multiplicity of uncoordinated health care services, creating inefficiency and ineffectiveness in the foundation of the health system.

Public financing of health in relation to gross domestic product (2.6% of GDP in 2009), particularly the expenditure of the Ministry of Public Health and Social assistance (MOH) reaches only 1.1% of GDP. This means an important disadvantage in the public financing of the health sector in Guatemala in relation with other countries in the region. The non-prioritization of public health funding is reflected in its low participation to the budget and government spending: from 10.7% in 2007 falling to 7.0% in 2011. This creates significant limitations in the operation and investment MOH. This generates a sharp increase in private spending (4.5% of GDP for 2009), which exceeds the public health expenditure (2.6% for 2009) and hits the family economy.

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Moreover, it is a factor of worsening the conditions of poverty and extreme poverty suffered by the population, as the out-of-pocket expenditures for health services is the highest of private spending (4% of GDP for 2009). This reflects the absence of a tax policy that would strengthen public finances and thereby establish the necessary conditions for sustained increase public health funding.

The programme of extension of health care coverage by signing agreements with NGOs, in reality undermines the State. It does not guarantee true quality and coverage to health problems and lacks of monitoring and evaluation mechanisms. In that sense, it does not meet the quality standards of the right to health contained in the ICESCR.

Articles 13 and 14 - The right to education

The Constitution of the Republic of Guatemala establishes the obligation of the State to guarantee the right to compulsory, secular and free education for all. However, the current educational policy has reversed the direction marked by the constitutional provision and failed to comply with the contents of the right to education.

State investment in education: There is a decrease in investment as to key aspects of education in the country. Since 2012 there has been a "downward trend in public investment in adolescence". A clear example is the case of investment in basic education which shows a reduced annual increase of 5% (between 2007 and 2010 the average annual increase was 23%). The investment in diversified education is similar; until 2012 there was an average annual increase of 10.7%, which by 2013 dropped to 4.5%, allocating more than 80% to administration and about 40% to teaching.

Public Policy: The model of the educational reform raised by the current public administration is far different from the one proposed by civil society in 1998 which is based on the Peace Accords. This model is delineated largely by the document "Strategy for Improving the Quality of Education for Children and Youth" issued in September 2012 by the Ministry of Education. The document establishes the reforms to be made in the formal education of teachers, as well as on secondary education. *"This strategy allows us to have careers that respond better to the needs of the labour market, as it will facilitate the incorporation of mid-level graduates to the economically active population."* (Ministry of Education - MoE, 2012).

However, the Ministry of Education, through partnerships with the private sector, tends to ignore fundamental State responsibilities related to the children and adolescents in the country.

Authoritarian actions: The educational reforms that have been developed over the last two years were based on the elimination of a genuine dialogue and participation of the educational community. These initiatives politically annulled the National Council of Education and imposed a high school and teaching career through administrative mechanisms beyond legality. On the other hand, teachers, students, youth and adolescents have been persecuted politically and administratively when they spoke out against the education reforms.

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On 18 February 2014 the Ministry of Education issued the 329-2014 Agreement, approving the Manual of Academic and Teaching Experience Requirements for the selection and appointment of staff in teaching positions at the level of secondary education. The Ministerial Agreement does not provide details on the changes, nor does it make available the new Manual (EducaGuatemala, 2014).

The analysis of these three conditions shows that the current education portfolio is focusing on minimum youth training for their entrance into the labour market, making the State the main financier of a process that favours domestic and foreign private investment.