Parallel Report

The Situation of Economic, Social and Cultural Rights in Guatemala

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Contents:

1. SITUATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN GUATEMALA
   by Hugo Escobedo, COODESC (Coordination for the Fulfilment of Economic, Social and Cultural Rights)
   page 4

2. COMMENTS ON THE REPORTS SUBMITTED BY THE GUATEMALAN GOVERNMENT
   by Secil Oswaldo de León, DESCGUA (Economic, Social and Cultural Human Rights in Guatemala) and CIIDH (International Centre for Human Rights Research)
   page 6

3. PEACE ACCORDS AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN GUATEMALA
   by Byron Garoz, CONGCOOP (Coordination of Non-Governmental Organizations and Cooperatives)
   page 7

4. SITUATION OF INDIGENOUS PEOPLES AND PEASANT COMMUNITIES IN GUATEMALA
   by Daniel Pascual, CNOC (National Coordination of Peasant Organisations)
   page 10

5. SITUATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF RURAL WOMEN IN GUATEMALA
   by Ursula Roldán Andrade, PdTI – Interdiocesan Land Commission, Agrarian Platform
   page 13

6. THE RIGHT TO LABOUR JUSTICE IN THE RURAL AREA OF GUATEMALA
   by Ingrid Urízar, PdTI – Interdiocesan Land Commission, Agrarian Platform
   page 18

7. THE RIGHT TO FOOD IN GUATEMALA
   by Martin Wolpold-Bosien, FIAN - Foodfirst Information and Action Network
   page 22

8. SITUATION OF THE RIGHT TO HOUSING, THE RIGHT TO EDUCATION AND THE RIGHT TO SOCIAL SECURITY IN GUATEMALA
   by Secil Oswaldo de León, DESCGUA and CIIDH
   page 25

9. SITUATION OF THE RIGHT TO HEALTH IN GUATEMALA
   by Hugo Escobedo, COODESC
   page 32
SITUATION OF ESCR IN GUATEMALA

The constant violation and failure to observe Economic, Social and Cultural Rights in Guatemala throughout recent history constitutes one of the main reasons for the animosity and war that has affected the country during more than 3 decades. Taking into account this reality, the fulfilment of these rights requires special attention in order to ensure peace in Guatemala. This translates into the elaboration of new legislation and policies, and the allocation of the resources needed to achieve such goal, being the Peace Accords a crucial instrument in this task.

Although Guatemala became State Party to the International Covenant on Economic, Social and Cultural Rights on September 30th 1987 with its ratification through the Decree 69-87 (the decision was submitted on May 19th 1988), the understanding of the ESCR as Human Rights of Guatemalans only goes back to the mid-90s. Before then, such rights were perceived as gifts and privileges of powerful sectors, or as dreams and hopes to be materialized only by means of social struggle and even war itself.

Guatemala’s civil society has made important developments in the inclusion of economic, social and cultural issues in the Human Rights detailed in the Universal Declaration of Human Rights and ratified by Guatemala. However, developments concerning their observance and implementation are insufficient, since these rights are not a priority of the State.

In Paragraph 1, Article 2, the International Covenant of Economic, Social and Cultural Rights establishes that each State Party to the Covenant “[…] undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”. In the case of Guatemala, the trend of public expenditure in the last few years portrays a picture contrary to the compromises and obligations assumed by the State of Guatemala.

The non-fulfilment of the International Covenant (ICESR) on the part of the State Parties can stem mainly from two reasons: economic incapacity and lack of political will. The former reason derives from the State’s lack of the resources required to design policies, for example.

In the case of Guatemala, economic incapacity is closely linked to lack of political will, since resources are allocated for issues that are not crucial to enable Guatemalans to live in dignity.

The main arguments for the non-observance of ESCR and the non-fulfilment of the Peace Accords on the part of the Guatemalan State have focused on this lack of resources. Nevertheless, military expenditure on a counterinsurgency and powerful army in peace times exceeds the allocation of funds for education and health (budget allocation 2002: Presidential High Command (EMP) 58,707,433.00 million quetzals, 2003: 96,986,329, an increase by 65.20 percent; Ministry of Education 2002: 2,881,214,963.00 million, 2003: 3,244,482,637.00 million, an increase by 12.99 percent; Ministry of
Health: 2002: 1,701,949,965.00 million, 2003: 1,753,222,164.00 million, an increase by 3.01 percent).

Although the civil society has launched important proposals regarding reforms on the tax system in order to be able to finance the Peace process, the two last governments after the period of conflicts have insisted on keeping the system of tax exemptions and privileges, using a tax system that is prejudicial for small and medium taxpayers.

The Guatemalan State lacks long-term policies aiming at the progressive fulfilment of ESCR and at ensuring their full realization in the long run. Rather, isolated actions have been taken regarding some compromises.

The privatization of the public sector, the sale of public assets, the provision of services to private institutions and the transfer of economic responsibilities to communities have caused a dramatic decline in the enjoyment of ESCR, particularly in the areas of education, health and social security.

Generally speaking, the Guatemalan State does not show political will to respect ICESCR, since, having the capacity required to allocate resources in this area, such resources are used for unnecessary expenses, which ends up again in the exclusive structure. 15 years after deciding to ratify the International Covenant, achievements related to ESCR are not proportional to the State’s income in this lapse of time as regards tax collection, sale of assets or bilateral international cooperation.

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1 CONADEHGUÁ: El Emporio de los Militares (The Empire of the Military), page 70, 2003.
COMMENTS ON THE REPORTS SUBMITTED BY THE GUATEMALAN GOVERNMENT

The Guatemalan Government submitted two reports to the United Nations Economic and Social Commission, body in charge of protecting Economic, Social and Cultural Rights. The first of these reports, tackling the implementation of the International Covenant on Economic, Social and Cultural Rights, was submitted on July 26th 2002. Following the presentation of this report, some questions were made to the Government. Answers were made through an Addendum, dated October 2002.

The characteristics of the content of both documents are the following:

1. Some major issues in order to enable the country’s development are simply left aside. Especially concerning access to land and environment. Neither the issue of poverty nor that of the unequal distribution of income –derived from an inadequate tax system– are tackled in all their dimensions.

2. The approach taken in other major issues, such as labour conditions, including benefits, social security, minimum wage, labour security and hygiene, and the situation of women, is basically focused on legislation, decrees and other legislative measures. Although these measures are important, they are not put often into practice. Likewise, the development of programmes and commissions is mentioned, but there are no data evaluating the impact of such measures.

3. When data is mentioned (health and education), these are in most cases out of date; they sometimes lack an empirical base and are not very realistic (such is the case, for example, of figures concerning illiterate population); other figures are simply inconsistent (for example, the coverage of the education programme CENACEP and the number of grants for girls). The reports mention the greater education and health coverage, but they do not indicate that developments have been achieved through mechanisms aimed at the privatization and transnationalization of public services, thus offering bad quality, doubtful sustainability and independence from the State.

4. Although the speech from the government can seem quite impressive at a first glance, an analysis of its content reveals the lack of improvement in most of the areas tackled, as well as the superficiality and lack of empiric evidence of the information presented.

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2 This paragraph is part of the Alternative Report, put forward by DESCgua and CIIDH: La Situación de los Derechos Económicos, Sociales y Culturales en Guatemala (Situation of Economic, Social and Cultural Rights in Guatemala), October 2003, Guatemala.
PEACE ACCORDS AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN GUATEMALA

The signing of the Agreement on Socio-economic Aspects and the Agrarian Situation (ASSA) before the ESCR Committee in 1996 was considered a major development by the representative of the Guatemalan Government. He declared that its fulfilment would enable a “transformation” of the Guatemalan State. Nearly seven years after such event, the Peace Accords have not been properly implemented. In the following paragraphs some of the central elements of the ASSA are mentioned, clearly indicating the selective approach adopted by both governments –PAN and FRG–in the fulfilment of these Accords. There is no doubt that the aforesaid "transformation" has not been carried out, and that measures taken have actually caused more damage to the Guatemalan population. Therefore, there has been little progress or even a backward trend regarding the role of the State as guarantor of the enjoyment of ESCR.

The economic policy boosted since the Peace Accords were signed is based upon market liberalization and the limitation of the role of the State. The main objective behind this idea is finding the way towards “stability and balance, taking as reference the performance of the market”. This policy of a neoliberal nature is particularly based on a subsidiary role of the State. Such policy eliminates every possibility of the economic policy to become part of a mechanism distributing wealth and enabling economic development. On the contrary, it makes out of such policy an instrument enabling wealth concentration and worsening the poverty and inequality situation. The neoliberal economic policy is the agenda that has been imposed, greatly distorting the content of the Peace Accords.

The main actions carried out by the two last governments are a clear evidence: the privatization of the electric and telecommunications industry, of the railway and mail systems; the dismantling of the agrarian public sector, the transfer to the private sector of the maintenance and construction of roads; the withdrawal of subsidies for economic liberalization. The fostering of a labour flexibility policy, reflected in the temporary contracts of employment, which generates instability and reduces or eliminates labour benefits; the transfer of public services such as health and education to the private initiative. The financial and commercial liberalization through the implementation of the free trade of foreign currency, the modification of financial and banking acts and the promotion and signing of free trade treaties.

The economic policy boosted by the government continues to focus on the agenda of the international financial institutions and in the criteria and principles upon which the neoliberal policy is based: the signing of the Stand-by Agreement with the International Monetary Fund, which includes measures such as the privatization of social security; the liberalization of financial capital through the adoption of Finance Modernization Laws and the withdrawal of subsidies for the use of electric energy; and the boost of structural reforms on the part of the Inter-American Development Bank and the World Bank concerning social services, as well as the infrastructure, biodiversity and labour force exploitation plans, such as the Puebla Panamá Plan. All these actions are contrary initiatives to the Peace Accords.

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Monetary Policy:

In accordance with the neoliberal policy, the monetary policy has as sole purpose the general stability of prices. Moreover, this is done from a short-term approach and with a partial vision of the situation, thus subordinating the whole economic policy, especially the tax policy. Stability and adjustment programmes continue to be designed. These are based upon the opening up to foreign market and the liberalization of the banking and financial system. These actions included reforms to the Organic Law of the Bank of Guatemala that, far from benefiting the country, eliminated the role of the Central Bank as developer and reference of economic and social development.

Tax Policy:

During the period 1996-1999, public finances underwent an apparent strengthening driven by the increase of the Value Added Tax (VAT) from 7 percent up to 10 percent. However, at the dawn of year 1997, and contrary to the Peace Accords, the government boosted a number of changes that were not in accordance with the purpose of rising tax burdens. The government increased total public expenditure, but without consequentially rising tax burdens, thus causing a considerable increase of fiscal deficit. In order to cover fiscal deficit, the PAN Government resorted to privatization and foreign debt. This meant that in 1998 the government admitted that it would not be possible to reach the tax burden objective of 12 percent for the year 2000 and asked for a reschedule of year 2002.

Housing Policy:

The accumulated housing deficit exceeds a million and a half homes, with an annual increase of about 43 thousand points. Meanwhile, construction of homes does not exceed six thousand units per annum, which means that it does not even cover de annual demand. At a first stage, the government fostered its housing policy through the Guatemalan Housing Fund (FOGUAVI). The FOGUAVI based its strategy on loans with variable and high interest rates and on a subsidy that provoked an increase in the speculation of lot prices. Such model has not benefited the poorest and has only been of benefit to construction companies and private banks. Moreover, the allocation of these loans is done through an exclusive process that prevents women's access to such loans.

Labour Policy:

The main problems since 1996 in the fulfilment of the labour commitments included in the Peace Accords are the lack of economic and material resources, as well as the non-fulfilment of labour legislation and the lack of coercive capacity on the part of the Ministry of Labour and Welfare to implement them. Violations of the right to associate in trade unions, breaches of collective agreements, labour stability and non-payment, deductions or delays on the wage payment, and so on are still taking place in Guatemala.

A recent research carried out in 86 estates in the southern coast of Guatemala indicates that only in 30 percent of these estates the minimum wage legally established is paid. It is worth underlining the study carried out concerning working hours per day/week and the number of days worked per week: figures show that peasants work over the 48 hours per week established by law as maximum. They often do not have a day of rest and the extra hours are not recognized; which means, that although there are apparently estates that even pay more than the minimum wage established, owners compensate this through the exploitation of peasants, imposing them long working days and not paying them for the extra hours they work⁴.

Very few actions have been carried out by the Ministry of Labour and Welfare through the Labour Inspection in order to solve this problem. This is especially worrying because in the report that the

⁴ CONGOOP/CODECA: Condiciones Laborales en la costa sur de Guatemala (Labour Conditions on the Southern Coast of Guatemala), April 2003, Guatemala.
Government of Guatemala put forward to this Committee, the violation of this right is clearly indicated.

**Rural Development and Access to Land:**

Most of the compromises taken through the Peace Accords concerning this issue are based upon the principles of the international financial institutions, aimed at boosting land market. Little progress has been made in order to make such land market function: the land tax on idle land is still to be implemented; there are no technical assistance or loan policies; the process on land registration develops at a slow pace; there are still legal gaps concerning land property and the role of the bodies guaranteeing it; there is no review or elimination of the system based on privileges, exemptions and exonerations; and there is also a lack of policies enabling the development of production resources among rural population.

The clearest evidence of the delay and non-fulfilment of the Peace Accords is the lack of a rural development and access-to-land policy, enabling the changes required by the agrarian sector. Contrary to the conception of the State as guiding body and the creation of an institution fostering development as indicated in the Peace Accords, the Agrarian Public Sector that represented the State was dismantled.

Most of the measures taken by the previous and current governments are aimed at boosting and maintaining production in the agro-export market and limiting the role of the State. Thus, the State plays a subsidiary role, and increases participation of large producers, whose interests are favoured to a greater extent. The Ministry of Agriculture, Livestock and Food (MAGA) has reduced its task to the distribution of fertilizers and the design of isolated projects, such as food security in the eastern part of the country.

This contrasts with the deep and dramatic crisis affecting rural areas, stemming from the drop of coffee prices and worsened by draught, unemployment, hunger and poverty.

The non-fulfilment and abandon of the Peace Accords, as well as the failure of the land market as a measure against crisis, opens up the debate on the need to fully transform the agrarian system and the need to boost a Global Agrarian Reform.

There is a lot of progress to be made regarding access to land, labour rights and basic services, such as healthcare and education, as shown in the reports included in this dossier.
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SITUATION OF INDIGENOUS PEOPLES AND PEASANT COMMUNITIES IN GUATEMALA

Guatemala is State Party to the International Covenant on Economic, Social and Cultural Rights. Nevertheless, such rights are up until now very far from being respected in the case of indigenous peoples and peasant communities. The economic, social, cultural and political exclusion suffered by indigenous and peasant communities in Guatemala is historical and has caused intense social conflicts. As a result of such historical exclusion, there are still deep social gaps, as reflected in the high poverty rate and prevalence of undernourishment that characterize Guatemala.

According to data published by the UNDP, 57 percent of the Guatemalan population lives in poverty. Such poverty affects rural and indigenous population to a greater extent. The total rate of poverty among indigenous peoples reached 72 percent in 2002; the extreme poverty rate, 26.4 percent. The aforementioned information can be summarized as follows: one out of two Guatemalans is poor; one out of five Guatemalans is extremely poor; four out of five poor people live in rural areas; three out of five are indigenous; and one out of two poor inhabitants is under 15 years of age. In the light of these data, the UNDP concludes: “Obviously, options and freedom of most of the population residing in rural areas are seriously limited”.

Half of the children in rural areas were in a chronic undernourishment situation. Such undernourishment affected mainly indigenous children, 69 percent of whom presented symptoms of chronic undernourishment. In 1998 was estimated that the average daily intake of kilocalories of a Guatemalan was 2,100. Taking into consideration that the daily energy requirement is 2,792 kilocalories, the population only satisfied around 80 percent of its dietary energy requirements. The municipalities that in 2001 showed a highest level of chronic undernourishment among schoolchildren (over 80 percent) where those located in areas with a predominant indigenous population, traditionally the poorest.

Guatemala suffers an economic crisis greatly due to the exhaustion of the traditional agro-export model. The clearest example of this situation is the coffee crisis, which has meant the loss of the income for hundreds of thousands of small producers and temporary workers in coffee plantations. The State has shown its lack of capacity and will to decisively face the consequences of the coffee crisis, thus accepting an increase of poverty and hunger threats in a large portion of the national territory. According to a study carried out by the World Food Programme (WFP), there are 109 municipalities with high or very high food vulnerability, which accounts for 33 percent of the country’s municipalities.

The Guatemalan State has shown a serious lack of will to face this situation affecting peasant and indigenous peoples. Instead, it continues to use a non-inclusive model of national and rural development. As indicated by the UNDP, the economic growth observed in the 1990s did not mean a proportional reduction of poverty, because those sectors with higher income beneficiated more from this economic growth than the other social sectors. If growth had equally beneficiated all sectors, extreme poverty would have been reduced from 18 percent to 12 percent, instead of the reduction to 16 percent until 2000. In this vein, it is worth mentioning that during the administration of the current government extreme poverty rose again, reaching 21.5 percent.

Data regarding land distribution are a clear example of the exclusive development carried out by the State concerning wealth concentration. Figures of year 2000 reveal that 94.1 percent of small plots\(^8\) amount to 18.6 percent of total land, whereas 1.5 percent of large plantations (with more than 38.63 hectares) represent 62.5 percent of the land surface. Only 26.6 percent of the total land is in indigenous hands.\(^9\) The percentage of landless rural families has increased from 24 percent in 1979 to 29 percent in 2000.\(^10\)

The indigenous peoples of the country have a lower healthcare coverage than the rest of the population. The social security coverage of indigenous peoples was lower in 2000 than that of the non-indigenous population, for indigenous peoples live mainly in rural areas. Peasants practicing subsistence agriculture are predominant, and their casual or seasonal work does not lead to formal labour relations. Indigenous and peasants working under informal conditions have no access to social security.

Among indigenous communities the level of schooling and labour qualification is lower: only 49.9 percent of the indigenous peoples over fifteen years of age are literate. Therefore, they mainly work in subsistence agriculture or carry out low-paid activities. Concerning healthcare, indigenous peoples face discrimination due to their socio-economic situation, their migratory status (temporary agricultural workers in estates of the agro-industry), and also due to cultural differences, especially regarding language while dealing with service providers\(^11\).

The Peace Accords are the basis to achieve structural changes and fulfil the Economic, Social and Cultural Rights of the indigenous and peasant population. Nonetheless, FONTIERRAS (Land Fund) – a market-based mechanism of land distribution set up in the context of the Agreement on Socio-economic Aspects and the Agrarian Situation (ASSA) – has been unable to solve the problem of land distribution in Guatemala. The Land Fund received nearly 2000 applications for land between 1997 and 2002. In this lapse of time roughly 160 pieces of land were given to around 14 thousand peasants. MINUGUA concludes: ‘This shows that the model of land and wealth concentration in Guatemala through the market is not feasible […]. It highlights the need to include more unused public lands in the Fund, as well as the importance of regaining the public land irregularly allocated and implementing the expropriation law. Simultaneously, and in accordance with the Peace Accords, a tax on idle land should be implemented, with the objective of stimulating inclusion of this land in the market or its sensible use.’\(^12\)

Other measures aimed at solving the problem of agriculture in Guatemala and included in the Peace Accords have not been fulfilled either. CONTIERRA, a mechanism of land conflict resolution, has never been able to carry out an effective work: legal projects such as the law on land registry, the agrarian code or procedural legislation on agriculture and environment have not been tackled by the State yet.

Peasant and indigenous organizations, as well as other social organizations have submitted in the last few years many proposals, in order to face the economic crisis affecting rural population, to boost structural changes in the agrarian policies, as well as to foster the development of the rural population. Nevertheless, the State has shown a negative attitude, characterized by the lack of attention and the non-fulfilment of the agreements established.

These problems can be detected in those cases of land conflicts where economic, social and cultural rights are denied to the communities involved.

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\(^8\) Small plots of less than 6.9 hectares (10 manzanas) and not enough for a livelihood.


The case of the estate *El Maguey*, Fraijanes

The estate *El Maguey* of around 308 hectares was public property. Around 90 families have lived in it through different generations. Now the army is claming the right over the estate with the purpose of building infrastructure for the military. This land conflict seemed to be being tackled when, on April 7th 2003, President Alfonso Portillo, based upon the Governmental Agreement 223-2003, gave the land to the peasants. Only four days later, military forces entered the estate and evicted the peasants. They were evicted through a violent action that was later supported by President Portillo, who based his argumentations on the Governmental Agreement 252-2003 of April 30th 2003, and decided to give the estate to the army. The army destroyed the homes, cultures and schools of the peasants and obliged them to live in the surroundings of the estate. Loss experienced by the peasants during the violent eviction exceeds half a million quetzals. Members of the community no longer have access to their cultivated land, since the military enclosed it with barbed wire and watches each movement of the peasants. Moreover, peasants must ask for permission in order to have access to drinking water, which is located within the army facilities set up at the place.

These facts provide clear evidence of the inconsistent and contradictory attitude of the State regarding the demands of peasant communities: the State violates their right to food and even breaches the national legislation under the pressure exerted by the army. On September 18th 2003, the Constitutional Court (CC) declared provisionally the unconstitutionality of the Governmental Agreement 252-2003, which favours the army. Community leaders demand the Government to give them back their title deeds and to withdraw the army. Nonetheless, army troops are still occupying the estate. Furthermore, peasants demand the State compensation for damage.

Taking into account the aforementioned situation, we demand the following elements to be included in the recommendations to the Guatemalan Government, in order to fully guarantee the Economic, Social and Cultural Rights of the peasant population and indigenous peoples in Guatemala.

1. The fulfilment of the Peace Accords, particularly of those measures regarding the agrarian situation in the country.
2. The elaboration and implementation of a rural development policy, based on an equal distribution of the country’s wealth, thus guaranteeing the participation of social sectors and collecting proposals of peasant and indigenous organizations.
3. The design and implementation of a Global Agrarian Reform that ensures access to land, through mechanisms other than land markets, putting back into practice measures such as taxes on idle and under-used lands, and ensuring that land irregularly allocated is given back and that land used for money laundering is expropriated.
SITUATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF RURAL WOMEN IN GUATEMALA

a. The State fosters Exclusion, Inequality and Sexist Culture

The transformation of the Guatemalan State –exclusive, racist, sexist, authoritarian and centralist– into a State with other features is one of the major demands coming from the Agrarian Platform, in order to make possible a rural development policy and a new economic model.

The Guatemalan State continues to be by definition a constitutional, monocultural state, based upon an economic system focused on private property. Such system enables income and wealth concentration. It is a State that enhances the role of the army and has at the bottom of the list fundamental social actors, such as indigenous peoples, peasants and women.

Therefore its specific regulations, such as its labour and civil legislation (although some modifications regarding gender have been made), let alone allocations of public funds, public policies and institutions, share these features.

There is no doubt that the Peace Accords offer guidelines to form a different conception of State and develop the idea of a Nation for everybody.

However, the Peace Accords did not become part of the State’s policies, at least not since the Creation of the Republic. They have led to a process of specific reforms in ordinary legislation and to some institutional reforms, such as the introduction of new governmental instruments, like, for example, commissions. Most of these actions were carried out from the executive and through decrees. Likewise, some attempts to reform the education and health sector were made, by means of parallel programmes.

Therefore, the Agrarian Platform demands the creation of a State and Nation, in order to make of Guatemala an inclusive, multicultural and civil country, with an economic structure according to social needs and national development.

b. Rural Areas, Indigenous Peoples and Women: Major Issues of Inequality

Many UNDP reports have tackled the main problems causing inequality and poverty in Guatemala: income and wealth concentration, which makes deeper the gap between rural and urban population, indigenous and non-indigenous communities, women and men.

It is somehow worth mentioning some related data illustrating such inequality:

Guatemala is a predominantly rural country, with 64 percent of the population residing in the countryside; 75 percent of rural residents live in poverty; 76 percent of the poor population is indigenous; 49 percent of homes with female heads of households are in poverty; and among indigenous and rural households and those homes with females heads of households 60 percent of the population lives in extreme poverty.13

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The aforementioned report indicates a reduction of poverty among indigenous and female households between 1989 and 2000. This is due to the increasing number of indigenous women in the labor market, especially in the informal sector, which enabled some households to overcome extreme poverty, but not poverty. These women work mainly in the areas of commerce, craftwork and in the service sector. However, in 2001 income decreased by 0.5 percent (supposedly due to the drop of coffee prices) and this translated into an increase in poverty by 4.3 percent. And per decrease of 0.5 percent in the distribution of income, an additional increase by 3.1 percent could be expected.

The situation of undernourishment is dramatic in rural areas: in 2000, 49 percent of the population was undernourished, 57.3 percent were indigenous peoples, 43.8 percent women, slightly over poverty among men, which accounts for 43 percent.

“According to the data included in the Report of the First National Meeting on Food Security, elaborated on April 5th 2002, in Guatemala City, in a period of time of 2 weeks, 41 persons starved to death; 44 percent of the national territory is considered to live in misery and to be seriously threatened by starvation, being the following departments the most affected by extreme poverty: San Marcos 86.66 percent, Totonicapán 85.62 percent, Quiché 86.66 percent, Huehuetenango 77.85 percent, Alta Verapaz 76.40 percent, Sololá 76.36 percent, Jalapa 72.59 percent, Jutiapa 63.88 percent, Santa Rosa 62.07 percent and Quetzaltenango 60.67 percent.

On February 18th 2002, the UN World Food Programme (WFP) indicated that, out of a total of 73 thousand Guatemalan children under five years of age suffering from acute undernourishment, 5 thousand children risk to die in the coming months. At least 126 Guatemalan children have died of undernourishment, since the beginning of the crisis last year. In addition, over 45 percent people suffer chronic undernourishment in Guatemala, the country with the highest prevalence of undernourishment in Latin America”14.

Differences between men and women have increased between 1989 and 2000.15 For example, in year 2000, the difference of income between women and men amounted to 59 percent. Moreover, women work an average of 17.30 hours per day, whereas men 10 hours, since women do the housework apart from working outside home. Another difference is how this income is used: women, for example, use it for the home, health and education more often than men, which shows the lack of compromise on the part of men with regard to their parental role.

The following figures also illustrate inequality: 10 percent of adult indigenous rural women are literate, and in the case of young women, 40 percent; among non-indigenous women, up to 68 percent of young women and 40 percent of adult women are literate. The percentage of indigenous rural women with no schooling reaches 69.2 percent; that of the non-indigenous women, 39.5 percent. As for primary education is concerned, 29 percent of indigenous rural women have gone to school; 34 percent in the case of the non-indigenous women. Both categories represent 9.5 percent in secondary education. Figures regarding higher and university education are insignificant.

The approach to women’s global health continues to be limited to their reproductive health, which leaves aside many important aspects of women’s health, such as nutrition, mental health or affection, for example. This leads to the fact that women still have few health services, thus explaining the alarming figures of maternal mortality rate: 153 deaths per 100,000 new-born babies. Due to the lack of information as well as to cultural aspects, the issue of reproductive health continues to be a risk factor that does not give women the possibility to choose the number of children and type of sexual relations they want to have.

Regarding access to production resources, rural women, according to data from the Agricultural Census carried out in 1979, represent scarcely 6.6 percent of the farmers in Guatemala, which not only suggests that distribution of public land has been unequal relating gender, but also regarding

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15 See footnote 1.
MINUGUA indicates, based upon official data from 1998/99, that only 27 percent of peasant women work their own lands, whereas in the case of men, the figure amounts up to 41 percent.

Women discrimination in terms of access to land is also reflected in the State’s transfers. Out of the 116,209 allocations made between 1954 and 1996 by the National Institution for Agrarian Transformation (INTA), only 8 percent were allocated for women. With the Peace Accords, a Land Fund was set up and, in 1999, the Land Fund Law was passed, which for the first time included the women’s right to property and joint ownership. Nevertheless, in practice inequality continues to exist as regards access to property. According to data of the Land Fund, between 1998 and 2000 women held only 11 percent of loans.

According to registered information, only 2 out of 34 banks (6 percent) are promoting loans for women for specific production activities. One of these is BANRURAL, which after 1998 has in its Board of Directors female representation from the Federación de Organizaciones rurales de desarrollo integral de las Mujeres (Federation of Rural Organizations for the Global Development of Women), as well as among its shareholders. In spite of this, only 37 percent of the funds of the bank were allocated for women. Likewise, there are other supporting programmes developed by NGOs. Taking into consideration the creation of local banks, there are about 400 banks in total. There is no doubt that this has opened up new financing possibilities, but it is not enough taking into account the level of marginalization suffered by rural women.

c. The Case of the Women behind the Coffee Beans

In year 2002, the Land Commission of Quetzaltenango carried out the study Las Mujeres detrás de los granos del café (Women behind the Coffee Beans) that revealed the situation of inequality suffered by rural women, especially in those areas affected during the last 10 years by the coffee crisis that had such a negative impact on workers, whose livelihood had depended through generations upon the production of coffee.

Official data showed the loss in 2002 of 98,000 permanent jobs and 126,000 temporary ones. This has caused an increasing decline of food security among those rural families working in the coffee sector, as well as an increase of underemployment and informal employment.

It has been proved that the inequality suffered by rural women is a historical and structural reality of Guatemala, as well as it is a reality in many other Latin American countries. Nevertheless, this study has been mentioned in order to illustrate how a national reality affects to a greater extent the most vulnerable groups, rural women and girls.

This study was carried out in the municipality of Colomba, where 47,300 inhabitants reside, most of them working in coffee plantations. This municipality shows a poverty rate of 81 percent, 53 percent of prevalence of undernourishment and 31 percent of illiteracy. The agrarian structure is of 104 estates (97 of coffee), 5 patrimonios agrarios (land properties given to peasants by the government), 14 mixed land properties and 38 lots. Many of the estates have been seized by banks and later on abandoned, many others have unpaid debts to their workers. Meanwhile, many families are fighting for their life and trying to overcome poverty.

There is not much information on the reality of women, but in the context of the aforesaid study, a survey was carried out. 804 people were interviewed: 544 female peasant workers; the rest were

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16 Carmen Deere / Magdalena León: Mujer y Tierra en Guatemala (Woman and Land in Guatemala), page 9. AVANCSO, 1999.
17 MINUGUA: Informe de Verificación de la situación de los compromisos relativos al desarrollo rural y recursos naturales de los Acuerdos de Paz (Report on the Verification of Rural Development and Natural Resources Compromises deriving from the Peace Accords), November 2000, Guatemala.
18 Deere / León: See Footnote 4, page 7.
workers under 18 years of age of both sexes. Such study reveals very important data: for example, it indicates that female peasants are not hired, which is supported by the content of Article 139 of the Code of Labour, according to which women are considered "contributory persons".

Regarding wages received by women in Colombia, 29 percent said to receive between $6.25 and $18.75 per fortnight, and only 8 percent of women between $25.2 and $50. This means that none of them earn the minimum legal remuneration that in 2002 amounted to $134.3 (wage plus bonus). Regarding labour benefits, almost none of the women knew what it meant, 5 confirmed to use Social Security, 6 use charity, 3 productivity bonus and 5 bono catorce (one of the instruments implemented by the government), and only 32 had holidays. 84 percent of women said that they did not know the guaranties offered by the Code of Labour, only 21 percent knew what a trade union meant and only 9 said to participated in one of these.

75 percent of women have primary education in the estate, but only 38 percent said to send their children to school; 27 percent does not send them and the rest did not answer. Only 50 percent has access to drinking water.

28 percent of the women interviewed said to participate in women groups, particularly those focused on health and education. 34 percent did not participate and the rest did not answer.

Women do not seem to have the right to rest, since they all combine their job with housework. In fact, only 15 percent of the interviewed women said to rest. An important piece of information regarding women working in coffee plantations is that they do not make a difference between housework and their work in the plantation. However, it could be established that they work an average of 18 hours per day.

Husbands or male partners still control the issue of reproduction, and topics like the use of methods of contraception or family planning are still a taboo and often criticised within the community.

Girls and young women in areas were coffee is cultivated find themselves in similar conditions, with the added issue that they not appear among the plantation workers, for they are only their fathers’ assistants. 79 percent of them work collecting coffee beans. Wages received by young women are much lower than those received by adult women, about $1 to $1.6 per fortnight and 10 working hours per day, according to the 29 percent of women that answered.

d. Developments and Main Demands from the Movements of Rural Women

The Peace Accords led to the creation of spaces for women and to an increase of their demands in Guatemala. This has translated into important progress, such as the modification of the Guatemalan legislation –clearly discriminatory–, as well as other modifications, for example, regarding the Civil Code, and more specifically the equal treatment of women within the family. There are other examples illustrating such developments: the law that has been passed enabling reproductive medical assistance; the violence prevention law regarding violence within the family; the law on global promotion of the woman; the reform of the legislation concerning Development Advises, in which space and representation is given to women’s organizations; the law against discrimination passed in 2002; the creation of the woman forum in 1997, with the objective of favouring women in public policies; In July 2000, the Commission for the Defence of Indigenous Women, part of the Presidential Commission; the creation, in September 2000, of a department acting as governing body for women’s policies and issues; in November 2000, the National Coordination on Violence against Women within the Family; in 2001, the first National Policy on the Promotion and Development of Guatemalan Women; in this same year, the Equal Opportunities Plan, for the period 2001-2006, focusing on: economic development, land and housing, education, integral health, violence against women, work, legal equality, institutional mechanisms fostering women development and their participation in politics; the creation of new organization structures made up of rural women demanding their own rights –here it is worth mentioning the initiative of setting up the Commission of Rural Women Organizations, which includes 70 organizations.
There is no doubt that these examples illustrate the progress resulting from the proactive and determined participation of Guatemalan women. However, there are still major socio-economic restrictions and also some legal, cultural and political limitations fostering inequality, and women’s exclusion and marginalization, both of rural and indigenous women. This situation will be solved as structural changes in the actual system are implemented, as well as through changes in the day-to-day life, so that both, State and society, understand the family and public roles as shared tasks.

In the light of the aforementioned limitations, rural women express the following demands:

1. Access to joint ownership and property of land and its resources. They therefore demand a policy of access, tenure, restitution, use and control of the land with a gender approach. A global rural development policy, production programmes and reformulation of the part of the statutes concerning existing roles.

2. Recognition of their work in the context of production, family and their community. They therefore demand the modification of the Code of Labour, and especially the deletion of Article 139; the design of education and technical capacity programmes, and that housework is shared with the partner, children and the rest of the family core.

3. Better participation conditions. To achieve this goal, they demand the development of legal capacity programmes, as well as documentation and mechanisms boosting the participation of rural women at all levels.
THE RIGHT TO LABOUR JUSTICE IN THE RURAL AREA OF GUATEMALA

I. BACKGROUND
The greatest and most serious violations of labour rights take place in rural areas, especially in estates. Such violations are one of the clearest examples of oppression, exploitation, discrimination and exclusion, mainly exerted though the imposition of inhuman conditions that, moreover, prevent workers from improving their standard of living. Such system shows no respect for workers at all, thus destroying their human dignity.

These conditions have worsened with the coffee crisis. Such crisis has led to a higher UNEMPLOYMENT rate, non-payment of minimum wages, unjustified massive redundancies with no benefits or compensation whatsoever, alarming increase of tasks, salary deductions, loss of homes, dismantling of family structure, lack of legal protection, migration, repression, hunger, poverty and illness. Labour conflicts represent the loss of the opportunity to live in dignity.

Unemployment has been one of the most important issues. In 2001 there were 245,778 jobs less. Unemployment has led to a higher migration within the country, as well as towards Mexico and the USA, and to a higher demand to access land. There are about 1,237.3 people living abroad, according to the national survey on International Migration. Extreme poverty in the countryside rose between 2000 and 2002 from 24 percent up to 31 percent.

Governmental Agreement 459-2002 establishes the minimum wage for agrarian workers from 2003 on. Salary and bonus represent a total of $150.00 per month. However, the basic basket itself already EXCEEDS this amount. Our register shows that the real salary received by workers ranged $52.5 and $0.75 per month.

Figures regarding the work carried out by women and children are also illustrated in the following statistics: 29 percent of women earned in 2002 between $6.25 and $18.75 per fortnight; 23 percent of them, $25.00; 8 percent of women between $25 and $50.00. 40 percent of women could not answer the question on how much they earned. The most dramatic information was that 1 out of 3 women interviewed receives less than a third of the legal wage. It also indicates that 71 percent of women do not have a permanent job, since they are only hired for the collection of coffee beans.

The Socio-demographic Survey on minors carried out in 1989 showed that 78 percent of boys work in agrarian activities, whereas 30 percent of girls carry out this type work. Between 1998 and 2002 the proportion of boys aged between 10 and 14 and belonging to the economic active population almost doubled. The presence of girls in this group rose from 11.3 percent up to 24.3 percent.

It is considered that the major problems faced by children who work are the following: economic abuse and exploitation, lack of labour protection and lack of access to social security, as well as the impossibility to start or carry on with their education.

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20 COVERCO: *La Vida de las Mujeres detrás de los granos de café*.
24 Rosalinda Hernández Alarcón: *Por una nueva sección periodística: Trabajo* (For a New Press Section: Work).
In the case of both groups, there will be no progress at all in this issue, until they are recognized as labour force. This involves that they have to receive a fair remuneration, in accordance with the tasks carried out and respecting the enjoyment of their human rights.

Social security is still a major problem and affects chiefly women, boys and girls, who do not have medical coverage or accident insurance and let alone maternity benefits\(^{25}\).

In the light of these circumstances, labour organizations and collective bargaining are neither effective nor feasible. In addition to this problem, repression prevents the organization in trade unions.

“In fact, the non-observance of labour rights and the terrible living conditions of peasants are a great obstacle for the development in rural areas”\(^{26}\).

Regarding work in the so called *maquilas*, Guatemala counts with around 600 or 700 of these, on which depend between 150,000.00 and 200,000.00 workers. Only 2 of the *maquilas* count with a labour organization and a collective agreement. The main feature of these centres is that a high percentage of minor women and Central American women with no legal documents are hired using false documents, which does not allow them at a latter stage to demand labour benefits, minimum wage, and so on.

Concerning the Administration of the Authorities, it cannot be said that there is an independent Ministry of Labour, since in the regions of the country these Authorities have become a centre of advice and defence of employers. In this way workers are discouraged to start with administration and legal procedures. Moreover, these authorities make difficult from the beginning the possibility of making feasible the demands of workers.

In practice, the Ministry of Labour has incredibly reduced its mandate and competences, for it has become an office collecting complaints.

Also very few actions have been carried out through inspections regarding breaches of the labour legislation. For example, between 1998 and June 2002, out of 25 demands submitted, only 2 are due to minor offences, which were submitted by the administration authorities\(^{27}\).

In the light of the current land crisis, the State, through the Ministry of Labour, does not have a specific policy able to deal with this issue.

\(^{25}\) MINUGUA: *Verification of Compliance with the Commitments regarding Rural Development and Natural Resources 2000.*

\(^{26}\) Idem.

\(^{27}\) Pastoral de la Tierra de Quetzaltenango: Labour proceedings presented before the Court of First Instance of Labour in the Municipality of Coatepeque, in the coffee plantations and farms.
II. NUEVA FLORENCIA - UN CASO TIPO

The estate Nueva Florencia is located in the municipality of Colomba Costa Cuca, a department of Quetzaltenango. Property of the entity OTMAR S.A.

A) Actions

a) Administrative:
On March 11th 1997, 36 workers unanimously agreed to form a trade union in order to protect themselves. To this purpose, they gave notice to the Labour Inspection of Quetzaltenango, based upon Article 209 of the Code of Labour, which by then established: “Workers cannot be dismissed for setting up a trade union. They have to be able to enjoy this right after the moment when they give notice to the General Labour Inspection and inform that they are FORMING a trade union and they will enjoy of this protection until sixty (60) days after the publication of its statutes in the Official Register... (sic)”.

In spite of this notice, on March 18th of the same year, 3 labour inspectors showed up in the estate (out of the working timetable) and elaborated a legal document, in which they informed that “workers and employer had agreed to finish labour relations from the following day on, so that their presence in the estate is in order to ensure the payment of the employer and that labour benefits are in accordance with the legislation...”. After this event, workers were dismissed.

Despite this intervention, on March 19th of the same year, the resolution of the Inspection informed the employer of his obligation not to dismiss workers. Only on March 31st came out the resolution declaring the rights recognition OF THE EXECUTIVE COMMITTEE of the Trade Union.

b) Legal:
On March 25th 1997, workers presented before the court their right to RESETTLEMENT, in accordance with Article 209 of the Code of Labour, which establishes: “Should this article be breached, the worker or workers affected SHOULD BE RESETTLED IN TWENTY FOUR HOURS and the responsible should be punished with a fine of One thousand quetzals and must also PAY UNPAID WAGES”.

On September 11th 1998, the Court announced: that defendants should INMEDIATLY RESETTLE ALL DISMISSED WORKERS; THE PAYMENT OF SALARY DEDUCTIONS AND UNPAID SALARIES UP UNTIL THE DAY WHEN THE RESETTLEMENT IS TO BE EFFECTIVE; and the payment of a fine by the defendants.

After several appeals, actions and resolutions, the Constitutional Court decided only on January 4th 2000 the “CONFIRMATION OF THE SENTENCE”.

In order to make the Constitutional resolution effective, on April 5th 2001, the partial payment of the unpaid salaries was demanded. The sum amounted to a total of FOUR HUNDRED AND TWENTY-ONE THOUSAND, FOUR HUNDRED AND NINTY-ONE QUETZALS AND FIVE CENTS (Q.421,491.05). The employer submitted a protection action and afterwards an appeal, arguing the violation of his right to defence.

Only in June 2003 the Constitutional Court sentenced again in favour of the workers and ordered the employer to pay the amount demanded.

28 Pastoral de la Tierra: Sistematización del Caso Nueva Florencia (Systematization of the Case Nueva Florencia) 2000.
29 VICTOR HUGO QUIJIVIX (Quetzaltenango), GERMAN LEONEL VALENZUELA Y VALENZUELA (Coatepeque) and JUSTO RODRÍGUEZ RABANALES (General Subinspector at that time)
30 Document 12/97.
31 Text has been capitalized and underlined.
32 Idem.
B. Conclusions of the Case Nueva Florencia

Workers went through a legal process of more than 7 years and courts of justice have not given them back their work immediately. They have not had the adequate and effective mechanisms either, so that employers resettle them and pay them unpaid salaries in the period of 24 hours.

The right to association in trade unions is not respected and workers suffer repression by the State, since it tries to solve these claims through penalising actions.

The Guatemalan State has not as priority the efficient regulation of labour relations in rural areas, as principle of the socio-economic system. It does not have the legal, political and technical capacity to implement judicial resolutions. This leads to the fact that legislation regulating this area is obsolete and inefficient to ensure constitutional rights and ESCR.

The Ministry of Labour is one of the weakest and more inefficient institutions of the State. Its actions are contrary to its role as guarantor of the right to work, hampers the realization of labour rights and lets labour impunity to continue.

Guatemala has assumed its obligation to protect the human right to food. If it does not succeed implementing those judicial and constitutional resolutions that favour workers of the estate *Nueva Florencia*, the State will be “continuously violating” ESCR and not fulfilling its obligation to protect, thus also violating the principle of "THE REASONABLE DEADLINE AND DELAY OF JUSTICE ADMINISTRATION”.

Results of the fruitless relation between workers and employers affect the objectives of every economic and social system of generating employment, welfare and global development.

III. GENERAL RECOMMENDATIONS

The Guatemalan State must tackle immediately the issue of the labour situation in the countryside. In fact, such issue must be considered a priority, due to its economic, social and historical significance, thus protecting the rural sector. It is not enough to recognize a right: the required mechanisms must be developed to ensure its enjoyment.

Strengthening of the Ministry of Labour, in order to ensure fair and equal labour relations. This also involves that with the implementation of instruments for conflict resolution, workers must not “GIVE UP THEIR RIGHTS”, but their rights must be fully guaranteed.

The Ministry of Labour must set up the required mechanisms so that Labour Inspectors really play their role of ensuring and verifying the fulfillment of labour legislation, and take specific actions when this legislation is not fulfilled. To this purpose, it must launch campaigns each six months, in order to inspect estates. Public opinion must be informed of these results.

The Ministry of Labour must promote labour rights in rural areas to a greater extent, especially as regards those of women and children.

The Ministry of Labour must launch initiatives to help the labour sector working in coffee plantations, as well as elaborate programmes of employment and production diversification aimed at children of plantation workers, as well as at micro and small coffee producers.

The State must make a difference in the realization of rights, if these are basic to ensure life. Thus proceedings must be immediate and fast, “SIGNIFICANTLY” punishing those who breach rights, and avoiding excess of appeals.

The creation by the Human Rights Ombudsman Office (PDH) of a team of specialists in international issues and ESCR that discusses and defines State’s responsibilities. A team that makes proposals to ensure the fulfilment of these rights.
THE RIGHT TO FOOD IN GUATEMALA

As the Guatemalan saying goes, “a hungry population is a population without peace”: According to FAO’s recent data, food insecurity in Guatemala has shot up dramatically in the 1990s. Undernourishment affected 14 percent of the population in 1992; afterwards, the situation worsened to such an extent that, in 1999, the prevalence of undernourishment rose by 22 percent. The decline of the situation observed by the FAO in Guatemala translates into the fact that, at the end of the 1990s, there was 1 million more of undernourished in Guatemala than at the beginning of the decade: figures of those suffering from chronic undernourishment went up from 1.3 to 2.3 million. The Inter-American Development Bank indicated in 2002 that conditions of famine and extreme poverty had been detected in 102 Guatemalan municipalities (33 percent of the country’s municipalities). On World Food Day 2003, the Resident Coordinator of the United Nations System in Guatemala, Juan Pablo Corlazzoli, informed that chronic undernourishment of children less than five years is the highest rate on the whole Latin American Region: 49.3 percent.

The Government of Guatemala indicates in its Poverty Reduction Strategy that “poverty affects mainly rural population. Three out of four inhabitants living in rural areas are poor, and four out of ten live in a situation of extreme poverty. In urban areas, poverty affects to three out of ten, and extreme poverty to less than one out of ten. Contrasts are also significant between indigenous and non-indigenous peoples: nearly three-quarters among indigenous peoples are poor, compared to nearly 41 percent in the case of the non-indigenous population. Likewise, the extreme poverty of the indigenous population is over twice as high as that of the non-indigenous.”

The rate of land concentration in Guatemala is one of the highest all over the world. Nevertheless, the government has taken no measures aimed at facilitating access to land to those peasants who need it in order to feed themselves. Rather, the only measure taken was the creation of a Land Fund, which during the past few years has proved to be utterly insufficient, considering the magnitude of this problem. Throughout its six years of existence (from May 1997 until July 2003), the Land Fund has benefited 14,108 peasant families, which contrasts with the demand of 360,000 landless families estimated by the CNOC (National Coordination of Peasant Organisations) and CONGCOOP (Coordination of Non-Governmental Organizations and Cooperatives). The land market cannot and must not be the only mechanism enabling peasants to access land, due to its exclusive conditions. On the contrary, it is necessary to comply with the Peace Accords, which establish that land in the Northern Transversal Strip irregularly allocated to the military and politicians should be recovered, and that the land robbed by private estates in the last decades should be given back to the indigenous peoples. Moreover, it is crucial—in the context of the obligation of the Guatemalan State to guarantee the Human Right to Food of landless peasant families—to launch a debate on the need for a Global Agrarian Reform in Guatemala.

37 Fondo de Tierras, website: www.fontierras.gob.gt
Guatemala still has a high level of land conflicts. FIAN International carried out fact finding missions to Guatemala in December 1999, October 2001 and April 2003. In the framework of these missions, violations of the Right to Food in agrarian and labour conflicts were observed, and meetings with the respective authorities from the executive and judicial branches in Guatemala were arranged, in order to discuss these issues. In fact, FIAN has to conclude that in the ten cases in which the organization participated in the last five years, no significant developments could be observed. On the contrary, it must be said that the administration of the responsible authorities has been characterized by omissions, lack of attention and non-fulfilment of promises and agreements. In the context of the State’s obligations regarding the right to food, ignorance is predominant; and in that of the multiple violations of this human right, impunity.

Theft of Indigenous Land in the Case of the Finca La Perla, Quiché.

The four indigenous communities, Ilom, Sotzil, Saqsiguan and Ixtupil were victims of a historic displacement of their lands, when today, nearly 830 families (approximately 5100 persons) no longer have enough land to be able to fulfil their basic needs. All the affected communities belong to the Ixil indigenous people. The land of the communities has been located on the finca La Perla that almost sixfolded their land during the last century and today it constitutes a surface of 5859 hectares, while the indigenous families are left with 0.5 hectares as average.

Because of the theft of the territory, that historically has belonged to the Ixil communities, the families have lost their necessary resources to be able to feed themselves in an adequate way. A part from this miserable situation, the families are suffering daily from all kinds of abuse, from verbal aggressions to death threats, that are carried out daily by the employees of La Perla against the communities for demanding access to the land, a legal investigation, and the return of the land.

The case of the finca La Perla, demonstrate the lack of measures taken by the government of Guatemala to fulfil the commitments assumed in the Peace Agreement of 1996, that clearly states that the processes of illegal monopolising of land ought to be reverted, the indigenous land in particular.

As State Party to the International Covenant on Economic, Social and Cultural Rights, Guatemala is duty bound to protect and guarantee the Human Right to Food. Therefore, FIAN International has asked Guatemalian authorities to immediately take adequate measures in order to realise:

- the clarification of the legal situation and the registration status of the land;
- the return of the land that belongs to the indigenous communities and the Municipality of Nebaj and Chajul;
- the definitive return of the robbed land to the communities and the Ixil Municipalities;
- the physical security of the families of the Ilom, Sotzil, Saqsiguan and Ixtupil communities.

The labour situation and its impact on the right to food in the rural area are extremely worrying. A large number of land workers do not receive the minimum wage, due to the lack of control of the Ministry of Labour. The situation of rural female workers is still more worrying: they receive very often a lower remuneration than men. It is also usual that in many estates women are not recognized as workers, but as their husbands’ assistants, and therefore they do not receive own and appropriate wages for their work. Moreover, the freedom of association in trade unions is still being violated in many coffee and banana plantations in Guatemala. The minimum wage is not enough yet, neither for the Minimum Food Basket, nor for the Basic Needs Basket: an average agricultural household needs two minimum wages, in order to cover their nutritional needs, and more than three wages to cover its other basic needs.

The European Parliament Resolution on the Situation of Human Rights in Guatemala of April 10th 2003 focused on the situation of the Right to Food and the situation in rural areas. It is worth mentioning some of the worries and recommendations expressed by the European Parliament in this important Resolution on agrarian conflicts and insecurity, and discrimination of indigenous peoples, particularly of indigenous female peasants. The European Parliament

“Expresses its concern at the weaknesses of CONTIERRA and therefore calls on the Guatemalan Government to give CONTIERRA a political and legal mandate within the new Secretariat for Agricultural Affairs and to provide it with the resources necessary to impose settlements effectively in specific disputes, by exercising the authority of the State;

Expresses its concern at the insecurity of the indigenous peoples and their eviction from the land where they work; calls, therefore, for strict compliance with the legal reforms laid down in the Peace Accord in order to rationalise, restore, protect and guarantee the historical land rights of the indigenous peoples and the transposition of WTO Convention 169 in national legislation and administration;

Expresses its concern at the continuing discrimination against indigenous and peasant women as regards access to, and control over land, and against female agricultural workers in relation to the recognition of their work; hence calls on the State institutions to consistently apply the right of co-ownership, to reform Article 139 of the Labour Code so as to ensure that women are recognised as workers with their own wages and that the other rights of women, including non-discrimination and fair treatment in political decisions and economic, social and cultural activities, are respected”39.

It must finally be underlined the recommendation to the Government of Guatemala to elaborate and implement a rural development policy aimed at guaranteeing the Right to Food. Such policy is to be agreed among the different social sectors and must particularly contain the proposals of the peasant-indigenous sector. There is no doubt that, considering the compromise of the State of Guatemala relating the Human Right to Food and in the context of this non-exclusive policy of rural development, a comprehensive and global programme of Agrarian Reform in Guatemala must be designed and implemented.

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SITUATION OF THE RIGHT TO HOUSING, THE RIGHT TO EDUCATION AND THE RIGHT TO SOCIAL SECURITY IN GUATEMALA

1. The Right to Decent Housing

a. Housing Deficit

The Secretariat of Planning and Programming (SEGEPLAN) itself admits that one of the deficiencies of the housing sector in Guatemala has been the lack of a long term policy, enabling the global and sustainable development of the housing sector, reducing significantly the qualitative and quantitative housing deficit and making an efficient and continuous use of funds allocated for this sector.

According to Segeplan, the housing problem in Guatemala is reflected in the increasing number of poor human settlements, which reveals a serious fall in housing quality, as well as overcrowding and a decline or total lack of basic needs, such as water and drainages, or the difficult or inadequate access to public services.  

The accumulated housing deficit exceeds a million and a half homes, with an annual increase of about 43 thousand points. Meanwhile, construction of homes is not over six thousand units per year. In other words, it does not even cover annual demand.

It is estimated that, geographically, 15 percent of the deficit is concentrated in the department of Guatemala, and the other 85 percent in the inner-country.

It is estimated that three-quarters of the housing deficit has a qualitative nature, due to the low quality of constructions and lack of basic services, as explained below. The other 25 percent of the deficit refers to the lack of housing solutions, which leads to overcrowding and the settlement of precarious housing in places of high risk.

b. Housing Quality

In terms of housing quality, the following data show the delicate situation: the overcrowding rate is very high (41 percent of the population) and it has not changed between 1994 and 2000. 52.2 percent of the population live in a room, sharing it among three or more people (10 percent share with 7 people or even more). 12 percent of the population has not water closet, not even latrine. This percentage reaches its highest level in the South-Western Region with 34.1 percent. 38.6 percent of the population uses latrines. Such percentage is considerably higher in all regions than in the Metropolis. 35.9 percent of houses have dirt floors, 13.2 percent have tile or thatched roofs and 66 percent sheets of zinc; 24 percent adobe walls.

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40 These paragraphs belong to the Alternative Report put forward by DESCGUA and CIIDH: *La Situación de los Derechos Económicos, Sociales y Culturales en Guatemala* (Situation of Economic, Social and Cultural Rights in Guatemala), October 2003, Guatemala.
42 UNDP 2002.
43 Ministry of Communications, Infrastructure and Housing: Report 2002, FOUGAVI.
44 UNDP 2002.
Regarding garbage, only 14 percent of homes have local service of garbage collection, 22.3 percent pays private services and the rest throws the garbage on the streets, land or burns it. Only 34 percent of the population has telephone, 41 percent drainage, 46.6 percent has indoor plumbing, 81.6 percent have electric energy, but the situation in the Northern Region is worse: 46.5 percent have electricity in Verapaces; 50.4 percent in Petén.46

c. Public Policies and Financing

At a first stage, the government fostered its housing policy through the Guatemalan Housing Fund, FOGUAVI. FOGUAVI based its strategy on the allocation of loans subject to variable market conditions and high interest rates. It also offered a subsidy that caused an increase in the speculation of lots. This model has not benefited the poorest and has only been of great benefit to construction companies and private banks.

In the last few years, the situation has declined due to the lack of resources allocated for the construction of homes. Although the corresponding amounts have been allocated (1.5 percent of the tax revenue), the portion of the budget actually used for this purpose reached 0.1 percent (Q10.1 million) of the tax revenues in 2000, 0.8 percent (Q131 million) of the tax revenues in 2001, and 0.9 percent (Q 170 million) of the tax revenue in 2002.47 The expenditure in the housing sector has been reduced in the past three years to different programmes regarding rootless population, demobilized people and programmes aiming at the payment of FOGUAVI’s accumulated debts to the private construction firms.48

Finally, in August 2001 started the elaboration of the final draft of the National Policy on Housing and Human Settlements. There was much agreement among the different sectors: government, civil society and employers. However, up until now, there has been a lack of political will to implement it. Additionally, it is necessary to adequate legislation to the new policy, especially the Human Settlements Law and the elaboration of a National Plan on National Distribution.49

2. Right to Education

a. Education Coverage

Progress has been made in terms of education coverage with respect to preschool and primary education. In 1996 coverage amounted to 20.7 percent, and in 2001 the net rate of preschool education increased by 41.3 percent.49 It is worth mentioning that girls have a greater coverage than boys and that in those departments with high percentage of indigenous peoples there is a greater coverage. This indicates that efforts were made regarding intercultural and bilingual preschool education. Nevertheless, the coverage is still low and a lot of work is still to be done, in order to further expand the preschool education.

Concerning preschool education, according to official figures from the Ministry of Education, the schooling net rate increased from 69.1 percent in 1996 up to 85.1 percent in 2001, which would mean a considerably high increase; however, the ENEI (National Survey on Employment and Income) has recently published alarming data: this net rate would have actually decreased from 97.5 percent to 90.6 percent; which means that, according to this figures, trend has been negative. The fact is that there is still quite a lot to do to achieve at least three years of schooling for boys and girls between 7 and 12 years of age before 2000, as established in the Peace Accords.

46 ibid
47 UNDP 2003.
50 UNDP, 2002.
The Guatemalan Government indicates in its report on ECSR that “education coverage for the three first years of primary education [...] in 1995 represented 84 percent and 94 percent in 1999”\(^51\). Although coverage might have reached the aforesaid figures, the UNDP Report on Human Development 2003 shows that only 40 percent of the boys and girls that begin the preschool education reach the third year.

School attendance is still worse. According to the ENCOVI Survey carried out in 2000, the net rate of attendance represents only 75 percent, which reveals the number of schoolchildren dropping out\(^52\). A high percentage of children are out of the education system: 8.7 percent of the non-indigenous and 19.1 percent of the indigenous children have never been registered in primary school. There are still important gaps regarding gender and ethnic groups. The percentage of boys and girls that finish primary education does not exceed 40 percent\(^53\).

It is worth mentioning that the programme that has led to a fast increase in the education coverage – PRONADE (National Programme for Education Self-Management)– has given evidence of serious deficiencies. Such programme, like many of the policies implemented in order to comply with the Peace Accords, is developed as a programme boosted by the World Bank world-wide and has the goal of limiting the role of the State, giving more power to the private sector. Main deficiencies are in terms of quality and implementation of bilingual education, as well as in terms of the role of and fulfilment on the part of private institutions, regarding the functioning of Education Committees (COEDUCAs), the flexibilization of labour suffered by teachers, budget and its financial sustainability\(^54\), and also regarding the indirect cost to the population.

Secondary education is still to a great extent in the hands of the private sector. The public sector continues to offer only minimum coverage and figures indicating its efficiency are alarming. It is not at all a priority of the Ministry of Education to improve the situation of the secondary education (basic and diversified).

b. Inner Efficiency

Inner efficiency is low. Although between 2000 and 2001 the number of children dropping out school decreased, figures continue to be high: 11.5 percent of children drop out in the first year of primary education; 15.23 percent repeat in primary education\(^55\); 25 percent repeat the first year of PRONADE\(^56\); 28 percent in the first year of primary education in the case of male students\(^57\); and the rate of children dropping out is 31.8 percent in the first year of primary education\(^58\). This makes relative the quantitative increase of coverage. In primary education, one teacher is in charge of 30 pupils on average. Moreover, 67.41 percent of pupils in primary education do not have the appropriate age for the school year they are in\(^59\).

c. Support Services

Regarding support services, there are constant problems regarding its distribution. Information is insufficient and sometimes inexistent, like breakfasts and meals at schools.

\(^51\) Paragraph 211 of the government report on the implementation of the ICESCR, July 26th 2002.
\(^52\) MINUGUA, 2002.
\(^53\) UNDP, 2002.
\(^54\) Financing of PRONADE comes from different sources. At a national level, IVA PAZ plays the most important role; at an international level, the World Bank, which offered a loan of $3.3 million in 1999 for 4 years, as well as funds given by the German Development Bank representing 20 million marks in January 1999 and December 2001. Additionally, the UNDP offered a seed fund and UNICEF supports the purchase of educational material.
\(^56\) PRODESSA: 2002.
d. Literacy

According to data published by the ENEI, in 2002, 72.5 percent of the population of 15 years of age was illiterate\textsuperscript{60}, compared to 68.2 percent in 2000. The rate among men increased from 77.2 percent to 80.2 percent; that of the female population, from 60.2 percent to 65.4 percent. Among indigenous peoples, only 58.3 percent of the population aged fifteen or more can read and write. In general terms, the literacy rate continues to be low. However, if this trend continues, it would be possible to achieve the objective of the millennium: the eradication of illiteracy in 2015, especially taking into consideration that illiteracy rates among young people reach 86 percent.

In the last two years, the Direction for Extracurricular Education (DIGEEX) has experienced budget cuts, which shows that extracurricular education is not a priority of the Ministry of Education (MINEDUC). The programme has a minimum coverage: in year 2000, only a total of 12,320 people received coverage.\textsuperscript{61}

e. Education Quality

In June 2002, the programme Teachers Training was launched, in order to train about 62,000 teachers and headmasters working in preschool and primary education. This programme included a general area dealing with culture and indigenous peoples and the history and socio-economic situation of the country, among other topics. The second area tackled the adaptation to other penums. Unfortunately, with the beginning of the teachers strike in 2003, the training process was suspended (after six months), and it is not yet clear if it will continue to function. There has been no progress relating the reform of Normal Schools, nor how this reform is going to be carried out.

Although the decision upon the curriculum for primary education taken in 2002 constitutes an important development, it is worth mentioning that gender is not properly tackled\textsuperscript{62}. In 2003 the new curriculum has been put into practice, but there are problems in its implementation. These are due to the lack of methodological guidelines or the delay when it comes to printing new texts. It is especially worrying the lack of the training that teachers should have received in the framework of the Teachers Training Programme. In primary education, the new curriculum was implemented at the beginning of 2002.

The gender issue has not been properly implemented, neither in the unsuccessful Teachers Training Programme nor with the transformation of the curriculum. Stereotypes have been eliminated but there has been no major progress in other areas, such as for example regarding interaction between male and female pupils, behaviour or teacher’s attitude.

f. Bilingual Education

Although the Guatemalan Government mentions that “the Ministry of Education, through the General Direction for Bilingual Intercultural Education (DIGEBI), has extended the bilingual education among 1,771 schools, in those municipalities resided by more than 50 percent of indigenous peoples”\textsuperscript{63}, the generalization of the bilingual education in all municipalities with a majority of indigenous population only constitutes a goal of the General Education for Bilingual Intercultural Education (DIGEBI). It is a praiseworthy objective, but with no planning or deadline, thus allowing the responsible authorities a lot of leeway. There are quality and coverage problems regarding DIGEBI schools. The evaluation of the performance carried out by the Ministry of Education pointed out that DIGEBI schools accounted for the worst results, which gives evidence of the methodological

\textsuperscript{60} UNDP 2002.
\textsuperscript{61} PRODESSA, 2002.
\textsuperscript{62} ibid.
\textsuperscript{63} Paragraph 151 of the government report on the implementation of the ICESCR, June 26th 2002.
problems. Coverage is very limited: only 24.8 percent of Mayan students receive an appropriate education regarding language and culture. There are many bilingual teachers in the system, but they are outside their linguistic region. There is not a redistribution mechanism: teachers can only move when there are vacant places. Moreover, there is a great reliance on foreign cooperation, which endangers the sustainability of DIGEBI. DIGEBI continues to have a very low budget. In 2002 three Normal Schools for Bilingual Teachers were created, which is positive, since up until now there had been no teachers with a good command of their language in all its dimensions.

In 2002 the training of around 2000 bilingual teachers led to the increase of DIGEBI teachers. After the training, teachers should in theory learn the language of the region. Another problem that has been left unsolved, due to the suspension of such process.

g. Grants for Girls and Boys

The number of grants given by the programme Grants for Girls and Boys has increased by 71,386 grants in 2001. In the first year of implementation, 191,571 grants were given to poor boys and girls (within the context of the grant programme Education for Peace). Although this means a major development in terms of coverage, it is worth mentioning that the allocation of grants has been irregular, and that there have been problems identifying beneficiaries. This led to the fact that sometimes families that did not need these grants received them, excluding others that did need such financial help. Moreover, the financial help is quite low (Q. 300.00/year). In 2002 there was no increase on the number of grants given and many of them have not been really given. There is no increase in the budget for 2003, which means that coverage will not increase either. Thus, it will be difficult to achieve the objective of 250,000 grants for boys and girls in a situation of extreme poverty.

h. Financing

Public expenditure in the education sector is one of the lowest around the world. Information published in the UNDP Global Report 2003 indicates that between 1998 and 2000 only six countries in the world have had a lower investment of funds in the education sector than Guatemala –in comparison with the GDP: Sierra Leone, Haiti, Swaziland, Myanmar y Ecuatorial Guinea and Ecuador. Since then the budget trend has not changed.

The Guatemalan Government in his report on the implementation of the ESCR talks about “the annual improvement of the relationship budget/GDP and the increase of the annual budget allocation for preschool and primary education”. It is also mentioned that “the Government Plan 2000-2004 contains the compromise of duplicating the budget of the Ministry of Education”.

In 2002 the education sector reached 2.5 percent of the GDP, thus dropping, in comparison with the previous year (2.7 percent in 2001). The budget planned for 2003 grows very slowly (400 million more than the previous year).

This situation is extremely worrying, since the amount invested is essential in order to achieve the goals established. The society has made many efforts to achieve a budget increase, but it seems to be a hard task.

3. Right to Social Security

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64 PRODESSA, 2002.
65 MINUGUA, 2002.
66 Compare with expenditure from the other Central American countries: 4 percent of GDP, El Salvador 2.3 percent of GDP, Nicaragua 5 percent of GDP, Costa Rica 4.4 percent of GDP.
67 Paragraph 223 of the government report on the implementation of the ICESCR, June 26th 2002.
68 Paragraph 238 of the government report on the implementation of the ICESCR, June 26th 2002.
69 MINUGUA, 2002.
a. Coverage of the Guatemalan Social Security Institute (IGSS)

The Guatemalan Social Security Institute has two programmes: one covering Sickness, Maternity and Accidents (EMA); another one covering Disability, Old Age and Survival (IVS).

Concerning the affiliation to IGSS, in 2001, only 24.6 percent of the Economically Active Population was registered in the Social Security Institute, which guarantees protection for pregnancy, accidents and retirement, as well as medical care. Moreover, the trend throughout the past years has been continuously on the decrease, as illustrated in the table below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Coverage</th>
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<tbody>
<tr>
<td>1996</td>
<td>27.4 percent</td>
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<tr>
<td>1997</td>
<td>26.3 percent</td>
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<tr>
<td>1998</td>
<td>26.4 percent</td>
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<tr>
<td>1999</td>
<td>25.6 percent</td>
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<tr>
<td>2000</td>
<td>25.1 percent</td>
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<tr>
<td>2001</td>
<td>24.6 percent</td>
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</tbody>
</table>

Whereas the registration rate in the Metropolitan Region is relatively high (57.6 percent), in the rest of the regions is basically inexistent: North-Western Region (4.2 percent), South-Eastern Region (7.6 percent), Petén (8.3 percent) and North Region (9.4 percent). The situation in the departments with a high percentage of indigenous population is worse, as for example in Totonicapán, Huehuetenango and Quiché, where rates are under 5 percent.

Regarding total population, on May 31st 2003, the number of protected inhabitants rose by 2,176,174 people, which represents 17.08 percent of the population. Out of the 2,176,174 protected people, 958,232 are taxpayers.

Despite the revalorization of pensions carried out this year, the amount is not enough to cover the basic basket. Due to the lack of answers from the IGSS, on September 22nd 2003, retired people went out to the streets, in order to demand an increase in their pensions, most of which were around Q. 300.00.

b. IGSS policies

An issue of major public interest at the beginning of this year has been the case of corruption of IGSS. This corruption involved over Q. 960 million, and was practiced through trusteeship with the participation of the Board of Directors.

Apart from this corruption problem and the aforesaid issue of coverage, the IGSS faces other serious problems: an evaluation of a Specific Commission of the Congress, set up to report on the IGSS performance, found out that the infrastructure regarding hospital is not enough, in order to meet the medical requirements of those registered; there is a lack of medical equipment and of medicines required; the quality of medicines has been questioned by the patients; there is not enough medical staff; bureaucratic procedures take too long; the cost involved by some external services is higher than providing those services with permanent staff within the institution. This leads to think that the use of such external services was made in someone’s interest.

There are neither programmes for informal, independent and rural workers, nor for the implementation of the Programme on Sickness, Maternity and Accidents (EMA) at a national level, nor for the improvement of labour benefits or for a wider coverage of minor’s protection.

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70 UNDP 2002, and that from IGSS and INE.
72 Congress of the Republic of Guatemala, 2003
73 Prensa Libre, September 23rd 2003.
74 Congress of the Republic of Guatemala, 2003
75 Social Organizations, 2003
These policies and reforms –boosted at a greater extent after the corruption scandal– are in accordance with the principles of the Inter-American Development Bank with respect to the privatization of social security, and particularly regarding retirement. In this model (not yet implement, but that is being discussed) solidarity among generations, as well as among people within a specific generation is replaced by an individualist approach. Such solidarity was demanded by the Guatemalan Government in the report submitted to ECOSOC: "Social security is based upon a financial mechanism that is very important for the economy of the country, since it distributes direct income, thus offering a fair distribution." Moreover, the system is not anymore tripartite (subject, employer and the State), but it only centres on the subject. Private companies offering services are those benefiting from this model. However, the (poorest) part of the population that has lived up until now thanks to the redistribution mechanism of the social security is only prejudiced.

76 Paragraph 124 of the government report on the implementation of the ICESCR, June 26th 2002.
SITUATION OF THE RIGHT TO HEALTH IN GUATEMALA

Background and Health System

Article 12, Paragraph 1 of the ICESCR establishes that: “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. To achieve this objective, according to such Article, measures should be taken in order to ensure the population an improvement of its health at all levels.

In the case of Guatemala, although it is true that the two last governments have developed some strategies aiming at increasing the coverage of medical assistance, emphasizing the mother-child group, these actions are not enough yet. Not only because they lack integrity and a real purpose of ensuring the population the right to a health assistance of high quality, but also because the health issue cannot be tackled through isolated actions carried out by sectors. Guatemala is one of the countries with the lowest public investment in health, (2.1 percent of GDP), although it is the second largest economy in the region. The distribution of Guatemala’s total expenditure in health is unequal: 50 percent comes from the patient’s Direct Expenditure, and only 20 percent stems from the Government. Such situation contrasts with the high poverty rates in the country. Some of the implications arising from this structure of Health Expenditure are the following:

- The Guatemalan State takes almost no responsibility as guarantor of the Right to Health of all citizens, giving this competence to its population.
- In view of the debilitation of public services, demand for private services increases, since allocated resources are in the decrease and the assistance needs of the population in the increase.
- More patients have to pay for health services themselves, poverty levels rise and the proportion of population without access to medical assistance shoots up dramatically.
- The intervention carried out by the population translates into an expenditure favouring self-medication, as well as late medical intervention instead of preventive and promotional measures, and even instead early medical interventions.

Although health is said to be one of the main priorities of the State, the small proportion of the budget allocated for the Health Sector has on the contrary indicated no major progress. When analyzing the budget of the Ministry of Health between 1995 and 2003, instability and a decreasing trend can be observed. During the period 1997-1999 there is a slight increase that reaches 1.2 percent of the GDP. Between 2000 and 2003 stagnation and a decreasing trend can be observed (1.1 percent, 1.3 percent, 1 percent, 0.9 percent per annum).

Another situation contributing to the unequal allocation of budget is the way funds of the Ministry of Public Health and Social Assistance (MSPA) are shared among the different departments. This leads to the fact that those departments with higher poverty rates, lower Human Development Index (HDI) and a greater proportion of indigenous population receive the lowest allocations per capita.

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78 Example: San Marcos and Totonicapán are the departments with the highest poverty rate in the country. However, they only count with less than $6.00 per capita. The departments of Guatemala and Sacatepéquez have the lowest poverty rates and receive the highest allocations, over $12.72 and $15.22 per capita respectively. The same situation can be observed in the case of HDI: departments such as Totonicapán, Sololá and Chimaltenango have the highest percentages of indigenous peoples in the country. Nevertheless, they are among the six departments receiving the lowest allocation per capita.
Example on Health:
Programme of Coverage Extension in Primary Health Assistance (EC/SIAS)

The Comprehensive Healthcare System (SIAS) belongs to the Reform of the Health Sector started in the 1990s and is one of the most important results of this long process. SIAS is designed as a programme at all levels of medical healthcare. Nevertheless, it has mostly been used in the framework of the Programme of Coverage in Primary Health Assistance, from now on EC/SIAS.

The origin of SIAS was the implementation of a global reform that would affect both the public sector (Ministry of Health, Guatemalan Social Security Institute (IGSS), among others) and private sector (profit and non-profit institutions). The reform in both sectors would share common principles and would be carried out in the framework of a public modernization process of neoliberal nature (Verdugo, 1995), thus ignoring the different socio-economic features of the country, particularly with respect to the high poverty and extreme poverty rates. In this way, the model fostered by EC/SIAS can be considered an international/national hybrid programme, since it searches high efficiency using a high number of volunteers\(^{79}\) that belong to the poor or extreme poor population and work for the health policy defined by the government.

The principles of EC/SIAS are in accordance with the strategies boosted as part of the reform process. Both the administration and assistance models are based upon the economic nationalization of public expenditure and the reduction of the role of the State in its function of budget allocation.

This programme aims at increasing the coverage of healthcare services, emphasizing the mother-child group, but there are different forms. Currently the most common is the private contracting (of NGOs) in order to administrate and provide services. These sign up agreements with the Ministry in order to provide services within a jurisdiction.

Providers commit themselves to give coverage to about 10,000 inhabitants with each agreement and to offer them minimum services, most of them aimed at the mother-child group. They have a basic medicine list. Providers set up in each jurisdiction a basic health team, made up of officials, a doctor, a public facilitator and volunteers, a community facilitator and medical assistants.

Weakness of the Design and Cost Definition

The design of the programme is such that for its functioning each community requires a certain number of volunteers, in order to access healthcare services. These are included in the Health Basic Team, made up of both officials and volunteers.

The Programme focuses on a biomedical, healing scope. It is designed as a standard model for the whole population. This means therefore that it does not consider specific risks of the population, nor tackles the health problem (epidemiological profile), nor considers, nor evaluates other types of model, such as the Mayan model. Additionally, the model does not take into consideration the different competences of the institutions functioning as providers.

The aforementioned minimum services are homogeneous for the whole population and have deficiencies when it comes to their implementation. This leads to a non-correspondence between real needs and actions established by the EC/SIAS Programme (in terms of the magnitude and diversity of the issue). These minimum services have been justified in the MSPAS documents through argumentations based on epidemiology and population, without clarifying the original concepts upon which they are founded. Such minimum services are characteristic in the health reforms of developing country and constitute one of the clearest examples of the economic rationality put forward by the World Bank in its World Development Report 1993\(^{80}\).

\(^{79}\) Approximately 80 percent of the staff working in the Health Basic Team is made up of volunteers from the communities.

\(^{80}\) (Verdugo, 200)
The portion of the budget allocated for each one of the actions is scarce. Moreover, such actions are not specific depending on the area. This situation limits the performance of the minimum services defined by the MSPAS itself. The low financing makes the programme depend on the capacity of the private providers at a great extent and on their capacity to administrate supplementary funds. In view of the situation, the Ministry cannot guarantee the same services to all the population.

**Main Problems Identified:**

The evolution of the budget for the EC/SIAS Programme shows that the budget allocated to it has been drastically reduced. In 2000, the MSPAS asked for Q101,498,323.00 and only received 85,429,923.00. Such situation has been systematically repeated to the extent that in 2003 they asked for Q121,673,454.00 and received Q64,065,408, only 64 percent of the amount demanded.

The decrease in the budget allocated to the EC/SIAS, the situation of standstill suffered by the programme, as well as the signing of agreements without public financial support, leads to major problems and hinders the functioning of providers, thus causing serious difficulties to provide the population with services.

In spite of the reduction of budget, the number of agreements signed within the programme has increased from 136 in 2000 to 160 in 2002. Such increase, without a financial support can only be explained through the decline of the budget per capita. When analyzing the budget per capita of the EC/SIAS, the following can be observed: between 2000 and 2002 the budget has been lower than $3.50\textsuperscript{81} in average. This amount is much lower than the one established by the Ministry itself in order to carry out the actions included in the minimum services, $5.00 approx. It falls also far behind the perspectives and recommendations made by the WB (US$22.00)\textsuperscript{82} in order to offer basic assistance.

**Some of the Main Implications of EC/SIAS Implementation:**

- This model reduces and limits the role of State concerning budget distribution and decreases its role as guarantor of the Right to Health.
- The need for communities to offer voluntary work in exchange of healthcare becomes a coercive mechanism aimed at formalizing the communities' participation but only in the implementation, since they participate in the implementation of actions but not in its design or evaluation.
- The health situation of the population in general continues to be critical.
- The health situation of the mother-child group develops regarding morbidity and mortality\textsuperscript{83}, but does not ensure at all a real improvement in the standard of living of such group.

Meanwhile, acute undernourishment has risen continuously throughout the past years. At the dawn of 2002, alone in the 15 municipalities with most serious undernourishment problems, 5854 children under five years of age suffering from acute undernourishment and risking death due to lack of healthcare were identified. Main efforts in order to help the most critical communities have focused on the Chiquimula department. Such initiative launched by the Guatemalan civil society and the international cooperation. Continuous cooperation on the part of the government has not been achieved. Out of the other 123 municipalities with a very high vulnerability and of the other 57 with high vulnerability only a minimum percentage is covered by the food programmes of the AID and the WFP.

\textsuperscript{81} Own calculations based on information from UPS1 concerning population, and from SICOIN Central concerning budget allocation.


\textsuperscript{83} Infant mortality rate in Guatemala continues to be one of the highest in Latin America, although it has decreased from 48\textsuperscript{th} thousand born alive\textsuperscript{84} in 1992 to 39\textsuperscript{th} thousand born alive in 1999 (19 percent). According to the *National Report on Human Development 2002*, the percentage of children under five that are small for their age went from 57 percent in 1997 to 41.1 percent in 2000. For the year 2000, according to the National Census, this problem was suffered by 48.8 percent of children. The study indicated that these children had the following characteristics: in 123 municipalities, vulnerability was very high, and in 57 was high.
**Recommendations to the Guatemalan State**

- **Revision of the investment priorities of public expenditure:** With the creation of a model of democratic State, social investment must increase in accordance with such model and must run parallel to the decrease of military expenditure. This implies the modification of the Nation's budget and the withdrawal of transfers to the army coming from other governmental bodies. The increase in the amount allocated for education and health must be in accordance with the growing demand of services. Such increase arises from the decline of the population’s living conditions, as well as from demographic growth. This means that problems concerning the situation of these rights cannot be solved through insufficient increases or the arbitrarily allocation of budget, as it has been done in the last years.

- **Follow-up of agreements reached with Civil Society in the framework of the Fiscal Pact:** Particularly regarding those measures aimed at the creation of a taxation system, globally progressive, fair and equitable that would enable an increase of the funds allocated to ensure the full realization of Economic, Social and Cultural Rights of excluded peoples and groups.

- **Modification of those policies making basic services –such as health and education– turn into privileged services:** Without reducing the participation of communities in the design and functioning of the State's actions concerning health and education, users should not pay for medical assistance, since this makes it become a privilege and hampers the enjoyment of human rights.

- **Reorient the reform of the Health System:** Using agreements with the Civil Society towards a free medical healthcare system, inclusive and global, in accordance with the multi-cultural reality and the various epidemiologic profiles of the country. Such healthcare system must not only been tackled from the clinic approach of disease treatment, but it has to be a clear reflection of the State's policies aimed at fostering a healthy population.