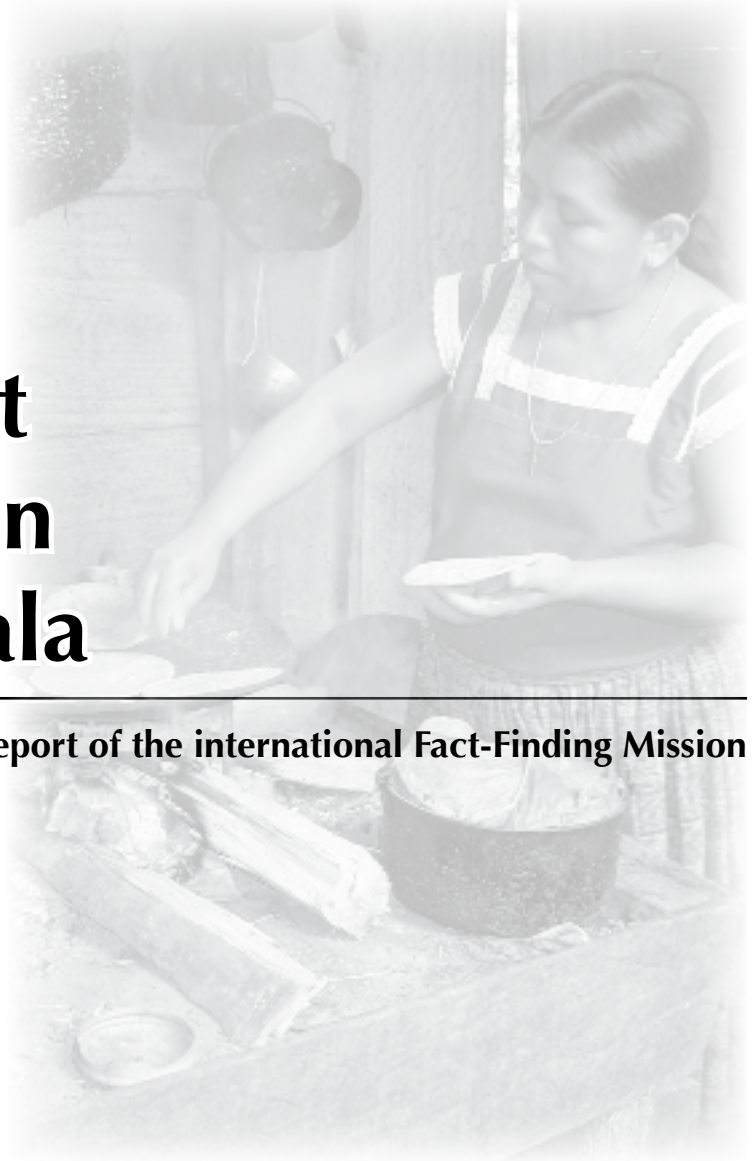


# The Right to Food in Guatemala

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Final Report of the international Fact-Finding Mission



*March 2010*

## Imprint:

### The Right to Food in Guatemala

#### Final Report of the International Fact-Finding Mission

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# 1. Introduction

***The human right to adequate food is part of the catalog of rights recognized by the State of Guatemala on all legal levels: international<sup>1</sup>, constitutional,<sup>2</sup> and ordinary legislation<sup>3</sup>.***

Article 1 of the Food and Nutritional Security Law establishes literally:

*“For the purposes of the present Law, the National Policy on Food and Nutritional Security establishes as Food and Nutritional Security the right of all persons to have physical and social, proper and permanent access to adequate food in quantity and quality, with cultural affinity, preferably of national origin, as well as to its adequate biological exploit, to maintain a healthy and active life.”*

With the aim of monitoring the effective realization of the human right to adequate food in Guatemala, the State has a wide institutional structure. On the government level, it consists of the National Council for Food and Nutritional Security (CONASAN), the Secretary for Food and Nutritional Security (SESAN), the Ministry of Public Health and Social Assistance (MSPAS) and the Ministry of Agriculture, Livestock and Food (MAGA), which has a vice-minister on Food Security. On the legislative level, it comprises the commissions on Food and Nutritional Security, on Human Rights and on Agriculture. Finally, the judicial body has the exclusive jurisdiction over children and adolescents, in addition to a Court of Appeal also specialized for these groups.

In spite of the strong legal development of the right to adequate food in Guatemala and of the broad institutional structure of the State, which could lead to expect an acceptable level of validity and effectiveness of the right to food, Guatemala not only presents the most alarming level of malnutrition in Latin America, but also one of the world’s worst.

Considering this, several Guatemalan organizations and networks – the Peasant Unity Committee (CUC), the National Indigenous and Peasant Coordinating Committee (CONIC), the National Coordinating Committee of Peasant Organizations (CNOC), the Inter-Diocesan Land Pastoral, the Agrarian Platform, the International Centre for Human Rights Research (CIIDH), the Coordination of NGOs and Cooperatives (CONGCOOP), the National Network for the Defence of Food Sovereignty (REDSAG), the Campaign “Guatemala without Hunger”, ActionAid Guatemala, the National Food Committee, Foundation Guillermo Toriello, the Centre for Legal Action on Human Rights (CALDH),

1 Guatemala has signed and ratified the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and its facultative protocol (waiting for ratification), the Convention on the Rights of the Child, the Declaration of the Rights and Duties of Man and the Protocol of San Salvador, just to mention a few.

2 The Political Constitution of the Republic of Guatemala fully recognizes the right to food, specifically its art. 51, 96 and 99.

3 Several national laws exist to promote and ensure the right to food in Guatemala, particularly the Law on the National System for Food and Nutrition Security, the Law for the Integrated Protection of Children and Adolescents, the Law for Elderly Persons and the Health Code.



the Committee on Human rights in Guatemala and the Unit for Protection of Human Rights Defenders in Guatemala (UDEFEQUA) – promoted the formation of an International Fact-Finding Mission which, from an external perspective, would verify possible cases of violations of the right to food in the country.

A broad coalition of international organizations – FIAN (FoodFirst Information and Action Network), the international peasant movement La Via Campesina, the European network Copenhagen Initiative for Central America and Mexico (CIFCA), the Coalition of Catholic Agencies for Development (CIDSE), the International Federation for Human Rights (FIDH) and the World Organization Against Torture (OMCT), including the Observatory for the Protection of Human Rights Defenders (FIDH-OMCT) – accepted and were part of an International Fact-Finding Mission, which was in Guatemala from November 11 to 23, 2009, counting also with the support of Bread for the World and the Association of World Council of Churches related Development Organisations in Europe (APRODEV).

A wide range of documents and studies about the situation of economic, social and cultural rights (ESCR) in Guatemala prove that chronic malnutrition, violations of the right to food and of the ESCR, as well as attacks against human rights defenders, continue to be an everyday reality in Guatemala. Considering this complex challenge, the initiatives in this matter – the efforts to document the violations of these rights, to train with regard to right to food advocacy, to monitor public policies, to promote justiciability and to strengthen the cooperation and coordination between different entities of the civil society – have searched for international support in order to achieve the highest possible impact. This was exactly one of the conclusions reached by the national dialogue about the right to food in Guatemala, celebrated in August 2008, following an invitation by the Episcopal Conference of Guatemala and FIAN International.

In view of the critical situation of hunger and poverty in the country, the different actors of the State, civil society and international cooperation continue looking for means to reach peace without hunger and a democracy based on the full respect of all human rights. The International Fact-Finding Mission (henceforth called the Mission) has set itself the goal of contributing substantially to this process, following up former related efforts.

The Mission studied, visited and documented paradigmatic cases of violations of the right to food. On the one hand, it focused on the mounting pressure exerted on rural communities, in particular on indigenous peoples, rural women and peasant communities, to dispossess them of their lands in order to exploit natural resources, a practice which has a direct negative impact on their rights to water, land and territory. On the other hand, the Mission also paid special attention to the harassment, threats, criminalization and intimidating jurisdiction towards those who are fighting in defence of these rights. In addition, the Mission has adopted as object of analysis the close relationship between the violation of the right to food and the violence exercised against affected communities and human rights activists, thus hoping that this link might contribute to raise the awareness and to call the attention of the responsible authorities, of the Guatemalan society and of the international cooperation to this situation.



## 2. Objectives of the Mission

The Mission had the objective to contribute to the visibility and documentation of violations of the right to food and other related human rights in Guatemala, as well as threats, attacks and acts of harassment against human rights defenders (including legal persecution against them) and the violence perpetrated against communities whose rights they are defending. The Mission also aimed at calling the attention of the responsible authorities, media, international community, and regional and international human rights instances and bodies to these problems, in order to bring them to act in support of solving these cases of violation, including the cessation of attacks against human rights defenders, to dedicate the maximum of available resources to the progressive realization of the right to food and to fight the causes generating hunger in Guatemala. The report of the Mission will be presented to the United Nations Special Rapporteur on the right to food, to the Committee on Economic, Social and Cultural Rights and to the European Parliament.

The present report is based on previous resolutions, observations and recommendations made by national and international entities about studied cases,<sup>4</sup> including the aspects related to the attacks, threats and acts of harassment against human rights defenders<sup>5</sup>. It also identifies the measures adopted by the State and points out the principal obstacles which, according to the Mission's view, make a correct fulfilment of the national and international obligations of the State of Guatemala to respect, protect and fulfil the right to food difficult. Moreover, the report makes a series of recommendations which have been considered necessary in order that the principal responsible authorities realize the proper fulfilment of these obligations.

## 3. Methodology

The selection of the cases studied by the Mission has been formulated according to the following criteria: 1. The definition of cases which have been accompanied and assisted by national organizations and 2. The study of exemplary cases of the grave situation of human rights connected directly to systematic violations of ESCR, especially of the right to food of the indigenous, peasant and rural population. These violations result from the deprivation of water, lack of adequate food, the close connection between labour-union rights and the right to food, the ravenous expansion of agrofuels and the immense destructiveness of the extractive mining industry. Special attention has been paid to threats, criminalization, intimidating judiciality and the violations of the right to physical and moral integrity of ESCR defenders.

4 In particular, legal sentences, recommendations of international human rights instruments and of national human rights organizations.

5 In particular, see cases described in the annual reports of the Observatory for the Protection of Human Rights Defenders, a joint program of FIDH and OMCT, and their urgent interventions which were part of a follow-up of the Mission. The compendium of the cases adopted by the Observatory in 2008 and 2009, which include follow-up information up to the end of 2009/beginning of 2010, is available as follows: <http://www.fidh.org/IMG/pdf/OBS-Casos-Guatemala.pdf> and [http://www.omct.org/pdf/Observatory/2009/OBS\\_casos\\_08-09\\_Guatemala.pdf](http://www.omct.org/pdf/Observatory/2009/OBS_casos_08-09_Guatemala.pdf).



**In this sense, 12 cases have been selected and studied:**

1. Forced evictions in Panzós and El Estor
2. Forced eviction of the Mich Bill Rix Pú community, Laguna Lachuá
3. Impacts of the agrofuel expansion in Ocós and Coatepeque
4. Impacts of the agrofuel expansion in Sayaxché, Petén
5. The Marlin Mine
6. Environmental conflict in the Granadillas Mountain
7. Construction of the Xalalá hydroelectric dam
8. Land conflict on the La Perla Farm
9. Land conflict on the San Luis Malacatán Farm
10. Founding of the SITRAPETEN labour union
11. Labour conflict on the Nueva Florencia Farm
12. Distribution of genetically modified food donations

In order to learn and hear directly from the affected individuals about each one of the cases, the Mission split into four groups during the first week of its stay, which visited different regions of the country. During the first week, the voices of victims were heard and their testimonials were collected and recorded. Many of them showed a profound sense of being considered “undesirable citizens” in their own country. Furthermore, their living conditions were observed and their demands and proposed solutions for the national authorities were recorded. During the second week of the visit, the Mission conducted interviews with national authorities of different state bodies – executive, legislative and judicial. Meetings were held with:

***Executive bodies:***

- Secretary for Food and Nutritional Security (SESAN)
- Ministry of Environment and Natural Resources (MARN)
- Ministry of the Interior
- Secretary for Agrarian Affairs (SAA)
- Presidential Human Rights Commission (COPREDEH)

***Judicial bodies:***

- Supreme Court of Justice (CSJ)
- Constitutional Court
- Public Ministry





**Legislative bodies:**

- Commission on Agriculture
- Commission on Energy and Mines
- Commission on Food and Nutritional Security
- Human Rights Ombudsman (PDH)

**International bodies:**

- Food and Agriculture Organization of the United Nations (FAO)
- United Nations High Commissioner for Human Rights (UNHCHR)
- Forum of International Organizations in Guatemala

**National bodies:**

- Human Rights Federation
- Unit for Protection of Human Rights Defenders in Guatemala (UDEFEGUA)

The present report contains the results of the study and of the contrast between the reality in the field and the appreciations of each individual case by the national and international authorities, as well as of human rights organizations. It will be handed over to national and international bodies, with the aim of contributing and supporting the fight to realize economic, social and cultural rights in Guatemala.

## 4. The food crisis

The UNICEF report “Global Situation of the children 2007”<sup>6</sup> points out that Guatemala shows the highest rate of chronically undernourished children in Latin America. This affects particularly the rural and indigenous population, of which more than 80% suffer chronic malnutrition. According to the FAO, more than 2 of the 13 million (15% of the population) Guatemalans are in a position of food insecurity.

The Government recognizes that “malnutrition in Guatemala is historic and is to a large extent considered [...] one of the factors which caused the armed internal confrontation which afflicted this land for more than three decades”<sup>7</sup>. This phenomenon has been present since colonial times, with acute crisis during certain periods, according to different political, economic and climatic factors. The State declares it to be a structural and national phenomenon which several State programs are fighting against.

At present, the country is undergoing a grave food crisis and the Government declared a “state of public calamity” due to the food emergency on September 8, 2009, which was still going on at the time this report was

6 Citing the “Second report of the State of Guatemala to the Honorable Mr. Olivier de Schutter, Special Rapporteur on the right to food of the United Nations”. COPRE-DEH, August, 28, 2009.

7 Ibidem



produced<sup>8</sup>. Up to that date, the crisis had caused 462 deaths (counting amongst them 54 children). This state had been declared with the objective of activating mechanisms of access to international assistance and to speed up state purchases without the necessity to adhere to the regulations of the State Purchasing and Contracting Law. In his declaration, President Álvaro Colom recognized that the food crisis had been “provoked by a long history of inequality”, that the State will undertake “necessary emergency actions” and adopt “other measures to confront the historic and structural malnutrition and poverty”<sup>9</sup>. At the moment of his declaration, the President estimated that 54,000 families were suffering hunger and that 400,000 could suffer the consequences of this emergency before the end of 2009. According to the Secretary for Food and Nutritional Security (SESAN), in May of this year, 1,901 vulnerable communities had been identified and their number increased to 4,059 communities at the beginning of August. It must be pointed out that articles 99 and 183 of the Political Constitution of the Republic of Guatemala oblige the State to care for the feeding and nutrition of the Guatemalan citizens so that they can enjoy good health conditions.

This situation worsened due to a series of climatic events, which affected the production of food, starting with Hurricane Stan in 2005. In 2009, a tropical low caused losses of agricultural production in 16 departments and the drought caused by “El Niño” destroyed 90% of the food production in the country. This phenomenon has just started and could extend between November 2009 and May 2010 in the Dry Corridor. According to information of the Ministry of Agriculture, Livestock and Food (MAGA), the production of white corn during 2009 decreased by 280 million kg. compared to the year before. This affected a million poor families in the rural areas of the country, who depend on this cereal to feed themselves. The losses amounted to Q119 million, representing the main reason for the price rise of corn on the local market, up to 25% during August and November.

Due to the losses caused by the drought it will be necessary, according to the Ministry of Environment and Natural Resources (MARN), to import staple grains for about Q100 million, which would not solve, according to the Ministry, the future basic needs of the population and the environmental impact of the phenomenon.

The crisis in food prices, which has been flagellating the world since 2006, caused a price rise in April 2008, which strongly affected the Guatemalan population. In this context, the price of one *quintal* corn, that is 100 kg, raised by 64% between December 2007 and August 2009<sup>10</sup>, while the consumer price of one pound black beans increased by 68% during the same period<sup>11</sup>. These strong increases significantly impaired family finances of both the urban and rural population, and deepened the problem of the food crisis in Guatemala, as the mechanism of raising salaries does not follow in the same logic pattern. The cost of the basket of basic commodities in Guatemala increased, during the same period, from Q3,033.902 monthly to Q3,540.63 for a family of 5 persons, showing a rise of 14.31%<sup>12</sup>. In 2009, a new minimum wage was approved for all workers in the country, fixing it at Q1,560 per month, gratuities included<sup>13</sup>. This implies that even if both parents of a family of 5 work, they will not be able to earn enough money to cover all living costs of the family<sup>14</sup>.

8 The “state of public calamity” was declared by governmental decree 10-2009, announced by the President of the Republic in the Council of Ministers on September 8, 2009, and prolonged by successive governmental decrees, being still effective in January 2010.

9 Ibidem.

10 COPREDEH (2009), Op. Cit.

11 MAGA “System of Monitoring Follow-up of the Prices on the Wholesale Markets of Guatemala”. See [www.maga.gob.gt](http://www.maga.gob.gt)

12 National Statistics Institute, [www.ine.gob.gt](http://www.ine.gob.gt).

13 Calculated based on Government Agreement 398 -2008, which comprises basic salaries for agricultural and non-agricultural activities.

14 See Frame 1: The minimum wage and the right to adequate food.



**Frame 1:****The minimum wage and the right to adequate food**

On December 29, 2009, through Governmental Agreement 347-2009, the President of Guatemala fixed a new minimum wage: Q56.00 per day for agricultural and non-agricultural activities, while for work in the *maquila*<sup>15</sup> it was fixed at Q51.75, which is equal to a monthly salary of Q1,594.00 and Q1,495.00 respectively. However, according to official data provided by the National Statistical Institute (INE), in November 2009 the cost of the basic food basket amounted to Q1,917.34 and the cost of the basket of basic commodities to Q3,498.79. This means that the State of Guatemala has fixed a minimum wage, also valid for the year 2010, which is Q323.34 and Q422.34 below the costs of the alimentation for an average Guatemalan family, statistically conformed by 5.3 persons, as calculated in November 2009. Moreover, this does not take into account the variations, generally upwards, which the basic food basket might undergo in the year 2010. But even more concerning is the fact that the established minimum wages only cover 45% and 42% respectively of the basket of basic commodities. This situation not only puts the right to food of the Guatemalan population at risk, as it impedes the economic access to adequate food, but also violates all other social and cultural rights recognized by Guatemala, such as the right to enjoy a decent life, to health, to education and to housing.

During the 16 years since the implementation of minimum wage fixing mechanisms established by Labour Law, the members of the National Minimum Wage Commission have never been involved in such process. Moreover, the State, represented by the Ministry of Labour in said Commission, has never really taken sides or got involved. It has always been the President who was in charge of fixing minimum wages, under criteria which do not correspond with the ones established by ordinary law nor by constitutional and international obligations incurred with the human rights covenants and treaties of which Guatemala is party.

By constitutional mandate, the State of Guatemala is bound to protect the individual and the family, and to guarantee the integral development and life of all its inhabitants. These constitutional obligations are not only limited to the Government, but they also establish clear mandates for the legislative and judicial powers, which are obliged to exercise the political and judicial controls as established by the Constitution. In this respect, the Mission observes with concern an unconstitutional action carried out in 2005 against the Governmental Agreement to fix the minimum wage. The Constitutional Court simply decided not to examine this action, given that at the moment of passing the sentence in 2006, the contested Governmental Agreement had already ceased to be in force. The Mission also urges the Guatemalan judicial system to assume its obligation to protect the rights recognized by the Constitution and further international treaties.

15 See Frame 1: The minimum wage and the right to adequate food



In addition, the economic and financial crisis strongly impacted the United States, causing a decrease of 9.93% in the money transfers from migrants to their families in 2009 compared with 2008<sup>16</sup>.

## 5. Institutional framework for the State response to the food crisis

CONASAN and MAGA, under the coordination of the Council for Social Integration, approved the Food Contingency and Emergency Plan 2009 (PCEA2009), which aimed at providing assistance to families highly threatened by food insecurity. Although the funding for the PCEA2009 was originally budgeted at Q72.32 million, only Q60 million were ultimately approved and the Plan has only been implemented in the Dry Corridor. The President of Guatemala declared the execution of the Plan of national interest at the Council of Ministers on August 21, 2009, by Governmental Agreement 230-2009.

The execution of PCEA2009 has been assigned to MAGA, “under its responsibility and without having to abide by the regulations of Tenders and Bidding established by the State Contracting Law”. Moreover, “the National Council for Food and Nutritional Security has been instructed, through the Secretary for Food and Nutritional Security of the Presidency of the Republic, to coordinate the efforts and activities of all bodies and dependencies of the public administration related with said plans, while all municipalities and decentralized or autonomous entities are demanded to connect themselves with it, in order to coordinate, consistently with the Political Constitution of the Republic of Guatemala, their policies with the general policy defined by the Executive Body”. However, Governmental Agreement 230-2009 was passed only on August 21, 2009, even though the activities time-table of PCEA2009 started in April 2009. It was, consequently, approved with a four-month delay, a period during which the “temporary solidarity bags” should already have been distributed.

The amount invested in the Plan will be channeled through the following entities: MAGA (purchase of food: Q60 million; production projects: Q40 million); PRORURAL (production projects: Q30 million); SESAN (coordination: Q3.5 million); Ministry of Public Health and Social Assistance (MSPAS – medical attention days and appointments: Q1.5 million); FONAPAZ (provisions: Q5 million)<sup>17</sup>. The assistance will be transferred in steps, according to state resources. Also the transport of goods to the departmental central localities and the implementation of public health and production projects will take place in stages. A total of 186,561 families of 1,901 communities will benefit from food assistance provided by the Plan, according to the classification of SESAN in 136 municipalities prioritized by the Council for Social Cohesion (CCS). Direct assistance will also be given to 30,000 families, following an evaluation made after the natural disasters which occurred during the past three years.

The distributed food packages contain beans, corn, *atol* (nutritious food based on corn), tinned chicken, oil and sugar. It must be pointed out that the content of the packages varies according to the level of nutrition of the affected people, distinguishing between individuals at high risk of undernourishment and those under a state of calamity. In view of the state of emergency of the country, the food will be purchased without former tender.

<sup>16</sup> A maquiladora or maquila is a factory that imports materials and equipment on a duty-free and tariff-free basis for assembly or manufacturing and then re-exports the assembled product, usually back to the originating country. A maquila is also referred to as a “twin plant”, or “in-bond” industry.

<sup>17</sup> COPREDEH (2009), Op. Cit.



In addition, a further program called “My Family Progresses” (“Mi Familia Progresa”) will be reinforced, allowing for the distribution of Q300 per month to families in poverty and extreme poverty. They will receive two vouchers of Q150 for health and education, on condition that they fulfil some “co-responsibility” requirements, such as permanent school attendance and periodic medical checkups. The program has been extended: the number of beneficiaries has been increased by 50,000 people. However, it has been so difficult to apply the basic human rights principle of transparency in the Social Cohesion programs that a strong legal battle emerged and even the Constitutional Court had to intercede. Finally, it ensured greater transparency, demanding the Ministry of Education to convey the necessary information to the General Budget Controller of the State.

“My Family Progresses” is part of the President’s government programs to “construct a more just and equal country”. The President has constituted the Council for Social Cohesion (CCS) with the goal of coordinating and managing the social funds which depend on the government, as for instance the Land Fund, Housing Fund, Fund for the Development of Communication, National Fund for Peace, Fund for Social Investment, Development Fund, Fund for Indigenous Development in Guatemala and the 55 *fidecomisos* (similar to trust funds) which exist in the country. The CCS also implements presidential programs such as “My Family Progresses”, Solidarity Soup Kitchens, Open Schools and Solidarity Exchanges.

In 2006, the Government devised the National Strategy for the Reduction of Chronic Malnutrition (ENRDC) 2006-2016, which aims at diminishing in 10 points the reigning chronic malnutrition of children under 5 years of age. The ENRDC, which has been introduced by the Ministry of Public Health and Social Assistance, has three components: basic health services, food and nutritional education, and food complementation with *Vitacereal*<sup>18</sup> and nutritional grains. The sustainable components of ENRDC are: water and basic sanitation, a program for the improvement of family finances, and communal organization.

In June 2009, based on a “multi-sector effort to identify the intended activities in the institutional budgets, which can be coordinated, integrated and focused in the prioritized municipalities, and which can contribute to reduce the risk of food insecurity and chronic malnutrition of children under 5 years of age”, the National Council for Food Security formulated the Strategic Plan for Food and Nutritional Security 2009-2012, geared to reach 6 specific objectives:

1. Promote food availability with special focus on the production of basic grains in order to contribute to the country’s food self-sufficiency.
2. Promote the access of the population to a basic food basket.
3. Promote the education, information and communication with regard to food and nutrition to improve the consumption of foodstuff.
4. Promote exclusive breastfeeding and contribute to the reduction of chronic malnutrition.
5. Amplify the coverage and quality of services regarding health, water, basic sanitation, and family and communal hygiene to reduce chronic malnutrition.
6. Strengthen the institutional capacities of SINESAN and of civil society to reduce food and nutritional insecurity. The projected budget for the execution of the Plan will reach Q9,807 millions during 4 years.

<sup>18</sup> See case 12 investigated by the Mission: *Distribution of genetically modified food donations*



The existing legal framework for SINESAN can be divided into three levels of action: the Political Direction and Decision, assigned to CONASAN; the Coordination and Planning, also assigned to SESAN; and the execution, in charge of those institutions which are part of CONASAN. In addition, the Center for Coordination and Information (CCI) is a coordinating entity with regard to matters related to Food Assistance, which comprises three different actions of food assistance: the Operation of Rescue and Recuperation (Preparation of the marginal population in situations of disaster); the Food Contingency and Emergency Plan (PCA); and disaster response actions related to food assistance. CONASAN is the entity responsible for the inter-sector and inter-institutional coordination.

#### Frame 2:

##### **Chronic child malnutrition: Challenge for the justiciability of the right to food**

Recent reports show that Guatemala occupies the first position in Latin America and the fourth on global level with regard to the prevailing chronic malnutrition of children. The National Survey of Maternal and Child Health 2002 and the Third Census of School Children Height 2008 prove that chronic malnutrition affects 45.6% of the children between 6 and 9 years and 49.3% of those under the age of 5. Chronic malnutrition is even more acute among school-age children in the rural areas of the country, as for instance in the department of Totonicapán, with 73.24%; Sololá, 73.17%; Quiché, 64.79%; and Huehuetenango, 63.39%. Although several national policies and strategic plans of contingency and emergency have been formulated and approved through Governmental Agreements, this situation persists. The fight against child malnutrition is a responsibility of the State of Guatemala which involves all three powers, including the judicial system.

Guatemala has a Law for the Integral Protection of Children and Adolescents (LPINyA) which not only recognizes the right to food of children and the responsibility and obligation of the State to help parents fulfil their obligations towards their children, but also establishes the specialized competence of jurisdictional bodies and their dependencies. It also provides clear proceedings to defend and protect the rights of children and adolescents in Guatemala. As to their nature, there are no distinctions between civil, economic, social or cultural rights: there is a sole proceeding to defend and protect all rights. What is more, article 113 of the LPINyA literally establishes: "Intervention by third parties. In case of violations of economic, social and cultural rights, human rights organizations can intervene as interested parties in the process".

Several legal instances are competent to require jurisdictional action in order to protect the rights of children and adolescents: specialized courts for children and adolescents, the Special Prosecutor for Children and Adolescents, which is linked to the Human Rights Ombudsman, and the Municipal Councils for Children and Adolescents have the capacity to bring actions at law when the rights of children are violated, just as any other authority that might gain knowledge of such cases. In view of the dramatic levels of child malnutrition in the country, the existing judicial inactivity is absolutely unjustifiable.

It is therefore mandatory that judicial bodies that are responsible to protect the rights of children and adolescents make use of the valuable instruments they possess. They must also fulfil their fundamental responsibility and duty to protect such rights, which have been bestowed on them by the law, and appropriately perform their role to control the intersector system of bodies of the state in order to protect the infantile population.



## 6. Scope of State activities regarding the food crisis

Before assessing the Government's reaction to the food crisis, it is worthwhile to examine some former data related to the State budget and to the budgetary execution of State programs.

To begin with, it should be pointed out that the Government has limited financial means available, as the tax revenues collected were lower than expected: there was a deficit of Q4,175 million between the approved budget for 2009 and the estimated one at the end of the year<sup>19</sup>. This is largely due to the international financial crisis, which made the execution of the Contingency and Emergency Plan difficult. Furthermore, the Government has had little political support in the Congress of the Republic, which did not approve the National General Budget for 2010, with the result that the budget assigned for 2009 is still valid for 2010. In addition, the Congress did not pass a proposed tax reform to increase income, value added and telephone taxes, which the Government counts on to gather the necessary resources for functioning and investment in social programs during the fiscal year 2010.

It is also important to highlight the instability of the ministers of MAGA during the present administration (two ministers up to now). Moreover, MAGA had the fourth position regarding the budget allocation (9.24% of the national budget) in 2009 and a very low budgetary execution (6.65%) during the first three months of the year. Some programs of MAGA, as for instance a fertilizer program, had a budgetary execution of 0%, thereby inhibiting the access of small peasants to them. In the same period, the program related to Agricultural Development and Food Assistance had a budgetary execution of 1.56%. Overall, during the first three months of 2009, MAGA was the State entity with the lowest budgetary execution<sup>20</sup>.

Regarding the food emergency in Guatemala, the Government has undertaken several measures, following lines of action previously defined in Decrees 10-2009 and 11-2009. These Decrees aim at circumventing or diminishing the following problems:

- Greater consequences regarding the depletion of food reserves and the consequences of food and nutritional insecurity
- Increase and expansion of different types of dengue fever
- Landslides which are being caused by climatic events

Prior to Decree 10-2009<sup>21</sup>, the Government had taken some actions to achieve Food and Nutritional Security, such as handing out 5 "rural solidarity bags"<sup>22</sup> to about 55,000 families in 689 communities at high risk of food insecurity.

After the President declared the state of public calamity, a Sector Commission for Food Security was installed with the goal of streamlining short-term and long-term activities. It also serves as a link between the Government and the international community. Actions for food and nutritional security were implemented in three geographically defined phases<sup>23</sup>. During each one of them, "rural

19 Human Rights Ombudsman, November 2009.

20 Ibidem.

21 Declaration of the "state of public calamity" for the entire national territory, caused by food insecurity, reappearance of dengue fever and landslides.

22 One Rural Solidarity Bag: 20 lbs. corn, 10 lbs. beans, 10 lbs. fortified flour, 2 bottles of 900 ml oil, 2 tins of 800 g chicken, 10 lbs. sugar, 10 lbs. rice.

23 The phases are divided by months (first phase: August to October, second phase: September to October, third phase: following).



solidarity bags” were delivered monthly to communities at high risk of food insecurity in the Dry Corridor. Moreover, the Ministry of Public Health and Social Assistance (MSPAS) installed 43 centers to treat and rehabilitate malnourished children all over the Dry Corridor<sup>24</sup>.

In September 2009, the Government asked the international community for help in tackling the food emergency in the country. This help included medicine, anthropometric measurement tools, food for malnourished children, micro nutritious food, staff (in the fields of health, education and social mobilization), means to fight dengue fever, food provisions and food formulas, as well as resources to prevent landslides and to support the production and storage of food. In addition, an institutional way to channel international cooperation towards the beneficiaries was established.

International cooperation responded rapidly to the Government’s demands. The received support includes the following<sup>25</sup>:

- Bilateral cooperation: Austria, Brazil, Korea, USA, Venezuela, Chile, Australia, Colombia, Cuba, Taiwan/China, Italy and Mexico. These donations have been in kind or cash money.
- Multilateral cooperation: Organizations of the American States (OAS), World Food Program, Central Fund for Emergency Replies through the World Food Program and OPA (Office for Rules of Active Achievements), FAO, UNICEF, UNESCO, Inter-American Development Bank (IDB), Central American Bank for Economic Integration (CABEI) and United Nations Population Fund (UNFPA). These donations were also in kind or cash money.
- Other organizations: Vestex, Embassy of Guatemala in El Salvador, FUNDAZUCAR, Abbott Enterprise, Japanese Association (China/Taiwan), Guatemalan residents in Denver and Washington DC, Guatemalan Consulate in Rhode Island.

The donations received amounted in total to US\$ 25,368,824.88, which can be divided into financial donations (US\$ 19,509,448.00), technical cooperation (US\$ 246,407.00) and donations in kind (US\$ 5,612,970.88)<sup>26</sup>.

Despite of this help, short and medium term perspectives are not very promising, if certain aspects are taken into account, such as the economic and financial crisis or climatic change, which results in climate alterations on global and local level. The Government foresees that the situation of food and nutritional security will worsen in the next 10 or 12 months due to the losses in the production of principal crops (corn: losses superior to 50%; beans: losses superior to 37%)<sup>27</sup>, which did not allow to store basic food reserves in the country. In addition, climatic irregularities caused by the phenomenon of “El Niño” (prolonged droughts, lack of rain), which are foreseen to last during the first months of 2010, will have a strong impact on the food production in the country. Therefore, it is predicted that the whole Dry Corridor will remain in a state of food insecurity (slightly or highly insecure).

According to the Government, the principal challenges for food security in the future will lie in recovering those boys and girls with acute malnutrition, as well as distributing food to families facing food insecurity<sup>28</sup>. Likewise, the launching of programs to promote food production is vital to

<sup>24</sup> Centers for nutritional recuperation, employing medical staff, educators and nutritionists.

<sup>25</sup> Secretary of Planning and Programming of the Presidency: “Report on the progress in actions and measures adopted during the emergency”. November 2009, Guatemala City.

<sup>26</sup> Ibidem.

<sup>27</sup> Ibidem.

<sup>28</sup> Ibidem.





combat hunger in the country and to secure the distribution of *Vitacerea*<sup>29</sup>, micro nutrients and/or fortified food to pregnant women and breastfeeding mothers. Finally, the Government is aware of the importance of other related measures, such as assuring the payment of a minimum wage, the strengthening of health and educational programs (including programs to control the quality of drinking water), the promotion of agricultural production which might generate employment (production for export), the transformation of the production in semiarid zones through the installation of irrigation systems and the strengthening of programs of MAGA intended to improve the living conditions of the rural population. Examples for such programs would be the promotion of the local capacity of food production, the protection of water wells through reforestation and the promotion of an integrated rural development to generate jobs adjacent to agricultural activities.

## 7. Obligations of the State of Guatemala regarding the right to food: An interpretation based on its obligations under international human rights law

The Mission had the opportunity to talk with high-ranking representatives of the State of Guatemala about the measures adopted within the framework of public policies relevant for the enjoyment of the right to food, and to discuss with them the paradigmatic cases it verified.

The present analysis mirrors a synthesis of the observations made by the Mission derived from a human rights approach and based on the obligations and principles of human rights which the State of Guatemala accepted as binding by ratifying the International Covenant on Economic, Social and Cultural Rights of the United Nations (ICESCR).

The main parameters defined by the Committee on Economic, Social and Cultural Rights of the United Nations (CESCR), through its general observations<sup>30</sup> and final conclusions about each member state, are considered in the present report.

Furthermore, special attention is paid to the obligation to respect, the obligation to protect, the obligation to fulfil (obligation to facilitate and provide), the obligation to non-discrimination and the obligation to use the maximum of available resources. At the same time, the principles of participation, transparency, accountability and the indivisibility of human rights are taken into account.

### a. The obligation to respect

*The obligation to respect essentially means that the State must respect the existing access of people to their food sources, and must therefore refrain from any measures which might deprive a person or a group of persons of their food sources.*

The verified cases and public policies analyzed by the Mission show that several State actions that play a major role with regard to the right to food did not take into account the obligation to respect,

<sup>29</sup> See case 12 observed by the Mission: *Distribution of genetically modified food donations*.

<sup>30</sup> Committee on Economic, Social and Cultural Rights, *General Observations*, in particular *General Observation 12, Right to Adequate Food*, Geneva 1999.



either by action or by omission. In particular, this observation is valid in relation to the following measures and/or policies which can be considered as causes for hunger:

- **Forced evictions:** Forced evictions of peasant and indigenous communities have been analyzed on numerous occasions by competent institutions and by special proceedings of the human rights system of the United Nations, particularly with regard to their impact on the enjoyment of the right to food and to housing. Unfortunately, the measures which public security forces continue to carry out, in many cases with the collaboration of private security forces, have not been ordered nor executed in accordance with international human rights. Firstly, the means to solve cases before conducting a forced eviction of indigenous and peasant groups are often not exploited. Moreover, the legal concept of “usurpación agravada” (aggravated encroachment) seems to be one of the reasons why eviction orders are being issued without exhausting the previous steps of investigating land registries and cadastres, without analyzing the recognition of the historic rights of indigenous communities over ancestral lands, and without taking into account the mediation measures offered by national legislation and institutions. Secondly, the way how evictions are being carried out is alarming, particularly because of the excessive use of violence, destruction of houses and crops, and the illegal participation of private security forces. Finally, since adequate places of resettlement are not guaranteed to the communities beforehand, in cases of evictions the affected persons are literally turned out to the streets, being left without any food sources or housing. The Mission has spoken to several State institutions about this problem and has observed that the Public Ministry, the Ministry of Government and the Secretary for Agrarian Affairs (Secretaría de Asuntos Agrarios – SAA) are willing to revise the modus operandi of the State with regard to evictions, to train the concerned State agents in the application of international human rights standards, and thus to stop forced evictions, actions which violate human rights.
- **Expansion of agrofuels:** Public policies promoting the expansion of agrofuel production must be revised with regard to its compatibility with human rights, particularly with the right to food and the right to water. The documented experiences in Guatemala, the studies carried out by Guatemalan and international institutions, and the cases visited by the Mission clearly indicate that the expansion of the oil palm has increased the pressure on land, has increasingly restricted the access to land of peasant and indigenous communities, and has proved to have a very negative effect on the right to water, due to the excessive use of water for irrigation systems and to the contamination of rivers with waste resulting during the processing of crops. Whole communities have remained enclosed in the middle of huge oil palm plantations, without access to sufficient land to subsist and suffering from the lack of water. The communities declared that “the palm has more rights to water than we do”. Considering the socio-environmental effects known from other mono-cultures during the history of the country, the Mission states that in the context of the agrofuel expansion past mistakes should by no means be repeated, with regard to the accumulation of profits in the hand of a very small elite and the burdening of the local population, the environment and future generations with the real costs of such a production. The State must strictly regulate the production of agrofuels instead of promoting it blindly.
- **Megaprojects promoted by the State must respect** the explicit volition of indigenous people, in accordance with the obligations it incurred through the ratification of Convention 169 of the International Labour Organization about the Rights of Indigenous People. The principle of free and informed consent of the communities must rule the State action and State bodies must acknowledge the popular consultations held with regard to the Xalalá hydroelectric dam or



mining projects, such as the Marlin Mine. The current mining, energy and water legislation allows for an exploitation of resources against the interests and rights of the communities affected by such large-scale projects. However, such legislation should be regulated in accordance with the obligations of the State to fulfil the indigenous peoples' right to food, to water and over traditional lands. Regarding the draft mining law, which is not publicly known and rests with the Congress of the Republic, as was confirmed by the President of the Energy and Mining Commission, the Mission perceived during the meeting with the President of said commission that neither the issue of the excessive use of water nor the recognition of community consultations will be taken into account in the draft law. This would contravene the ILO Convention 169, ratified by the State of Guatemala. The Mission stresses that it is necessary to revise the present mining legislation in order to make it consistent with international human rights and environmental standards. It is also necessary to establish a water law which slows down contamination and the excessive and free use of water by private enterprises. This legislation should regulate the use and treatment of water resources according to the principle of public good, guaranteeing that the access of high quality water is a human right.

## b) The obligation to protect

*The obligation to protect essentially means that the State must protect the existing access of people to their food sources against attacks of third parties who intend to deprive individuals or groups of persons of their means of subsistence.*

The verified cases and public policies analyzed by the Mission show that several State actions that have a major importance for the enjoyment of the right to food have not taken into account the obligation to protect, either by action or by omission. In particular, this observation is valid in relation to the following measures and/or policies which can be considered as causes for hunger:

- **Violations of labour rights in farms and private enterprises:** On October 22, 2008, a thematic hearing was held before the Inter-American Commission on Human Rights, during which the inefficacy of the labour justice system in Guatemala was discussed, with special attention to the case of the Nueva Florencia Farm. As a result of the hearing, a multi-sector committee was founded to advance in this matter. The Mission has observed that in many cases, including that of Nueva Florencia, the effects of labour rights violations, in particular of illegal dismissals of workers who are in a union formation process, have a major impact on the enjoyment of the right to food. The almost absolute impunity in labour matters which exists on farms, the intimidation of workers who want to exercise their rights to join or form a union, the non-payment of minimum wages and the lower payment to women for equal work are phenomena which directly affect the enjoyment of the right to food of a highly vulnerable segment of the population. The State of Guatemala must reinforce labour inspection, especially with regard to the payment of minimum wages on the farms. As long as it does not enforce this and allows general labour impunity, it is disregarding its human rights obligations.
- **Lack of protection of ancestral rights of indigenous people:** In the national and international verification of the fulfilment of the Peace Accords, it has been repeatedly confirmed that the most disregarded part is the Agreement on the Identity and Rights of Indigenous Peoples. In particular, this refers to the non-recognition and non-restitution of historic land rights and territory of indigenous communities. The paradigmatic cases of the La Perla Farm and the Nebaj and



Chajul communities not only bear testimony to the dispossession and robbery of indigenous land for the benefit of private persons, but also to the lack of capacity and will of the State to find solutions to the cases. Although the State institutions which have dealt with the matter did identify the irregularities and anomalies in the purchases of ancestral land and shared this knowledge with the Mission, they do not possess the means necessary to solve these issues, in view of the lacking mandate and resources of the SAA, the institution in charge of resolving agrarian conflicts. Therefore, as long as the dispossession of indigenous historic territories persists, the State continues to violate its obligation to protect the right to food.

### **c) The obligation to fulfil**

The obligation to fulfil the right to food encompasses two dimensions: to facilitate the access to food sources (land, work, other types of income) to persons who do not possess the means to feed themselves adequately; and to provide food directly to persons who are not in a situation to be able to feed themselves, especially in case of emergency and malnutrition.

The policies of the State of Guatemala distinguish themselves, as noticed by the Mission, by a certain dichotomy in relation to this obligation: while the obligation to provide food shows a high level of progressive fulfilment, important advances cannot be seen in activities regarding the obligation to facilitate.

#### ***The obligation to provide***

The Mission recognizes that the provision of food and the transfer of direct financial resources for the consumption of food for the neediest families have been strengthened by the present Government in the framework of various above described programs designed to combat the food crisis. According to data available to the Mission, public investments in these programs have increased unprecedentedly and with the support of external resources. Moreover, there has been a significant reaction, even though not fast enough, with regard to the situation of acute malnutrition in communities in the Dry Corridor. However, the Government's response to the general problem of acute and chronic malnutrition, especially of children and women, is not sufficient, in spite of the important advancement of public spending and coverage of such programs in this sector, comparing these with former administrations.

Nevertheless, several human rights principles that should also rule food assistance actions must be included in the framework of the obligation to provide directly: the State must ensure both the participation of communities in the decision-making about adequate food and the principle of transparency. In the case of the communities in San Mateo Ixatán, it was noted that the population rejects food assistance which contains genetically modified substances. But the Mission only discovered this through a study of the municipality. It is fundamental to respect the right to information about the food that is consumed, the right to decide which food is considered culturally adequate, and therefore also the decision to reject genetically modified food assistance. Furthermore, the precautionary principle is observed by the Food and Nutritional Security Law of Guatemala. Therefore, it is the State or the company which provides the food, and not the communities, who must prove that the food distributed through governmental programs is innocuous. As long as it is not possible to confirm that the product is not harmful, which in case of genetically modified food continues to be a scientific controversy worldwide, it is mandatory not to include such products in government programs, but to use these programs and related resources to promote the local peasant production.



### ***The obligation to facilitate***

*The obligation to facilitate means that a country like Guatemala, with a dominating extreme poverty and chronic malnutrition of the rural population, is a state which must pro-actively engage in activities intended to strengthen people's access to land and other natural resources, and to decent jobs.*

The Mission points out that the obligation to facilitate currently requires strong governmental and legislative actions in at least three fields: rural development, agrarian policies and minimum wage.

1. Rural development: It is necessary that the Congress of the Republic approves the draft for an Integrated Rural Development Law, which has been based on an extensive effort of discussion between the Government and civil society. Furthermore, the State must assign budget funds for the implementation of the Rural Development Policy.
2. Agrarian policies: The State must assign budget funds to the Secretary for Agricultural Affairs (SAA) which enable it to properly fulfil its two functions: to contribute effectively to the solution of more than one thousand agrarian conflicts registered by this institution; and to execute the approved agrarian policy, which until now does not have an adequate budget. Moreover, in view of the extreme land concentration in Guatemala, and the very limited impact of the Land Fund, the State must restart the debate with all sectors of society about the necessity of an integral agrarian reform.
3. Minimum wage: It is essential to overcome its shortcomings. In order to be consistent with international human rights law, in particular with articles 7 and 11 of the International Covenant on Economic, Social and Cultural Rights, the minimum wage must never be lower than the basic basket of commodities, which in fact currently happens in Guatemala. On the other hand, the State of Guatemala must guarantee that all farms and enterprises do really pay the legal minimum wage.

### **d) The obligation to non-discrimination**

The obligation of non-discrimination is a fundamental element of all human rights treaties. It is even more important with regard to equal rights of women, in particular relating to the promotion and protection of their economic, social and cultural rights. In fact, the implications of non-discrimination of rural women extend to almost all spheres of their lives. The situation of these women is marked by a lack of access to education and information, high work load (domestic and agricultural), high vulnerability to all kinds of violence, and lack of access to productive resources (including land), necessary to be able to feed themselves and thus be able to exercise their right to food.

The Committee on the Elimination of Discrimination against Women (CEDAW) examined in February 2009 the situation of women in Guatemala. In its concluding observations, the CEDAW recognized the efforts made by the State of Guatemala to support and initiate communal projects in order to economically empower women. However, it also expressed concern at the impact and sustainability of those programs, as well as about the persisting high levels of poverty and social exclusion of women, especially in rural areas. The CEDAW also expressed its concern about the lack of access to land of women in general and of indigenous women in particular, who "...may be displaced as a result of new economic development plans."<sup>31</sup> Therefore, the Committee recommends that the State party ensures "... that economic and social policies and public investment specifically take into

<sup>31</sup> Rights of the Guatemalan women claimed by the UN Committee in [www.fian.org/noticias/comunicados-de-prensa-1/derechos-de-las-mujeres-guatemaltecas-confirmados-por-comite-de-las-nu-6/04/2009](http://www.fian.org/noticias/comunicados-de-prensa-1/derechos-de-las-mujeres-guatemaltecas-confirmados-por-comite-de-las-nu-6/04/2009)



account the situation of women and monitor the resulting impact of these programs. The Committee urges the State party to strengthen efforts to encourage the sustainable economic empowerment of women, and, in particular, promote women's access to land and credit."<sup>32</sup>

The Mission found in all examined cases that women have been especially affected by the verified human rights violations. Based on the findings of the cases, the Mission urges the State of Guatemala to fulfil the recommendations made by the CEDAW in February 2009.

### e) The obligation to use the maximum of available resources

*The progressive fulfilment of economic, social and cultural rights is an obligation of each State Party to the International Covenant on Economic, Social and Cultural Rights, which it must implement "to the maximum of its available resources", as enshrined in article 2.1 of the Covenant.*

Guatemala has the lowest tax revenues in Latin America. According to governmental data, they will merely reach 9.9% of the gross domestic product (GDP) in 2009. With this income, it is practically impossible to fulfil the responsibilities of the State and, in particular, to advance in the progressive fulfilment of economic, social and cultural rights. It is imperative that the economic elites of Guatemala become aware of the necessity to contribute to the wellbeing of the whole society and that they accept that they carry responsibility that the whole Guatemalan population has access to basic services to which they are entitled by right. A tax reform is necessary and inevitable to enable the State to fully comply with its obligations with regard to the human right to food and the remaining economic, social and cultural rights of the whole population.

## 8. The situation of human rights defenders

### a. Legal framework for human rights organizations

In general, there are no legal obstacles for the creation of civil society associations or organizations, including those to promote and defend human rights. The Constitution of the Republic guarantees the right to freedom of association (art. 34), while the Civil Code and, particularly, the Law of Non-Governmental Organizations for Development (Development NGO Law, Decree 02-2003) establish the normative basis. The same applies to the Municipal Code with regard to neighborhood associations or committees.

In accordance with the Civil Code, non-profit associations, whose constitution must be properly approved by the competent authority, acquire a separate legal personality from its members by the mere action of being entered in the registry of the municipality in which they have been founded (art. 15, 16 and 18). Nevertheless, the Development NGO Law and the Municipal Code establish that a "public deed" is required for the effective foundation (art. 5 and 19, respectively), as well as a minimum of members of no less than "seven natural or legal persons who have legal capacity". Up to twenty-five percent (25%) of the members can be foreigners (art. 7, Development NGO Law).

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<sup>32</sup> Ibidem.



Even though the obligation to register is an essential prerequisite for the recognition of the legal personality of organizations, this does not represent a real obstacle; the procedure is simple and free of charge, which also applies to the procedures of the Register of Legal Persons, controlled by the Ministry of Government (Governmental Decree 649-2006).

Furthermore, there are no limiting requirements with regard to the access to financial resources; and legislation, especially the Development NGO Law (art. 2), recognizes the right of organizations to have their “own patrimony derived from national or international resources”.

The Political Constitution, on the other side, establishes that the final goal of the State is to realize the common good and that it must protect each person and his family (art. 1). It also declares that it is a duty of the State to guarantee life, liberty, justice, security, peace and integrated development to all its inhabitants (art. 2). In addition, art. 44 not only enshrines the general principle that social interests override private ones, but also establishes that “laws and governmental provisions or any other kind of orders which diminish, restrict or distort the rights guaranteed by the Constitution are void *ipso jure*”.

The Constitution also states that everybody is enabled to bring those who violate human rights to trial simply by making a complaint, without any kind of deposit or formality. Art. 46 adds that “the resistance of the people to protect and defend the rights and guarantees enshrined in the Constitution is legitimate”. This article also includes the general principle that in human rights matters the treaties and covenants accepted and ratified by Guatemala override internal law.

On March 29, 1994, the Government of Guatemala and the Guatemalan National Revolutionary Unit (URNG) signed the Global Agreement on Human Rights (AGDH), which included under agreement 7, entitled “Guarantees and protection of persons and entities who work in the protection of human rights”, the following principles:

*“7.1. The Parties agree that every action that could affect the guarantees of those individuals or entities that work in the promotion and tutelage of human rights is condemnable.*

*7.2. For this purpose, the Government of the Republic of Guatemala shall take special protection measures for the benefit of those persons or entities that work in the field of human rights. Also, it shall investigate opportunely and exhaustively the accusations presented relating to actions or threats that could affect them.*

*7.3. The Government of the Republic of Guatemala reiterates the commitment to guarantee and protect efficiently the work of the individuals and entities that defend human rights.”*

As can be seen, Guatemala has a significant system of protective norms, structured by the Political Constitution. Moreover, it is State party to a variety of international human rights legal instruments, whereby it is obliged, as well as by the Declaration on Human Rights Defenders, to monitor the realization and the effective respect of human rights, and to protect human rights defenders. To fulfil such tasks, the State relies on several and important institutional mechanisms, such as the Presidential Human Rights Commission (COPREDEH), the Special Prosecutor of the Public Ministry for Human Rights Defenders, the Human Rights Unit of the Special Division for Criminal Investigation (DEIC) of the Civil National Police, etc.

In spite of these legal and constitutional provisions, as observed by the Mission, defending human rights not only provokes incomprehension among many public and private actors, but is also highly dangerous, as it will be presented in the following.



## b. Context of repression against human rights defenders

The situation of human rights defenders in Guatemala has developed in a violent environment, which has severely affected the defence of human rights (see compendium of the cases adopted by the Observatory in 2008 and 2009<sup>33</sup>). The old power blocs, responsible for the repression during the armed conflict, continue to assassinate, oppress and criminalize human rights defenders, converging with new economic interests linked to megaprojects, extractive industries or agricultural exports. For this purpose, they often employ public security bodies and the judicial system, while in many cases they count on mechanisms of private security, political influences and economic power. In this way, they secure the impunity for past and present doings.

In 2008 and 2009, social protest has been increasingly criminalized. On several occasions, the Government declared “states of prevention”, which are situations governed by the Law on Public Order. Union members and workers were victims of severe human rights violations, which have not been investigated. In this context, some multinational fruit companies have been engaging for several years local firms to cultivate their plantations. However, these tend to adopt anti-union practices, thereby inciting aggressions against union members in the country. Some of the existing social protests are related to land property conflicts and the abusive exploitation by multinational companies, activities which often affected the rights of indigenous communities. On many occasions, these communities have been subjected to criminal persecution and to violent police raids. In order to address this situation, the Government organized national negotiations with peasant groups and responsible state representatives in April 2008. However, until now such negotiations did not put an end to the aforementioned practices.

During many social conflicts, one can observe the enormous power and influence of enterprises and other economic power blocs on the legal system and the public security bodies, whose actions are often extremely worrying. Indeed, the levels of aggravated corruption within the ranks of the National Police, even in the highest positions, have lately been exposed due to the arrest of several former high-ranking officials and officers who were involved in criminal activities. In addition, the conditions which surrounded the nomination and final inauguration of new magistrates of the Supreme Court of Justice (CSJ) leave certain misgivings about the future handling of the highest instance of national jurisdiction with regard to promoting justice.

In spite of the wide institutional and legal framework regarding the protection of human rights and of human rights defenders in Guatemala, a fast look at the situation of human rights defenders, considered in the widest sense of the word, reveals one of the most critical panoramas in the world.

The reaction of some groups to social protest, which is provoked by the deep deficiency concerning social, economic, cultural, environmental and further rights, result almost systematically in grave and repeated actions against leaders and popular activists, unionists, indigenous persons, peasants and other promoters and defenders of human rights. Here can be noted special pursuit against those who denounce and fight against impunity.

Human rights defenders are mainly attacked in two ways in Guatemala: on the one hand, they are subjected to direct attacks, and on the other hand, they are criminalized.

<sup>33</sup> The data presented in Chapter 8 of this report have been compiled in the framework of the Observatory for the Protection of Human Rights Defenders, a joint program of FIDH and OMCT, and include follow-up information until end of 2009/beginning of 2010. A more detailed report is available under: <http://www.fidh.org/IMG/pdf/OBS-Casos-Guatemala.pdf> and [http://www.omct.org/pdf/Observatory/2009/OBS\\_casos\\_08-09\\_Guatemala.pdf](http://www.omct.org/pdf/Observatory/2009/OBS_casos_08-09_Guatemala.pdf)





### c. Attacks on human rights defenders

When referring to human rights defenders, we mean all men and women who promote or defend economic, social, cultural, civil and political rights, as well as collective rights, such as the right to enjoy a decent life, the right to adequate food, to housing, to a decent job, to land, to access to water, to integral health, to a healthy environment, to ancestral property, to correct information and to decide about which type of development is needed.

The level of hostility and of risk confronted by women and men who defend human rights in Guatemala seems to grow progressively. During the last ten years, the number of known aggressions against human rights defenders increased from 59 in 2000 to 339 between January and October 2009. This figure reflects an average of 1.01 attacks per day and exceeds the 220 attacks occurred in 2008, that is a rise of 14.96%.

In this spectrum, it is important to stress the adverse effects suffered by those who fight for the truth and against impunity, among whom are unionists, journalists, peasants and activists who favour development and the protection of the environment. Aggressions take place particularly in the capital, Guatemala City, but also in El Quiché, El Petén, Sacatepéquez, Quetzaltenango, Huehuetenango and Alta Verapaz.

The most common types of attacks of which human rights defenders in Guatemala have been victims are assassinations, murder attempts, written or telephone threats, intimidations, arbitrary or illegal detentions and criminalization, which results in accusations, filed charges and judicial processes.

#### ***Main aggressions against human rights defenders***

In the context of its activities, the Mission has registered several cases of deaths of human rights defenders in the past, in connection with a number of land conflicts and disputes, defence of the environment, etc.

Examples of such cases are the extrajudicial executions and forced disappearances of at least 16 persons between 1982 and 1986, carried out during the conflict on the San Luis de Malacatán Farm in San Marcos. Due to the land conflict in the Granadillas Mountain, Zacapa, leader Israel Carias Ortíz and his two sons Ronald Aroldo and Ledwin Anilson were murdered at the beginning of 2007, and at the end of 2008 another member of the community, Willi Morales, died under suspicious circumstances, which were never fully clarified.

By the end of October 2009, at least 15 cases of assassinations or murder attempts against human rights defenders were recorded. Among the victims was Adolfo Ich Chamán, President of the District Committee of La Unión, leader of the Las Nubes community, defender of the rights of his community and teacher at the communal school of Las Nubes. He was murdered on September 28<sup>th</sup> in El Estor, department of Izabal, in connection with the conflict between the Las Nubes community and the Guatemalan Nickel Company (CGN). In the incident were involved the Head of Security of the CGN, Mynor Padilla, as well as Hugo Chalibat and Mynor Alvarado, also members of the same private security force.

On October 24, in Malacatán, San Marcos, was also murdered Victor Gálvez Pérez, member of the Resistance Front against Abuses of the DEOCSA (Distribuidora de Electricidad de Occidente



S.A.) of Malacatán, an electricity company property of the Spanish transnational company Unión Fenosa. This murder is connected with his activities in defence of the economic and social rights of the inhabitants of Malacatán, who were affected by the activities of the company.

In January 2009, Amado Corazón Monzón, leader of the Movement of United Street Vendors of Coatepeque, was murdered by hired killers in the quarter El Rosario, in the city of Coatepeque, presumably due to the conflict between the movement and the municipality, which had already provoked public threats by the mayor. Just two weeks before, the lawyer Armando Donald Sánchez Betancurt, advisor to the Peasant Unity Committee (CUC) and the Movement of United Street Vendors of Coatepeque, had been murdered.

Most victims had received death threats or been subjected to direct aggressions or murder attempts. Although these incidents had been reported to the Public Ministry in most cases, this did not prevent their deaths.

During the same period, a large number of other violations of the right to life and physical integrity were registered.

### ***Threats and harassment***

Threats, harassment and persecutions of human rights defenders are constant practices, which in some cases are exercised by state employees and/or agents, and in other cases by private security groups or unidentified persons.

One of the many examples of such practices is the case of the members of the Lutheran Church and community groups, including the Association for the Defence and Protection of the Granadillas Mountain, in the department of Zacapa, who have been repeatedly threatened since past January. Also worth mentioning are the threats against members and leaders of indigenous and peasant communities in Panzós, Alta Verapaz, and El Estor, Izabal. Furthermore, similar incidents were also registered against members of SITRAPETEN in Guatemala City; against leaders of the movement against open-pit mining of the Marlin Mine in San Marcos; and against member communities of the Agrarian Platform, who fight the contamination and alteration of the course of the rivers Ocos and Pacayá, in Quetzaltenango and San Marcos.

### ***Criminalization of human rights defenders***

*“Criminalization is the arbitrary application of law, or the threat of its application, as a response of officials and economic powers to activities in defence of human rights.”<sup>34</sup>*

The instruments of criminalization are the stigmatization and judicialization of demonstrations and acts of protest, as well as of leaders and of social, communal, peasant, indigenous, environmental or other types of activists. The objective of criminalization is not only to keep these individuals from freely performing their role as human rights defenders, but also, to a large extent, to discredit their social demands and claims. This practice is often applied by private individuals or groups, who generally boast economic and political power, as well as by public administrative and judicial authorities.

<sup>34</sup> Definition by UDEFEGUA, presentation *“The Criminalization of Human Rights Defenders”*



There is a large number of examples, as UDEFEGUA pointed out: only up to October 2009, 33 cases of judicial complaints against human rights defenders were registered.

One example are the cases concerning the members of the Association for the Defence and Protection of the Granadillas Mountain, in the department of Zacapa, and the representative of the Lutheran Church, Rev. José Pilar Alvarez, who was temporarily arrested at the end of January. Although he was released, he remained accused of “disturbing private property” and was placed under unsupervised house arrest, having to sign papers every 15 days. These measures were finally canceled some time later.

It is also worth mentioning the murder accusations raised against Jesús Poob and Lorenzo Poob, members of the Margarita Copón community, in connection with the conflict of the Xalalá hydroelectric dam, in Quiché, as well as the accusations of “usurpation” raised in the past against dismissed workers of the Nueva Florencia Farm, in Colomba Costa Cuca, Quetzaltenango.

#### **d. Institutional initiatives in support of human rights defenders**

After his visit to Guatemala in February 2008, the Special Representative to the Secretary General of the United Nations on the situation of human rights defenders called attention to the scant protection these individuals enjoy in Guatemala and to the high degree of repression against defenders of economic, social and cultural rights in particular.

##### *1. Activities of the Institute for the Analysis of Attacks against Human Rights Defenders*

In January 2008, one month prior to the visit of the Special Representative, the Ministry of the Interior, in cooperation with the Prosecutor General’s Office, created the Institute for the Analysis of Attacks against Human Rights Defenders (*Instancia de Análisis de Ataques contra Defensores de Derechos Humanos*), which processes complaints of aggressions against human rights defenders. The Institute, which is a mechanism of coordination and confidence, has shown certain results, but these remained weak insofar as the Public Ministry continues not to prosecute the perpetrators. Nevertheless, the creation of this instance has constituted an important step which may contribute to better protection for human rights defenders under attack.

This instance should become institutionalized so that it does not depend on the good will of the minister governing at present. Moreover, the Government should also develop a protection program for human rights defenders, which should be accorded with these individuals themselves. Nevertheless, we were informed while finishing the present report in January 2010 that the Government intends to weaken this initiative. This would represent a step backwards with regard to the needed political will to protect human rights defenders and to recognize the legitimacy of their activities.

##### *2. Activities of the European Commission and of Embassies of Member States of the EU*

As to the international community, the role of the European Union must be highlighted, as it is currently making efforts to develop some aspects of the Directives of the European Union for the Protection of Human Rights Defenders, not only with regard to maintaining certain level of dialogue with representative organizations, but also to technical assistance to strengthen dialogue between



civil society and the authorities and institutions; as well as to some initiatives aiming at the protection of human rights defenders in certain particular cases.

### *3. The Unit for Protection of Human Rights Defenders in Guatemala (UDEFEFUGA)*

One of the most important initiatives of the civil society has been the creation and consolidation of the Unit for Protection of Human Rights Defenders in Guatemala (UDEFEFUGA), which is conducting monitoring work, verification, protection and accompaniment for the security of men and women defending human rights in Guatemala. They started monitoring their situation in 2000 and until October 2009 they registered 1,764 attacks against them.

The work of UDEFEFUGA has achieved wide international recognition and has also been able to open up institutional spaces with the Government, the Public Ministry and other state agents. It is therefore necessary to guarantee the continuance of this endeavor of advocacy and protection.

## **e. Conclusions and recommendations**

Until now, the Government of Guatemala lacks clear policies for the protection of human rights defenders, as well as inter-institutional coordination measures to investigate the attacks, as for example between the police and the Public Ministry. Moreover, the performance of other instances, including the State Attorney, are likewise deficient and in a certain manner even non-existent. Institutional agendas do not include or barely deal with issues related to the security and the protection of human rights defenders, the effective investigation of complaints or the punishment of those responsible for the harassments, intimidations and attacks against individuals and organizations.

Even though social protests, the recuperation of land, strikes and other forms of vindicating human rights are fully backed by the Constitution, the necessary political will to place the realization of these rights above certain private interests does not exist.

Although impunity is a general rule within institutions and criminality is gaining ground from both State and society, the human rights movement and certain institutional open spaces must progressively contribute to the fulfilment of the social objectives of the State and to the realization of social peace. It is thus essential to put an end to the criminalization and persecution of social protest and to the attacks against human rights defenders.

Both governmental and judicial agents must ensure a wider recognition, acceptance, respect and protection of human rights defenders. When conflicts in the interpretation arise, the general public interest and the rights of the least favored must prevail, especially those of indigenous peoples.

Finally, the Institute for the Analysis of Attacks against Human Rights Defenders must become institutionalized and a program to protect human rights defenders should be developed in cooperation with the involved persons.



## 9. Description of the cases verified by the Mission

### 1) Forced evictions in Panzós and El Estor

#### *Location and identification of the case*

The affected communities are Bella Flor and 8 de Agosto, located in the Polochic Valley, municipality of Panzós, department of Alta Verapaz. The latter is situated on land administered by the Institute of Agricultural Science and Technology (ICTA). Other 5 affected communities are Lote 8 (Chacpaila), Lote 9 (Agua Caliente), La Paz, Las Nubes and Barrio la Unión, in the municipality of El Estor, department of Izabal.

#### *Description of the case*

The affected communities were victims of encroachment, dispossession of goods and forced evictions to make way for the production of agrofuels (oil palm) and ethanol (sugar cane). The areas fell under the control of the Guatemalan Nickel Company (CGN) and other big landholders.

Apart from evictions, systematically accompanied by the destruction of crops, this process led to the “encirclement” of some communities and thus to the reduction of productive areas and to the incorporation of some of their members into paid activities, often lower than the minimum wage.

In general, these events result from actions ordered by the Public Ministry upon request of landholders and of the CGN and authorized by the court of first instance specialized in drug and environmental crimes of the La Tinta municipality, department of Alta Verapaz, and of Puerto Barrios, department of Izabal. The aforementioned actions were conducted with the intervention of the Civil National Police (PNC) and the army, as well as with the participation of private security guards of the CGN, of landholders and of other interested companies, as for example the sugar refinery Chabil Utzaj, in the case of Panzós.

The destruction and theft of crops and working tools, as well as the burning of shacks, have been systematic practices in almost every case. Moreover, numerous individuals were indiscriminately attacked. Many of them were injured and some even died afterwards or still suffer after-effects. Furthermore, sexual abuses have also been reported in at least two cases of eviction. The affected women give account of collective rapes, and one woman declared to have been raped by 9 officers, presumably of the National Police. Moreover, in at least two cases, the raped women got pregnant. All of this tragically reminds of the counter-insurgency strategy adopted by the State forces during the armed conflict.

#### *Violated rights*

As a consequence, the right to food and the food security of the communities have been severely affected. This situation is aggravated by the threats posed by several actions: the intensive use of chemicals, such as pesticides; the massive consumption of water, including the rerouting of rivers; the contamination of water with waste, oil and others; and the insecurity regarding land tenure. The latter



is to a large extent due to the predominance of the traditional mode of transfer of land, which does not entail the formal registration of land ownership. A further reason for such insecurity is that many individuals do not have the resources needed to access the processes of recording deeds, cadastres and the State. On the other hand, even registered rights are actually violated, through the destruction of cadastres, as happened in the case of the Lote 9 community, and forced sales.

The recorded events severely violate human rights, particularly the right to land, to food, to food security, to water, to housing, to physical and psychological integrity, and to life. The responsibility for these events and violations not only lies with the administrative authorities and the judicial, legislative and law enforcement bodies, but also with enterprises and large landholders.

### ***Demands for the fulfilment of rights supported by the Mission***

- To recognize and effectively respect human rights, including the right to land.
- To cease immediately all aggressions, threats and persecutions, including those of judicial nature.
- To fulfil the right of the communities to be consulted and to decide about the implementation or development of decisive productive activities.
- To carry out a comprehensive investigation of suffered aggressions, especially of sexual abuses, deaths and serious injuries.
- To adequately compensate and indemnify the affected individuals.

### ***Response by the authorities***

In addition to the victims, the Mission also interviewed various local authorities, including the National Police, and representatives of public human rights bodies, such as the Auxiliary Human Rights Ombudsman (PDH) and COPREDEH.

The authorities have acknowledged the intervention of private security forces in “cleaning” actions at the sites identified for evictions, as well as acts of physical violence, which the Public Ministry said were unavoidable in some cases. However, they said they were unaware of sexual abuses, as they did not receive any complaints from the victims. Furthermore, the authorities pointed out that representatives of public human rights institutions participate systematically in eviction operations when they are informed by the PDH. Finally, the Public Ministry informed that it has initiated an investigation about the mentioned occurrences.

Following the visit of the Mission, on December 14, 27 families of the Bella Flor community reoccupied their territory. However, when the community tried to dialogue, the security forces of the sugar refinery Chabil Utzaj responded violently by using firearms. Subsequently, the members of the community started to leave the farm peacefully, but the security agents hustled them to leave and dialogue outside the farm (along the road). When the peasants resisted to leave immediately, the security guards started to fire into the air and later shot at the people, to urge the exit and leaving the injured ones right on the spot. Six people were injured in the confrontation, of which four were hit by bullets.



This was not the first time that security forces of Chabil Utzaj attacked peasants. On June 30, 2008, there was an attack against a peasant group, during which one man was injured and two women were abducted temporarily. Both women would participate in the national direction of CUC on July 1, 2008. A formal complaint has been made against these actions, but the process has been put on ice with the Special Prosecutor of the Public Ministry of the La Tinta municipality, Alta Verapaz, so impunity continues. Likewise, on September 2, 2009, the alleged owner of the Bella Flor Farm destroyed with the participation of the National Police the corn fields and other crops cultivated by the peasants, which consisted of approx. 28 ha of corn, 35 ha of okra and 10 ha of beans. In this case, a formal complaint was presented to the assistant of the Special Rapporteur on the right to food of the United Nations.

## 2) Forced eviction of the Mich Bill Rix Pú community, Laguna Lachuá

### *Location and identification of the case*

The Mich Bill Rix Pú community, also known as Cerro Alto Las Palmas, is situated in the confines of the National Park Laguna Lachuá (PNLL), which has been declared protected area under the administration of the National Council of Protected Areas (CONAP). The park is located in the region of Salacuín, in the municipality of Cobán, department of Alta Verapaz.

The community consists of 21 families, 138 persons, of Q'eqch'í origin. They settled in this territory of about 409 ha in 1962. In an extension of about 230 ha, the families jointly cultivate basic grains and vegetables and raise livestock and domestic animals. They combine subsistence agriculture with the cultivation of cardamom for export, which allows them to have a monetary income.

### *Description of the case*

The case of Mich Bill Rix Pú is a typical case in which certain rights and interests, in this case environmental ones, are placed over the rights of indigenous and peasant communities, even though they had settled in the region of Laguna Lachuá before it was declared a national park and protected area.

In 1975, the National Institute for Agrarian Transformation (INTA) declared 10,000 ha around the Laguna Lachuá a forest reserve. In 1989, it was officially declared National Park Laguna Lachuá<sup>35</sup>, a fact which did not affect the rights of the Mich Bill Rix Pú community. However, on November 20, 2003, the area of the PNLL was extended to 14,211 ha, with the result that the community remained enclosed in it. This governmental decision takes no notice of the communities<sup>36</sup> residing in it, establishing that the land was an area of wasteland. Nonetheless, the State already denied systematically the existence of these communities prior to this measure: members of the community informed the Mission that state security forces executed an extrajudicial eviction against the Mich Bill Rix Pú community on April 8, 2003, i.e. seven months before the expansion of the PNLL.

<sup>35</sup> Established in article 89 of the Law for Protected Areas, Decree 4-89 of the Congress of the Republic.

<sup>36</sup> The communities settled in the park extension are Mich Bill Rix Pú, Yalcobe, Secupur and Mansión del Norte.



In May 2004, half a year after it, a further extrajudicial eviction against the community members was carried out. Just as in 2003, members of a military detachment, of the National Civil Police and of the Forest Park Police were involved.

Upon proposal of the Secretary for Agrarian Affairs (SAA), in 2006<sup>37</sup> a special working group involving the following institutions was founded: CONAP; the National Forest Institute (INAB); the Ministry of Agriculture, Livestock and Food (MAGA); and the Presidential Office to Address the Crisis (COPAC). Although this working group has been functioning for three years, no solution in favor of the affected communities has been proposed yet.

On the other hand, the State reacted with violent measures against the communities and against Herculano Luc, the leader of the Mich Bill Rix Pú community. It passed a new order of eviction for October 18, 2006, which was not carried out, and issued an arrest warrant against the leader on May 11, 2009. The conflict has been transferred to COPAC, and it was suggested that the community be resettled or that an agreement of permanence of the community be reached.

During the visit of the Mission, some articles were published in the newspaper *Prensa Libre* announcing that one section of a road, the Northern Border Country Cross Road, will pass through the National Park Laguna Lachua<sup>38</sup>. This information shows how certain State and entrepreneurial interests override the interests of poor indigenous communities, whose human rights are not being recognized.

### ***Violated rights***

Based on the permanent threat and constant risk to which the Mich Bill Rix Pú community is exposed due to the existing orders of eviction and arrest of its leader, the Mission identifies, as least, the following violations of rights:

- The right to land and to collective land ownership, and their rights as indigenous communities to a sustainable and including development, recognized by the Constitution of the Republic (art. 67 and 68), the ILO Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples<sup>39</sup> and the jurisprudence of the Inter-American Court of Human Rights (IACHR).
- The human rights to food, housing, water and therefore health, enshrined in the International Covenant on Economic, Social and Cultural Rights.
- Criminalization of the social protest for defending the rights of the communities.

### ***Demands for the fulfilment of rights supported by the Mission***

- Efforts should be made in order to allow the communities to stay in the territory they have traditionally owned and possessed and to reach an agreement of permanence.

<sup>37</sup> There is no certainty regarding the date when this working group was established, whether in 2004 or in 2006.

<sup>38</sup> *Prensa Libre*, November 18, 2009

<sup>39</sup> These rights are defined and supported, in first place, by the Constitution of the Republic, article 67, which declares that "the land of indigenous communities... the family property and popular housing enjoy the special protection of the State... which guarantees its possession and development, in order to secure a better living condition for all inhabitants". This is also backed by Convention 169 of the International Labour Organization (ILO).





- If this should be impossible, then the Government must relocate the community to another area. Such relocation must take place only with the free and informed consent of the peoples concerned, in accordance with article 16, paragraph number 2 of the ILO Convention<sup>169</sup>.
- In this case, the State must provide the community with land and fully compensate its members for the resulting losses.
- Families shall not be compensated through the Program to Address the Crisis, which only provides a compensation of approx. only 10 ha for each family, since this is not a case of crisis like the evictions of private farms.
- The orders of eviction and the arrest warrant against Herculano Luc must be immediately suspended.

### ***Response by the authorities***

The Secretary for Agrarian Affairs (SAA) proposed to the affected communities the relocation to the Ixila Farm in Cobán. This farm has a size of approx. 70 ha, which means that each family would receive 3,5 ha. Therefore, as this territory is much smaller than the one they have traditionally owned, this proposal does not fulfil the community's demands. However, SAA declared that it does not have sufficient funds to answer their claims and that at the moment it can only maintain the suspension of the eviction order of 2006.

The Special Prosecutor of Human Rights of the Public Ministry stated that he was unaware of the arrest warrant against Herculano Luc. The Supreme Court of Justice also affirmed that it did not have any knowledge of the case in question.

## **3) Impacts of the agrofuel expansion in Ocós and Coatepeque**

### ***Location and identification of the case***

This case reflects how the rights to food and to water of the communities concerned have been affected by the diversion, excessive use and contamination of the rivers Pacayá, Talpope, Mopa and Talticuó, or the lower basin of the river Ocosito, in the municipalities of Coatepeque (department of Quetzaltenango), Ocós (department of San Marcos) and Retalhuleu (department of Retalhuleu). The 21 affected communities are: in the municipality of Ocós, the hamlets El Izotal, Carrizal, Las Morenas and El Palmar I and II, the locality Chiquirines and the suburb Barillas; in the municipality of Coatepeque, the hamlets La Ayuda, El Troje, Santa Fé, El Pomal, Carrizales, Las Morenas and Madronales, the villages San Rafael Pacayá, San Vicente Pacayá and Los Encuentros, the locality Chiquirines and the suburb Barillas; and in the municipality of Retalhuleu, the hamlet La Blanquita, part of Caballo Blanco.

### ***Description of the case***

The Mission had the opportunity to visit and meet members of the communities of Ocós in the hamlet Carrizal and members of the communities of Coatepeque in the hamlet El Troje. Furthermore, the



Mission examined in situ the dams constructed to protect the banana and oil palm plantations, and verified the rerouting and excessive use of water for the vast palm oil plantations. It could also observe that the adjacent communities use the river Pacayá to bath, to wash clothes and to fish.

The main problem of the communities of Ocós is that the construction of the dams in 2005, which protect the contiguous banana and oil palm plantations, has resulted in severe cyclical inundations of their lands and crops. As a consequence, the communities were heavily affected by Hurricane Stan in 2005 and in the following years they were only able to harvest once a year, instead of twice, as the inundations destroyed the second harvest. They maintain that the main reason of the problem are the high dams, which cause downstream floods and prevent the river waters from settling in the lower areas of the Pacayá river in times of heavy rains. These inundations have caused losses of millions for the communities, for which they have not received any compensation yet. Moreover, they are at permanent risk, especially if there should be another tropical storm, which under the present circumstances could result in a humanitarian catastrophe.

On the other hand, the major problem of the communities of Coatepeque concerns their access to water, which has been severely affected by the vast oil palm plantations established in the region. Their irrigation has led to an excessive use and rerouting of water, leaving the communities with less and less water. Many communities report that several wells have already dried up and that it is increasingly difficult to have access to clean water during the summer season. They are outraged that there is water for palm trees, but not for the inhabitants of the communities. Additionally, the communities of Coatepeque and Ocós are both affected by the same problem: rivers are being contaminated with toxic substances and waste of the plantations and sugar refineries, which poses a serious risk to the health of people who bath, wash clothes and fish in the rivers. The lack of water and the high level of contamination of that available particularly affect women, since they are the ones who have to walk long distances to gather water from wells and who are in direct contact with contaminated water to wash clothes. As a result, they have a higher workload and their health is more severely affected.

### ***Violated rights***

The Mission could verify that in this case the rights to food, to water, to a healthy environment and to health were violated. Moreover, the inhabitants of the communities are at permanent risk in the event of a tropical storm, which poses an imminent threat to their right to housing and to life.

### ***Demands for the fulfilment of rights supported by the Mission***

- Indemnification of the communities of Ocós for the damages and losses caused by the inundations.
- Measures to prevent future disasters for the communities of Ocós, in particular with regard to the erosion of the river Pacayá and the reopening of the boondocks. This would imply the partial dismantling of the constructed dams.
- Regulation of water use in the whole region, particularly to limit the water use by oil palm plantations, in such a way that the right to water of the communities is not negatively affected.



- Constant monitoring of the water to guarantee the health of the people who use the rivers in question, to verify the charges of contamination and to identify and legally prosecute those responsible for it.
- Visit of an inter-institutional mission of the central government, which should investigate the charges and, in particular, the severe problem of the access to water affecting the communities due to the excessive water use by palm oil enterprises.

### ***Response by the authorities***

The Ministry of Environment and Natural Resources promised the Mission to follow up the case reported to the Ministry in 2008 (file 9, 173-2008) by the communities. The Ministry said to the Mission that it will become active in the matter, in the sense of applying the principle of the common good and recognizing that river water is a common property. Furthermore, it is committed to answer the claim of indemnification of the 7 communities of Ocós, in accordance with the agreement signed on July 30, 2009, between the Government and the Agrarian Platform, COPREDEH and the Secretary of Peace (SEPAZ).

## **4) Impacts of the agrofuel expansion in Sayaxché, Petén**

### ***Location and identification of the case***

The Mission was informed about four cases of “encirclement” through oil palm plantations in the municipality of Sayaxché, department of Petén. The affected people lived in the hamlets Semoxan, Las Arenas (known as El Arenal) and Champerico, and in the locality San Rafael, hamlet Nueva Esperanza. The Mission visited and interviewed seven peasants of the hamlet Champerico. Most of its families, who are of Q’eqchi origin, were internally displaced during the armed conflict and settled in the mentioned locality at the beginning of the 1980s. Of the 65 houses which constitute the hamlet, 20 families had a plot to cultivate before 2001.

### ***Description of the case***

Since 2001, there has been a significant transfer of land from small peasants to large landowners and companies, such as Olmeca, in the municipality of Sayaxché. These lands, which have been generally purchased, are used to produce palm oil. The peasants who refused to sell their plots were “encircled” by the plantations and have therefore serious difficulties to accede and cultivate their lands and to extract their crops, as the companies control the access. Moreover, pressure is asserted on the peasants in different ways to force them to abandon and sell their land. They have reported burning and fumigation of their plots, theft of crops and illegal planting of palm trees on their fields.



In 2001, the farm next to the hamlet of Champerico, alleged property of the Molina-Botrán family<sup>40</sup>, started an oil palm plantation to supply Olmecha with oil, also property of the same family. Consequently, a process of land re-concentration was initiated in the adjacent areas of Champerico, and thirteen families sold their plots at an average price of Q60.000,00<sup>41</sup>.

As a result of the successive purchase of land around the hamlet for the production of palm oil, the plots of several community members have resulted to be enclosed in the plantations. Moreover, they do not have free access to the neighboring village El Pato, where they usually sell their harvests and buy food. They can only reach the village after 5 hours of walking, through a public path which leads to the road. The 7 families who refused to sell their plots, of about 45 hectares, do not have free access to them and must ask the farm administration for permission to enter by car or truck and bring out their crops.

Some of the families who sold their plots left, while others are now leasing land to cultivate for their subsistence or are working occasionally on the farm for a salary of Q50 per day. However, none of the inhabitants of the hamlet work regularly on the farm.

The expansion of palm oil plantations has a significant environmental impact and affects the population of the hamlet due to the contamination of the river, into which the company throws its wastes of the mill. The community, who uses the river for fishing, has reported contamination and dying fish.

The most affected families have tried to dialogue with the administration of the farm, but have not been heard. Nevertheless, they have not pressed charges with the municipality, because “no one ever listens to us”, as one of the peasants declares.<sup>3</sup> Violated rights

Since the access to the plots on which the families cultivate their food and to the market of the village El Pato has been severely affected, the following rights are violated: the right to a healthy and sustainable environment, the right to food, the right to private property and the right to free access and circulation. The contamination of the river is also a violation of the right to health of the affected individuals.

Finally, due to the irregularities with regard to the purchase of the plots, the right of indigenous peoples to access land and territory is being violated (ILO Convention 169).

### ***Demands for the fulfilment of rights supported by the Mission***

- Regulation of water use in the whole region, particularly to limit the water use by oil palm plantations, in such a way that the right to water of the communities is not negatively affected.
- Constant monitoring of the water to guarantee health to all persons who use the river water in question, to verify the charges of contamination, and to identify and persecute the responsible ones.
- Guarantee the free access on foot, by car or truck of the peasant families to their plots and to the market in El Pato.
- Prevent that fumigations affect the crops on the plots and therefore the health of the community.

<sup>40</sup> This family also owns HAME industries and the reforestation company “Palmas del Petén S.A.-REPSA”. See also: SOLANO, Luis: “Productive reconversion and agrofuels”, El Observador, Alternative Analysis about Economy and Politics No. 14, Guatemala, September 2009, pp 46-47.

<sup>41</sup> This was a low price because the families did not have land titles. The peasants reported that in 2009 the farm offered Q500.000 to a neighboring peasant who does have land title.



### ***Response by the authorities***

The Mission was able to confirm the weak institutional presence in the area and the absence of a necessary land use regulation. It also observed the high level of vulnerability and defenselessness of the members of the community, which kept them from pressing charges about this case, as they believe that “no one ever listens to” them. Therefore, the Mission recommends the competent state institutions and civil society organizations to pay more attention to this type of events which provoke violations to the cited rights.

## **5) The Marlin Mine**

### ***Location and identification of the case***

The project is located in the hamlet of José Nueva Esperanza (107 inhabitants); village Agel (931 inhabitants); San José Ixcaniche (372 inhabitants) of the municipality San Miguel Ixtahuacán; and in the village Salem (283 inhabitants) of the municipality Sipacapa. The principal installations of the Marlin Mine include two open air pits and one subterranean pit.

### ***Description of the case***

In 1999, the Government of Guatemala granted an exploration permission for the Marlin project to the Canadian enterprise Glamys Gold, which acted through its subsidiary, Montana Exploradora de Guatemala. In 2003, the enterprise obtained an exploitation permit, which allowed it to run an open-pit gold mine for 25 years (resolution number 779-2003/CRMM/EM). In 2006, the company was sold to Goldcorp Inc., another Canadian company. According to the current Mining Law (Decree 48-97), the enterprise only has to pay royalties of 1% and was exempted from taxes until 2008.

The State of Guatemala has ratified the Indigenous and Tribal Peoples Convention, 1989 of the International Labour Organization (also known as ILO Convention 169), thereby recognizing that any kind of project which affects the life and the territory of indigenous peoples requires their free and informed consent. The community consultations undertaken hitherto in Guatemala show that the indigenous population rejects the open-pit mining project. One of the first consultations was carried out in Sipacapa in relation to the Marlin Mine. In 2005, the UN Special Rapporteur on the right to food, Jean Ziegler, visited Guatemala and said that the Government had granted the permission for the Marlin Mine without the free and informed consent of the affected indigenous communities.

There is evidence of the negative impact of the Marlin project on the enjoyment of the right to water, to food and to health of the population. The project contaminates the water used by the communities and also absorbs large amounts of water (45,000 liters per hour, according to figures delivered by the company), which leads to shortages affecting the population. In the meeting which the Mission held with members of the communities of San Miguel Ixtahuacán, it was informed that 8 wells have dried up. Monitoring studies of the Pastoral Commission for Peace and Ecology (COPAE) of the Diocese of San Marcos indicate that the river water is contaminated with heavy metals and that the communities report skin diseases, among other ailments.



Since its start, the Marlin project has been accompanied by growing social conflict, harassment and violence against its opponents and criminalization of social protest. At the beginning of 2005, people tried to block the passage of heavy mining equipment headed toward the Marlin Project. In the clash between the protesters and the Guatemalan security forces, consisting of members of the army and the police, a man was killed and many others were injured. Since then, human rights defenders, members of the communities, persons attached to the church and researchers who oppose the Marlin project have been repeatedly threatened, attacked, harassed and intimidated. Among the victims was Mons. Álvaro Ramazzini, Bishop of San Marcos. At present, there are pending court cases against 8 women and 5 men, which the Mission perceives as means of criminalizing social protest against the mine.

Currently, the communities are extremely polarized, particularly in San Miguel Ixtahuacán, between those persons working for the mine and those who oppose it. The rupture of social coherence is extreme. There is concern about the strong negative impact of this conflict on the various Maya cultures and spiritualities, given that general and intrafamily violence has increased, as well as the number of men carrying arms and of bars newly opened during the past years. Women and children have been especially affected because wells have dried up and they have to walk longer distances to collect water. In addition, women reported that, on the market of San Marcos, it is more difficult to sell fruits and vegetables harvested near the mine, as buyers fear the risk of contamination.

Finally, the right to housing has also been affected. According to a recent study of COPAE, several houses near the mine show fissures in the walls and floors, which have been provoked by vibrations from the explosions in the mine and the traffic of heavy trucks.

### ***Violated rights***

In this case, the Mission identified the violation of the following rights: the rights of indigenous peoples enshrined in the ILO Convention 169, the right to water and food, the right to a healthy environment, the right to housing and the rights to freedom and to personal integrity.

### ***Demands for the fulfilment of rights supported by the Mission***

- Full recognition of the results of community consultations which reject open-pit mining and demand that the mining company leaves the region.
- Stop any kind of harassment and criminalization against human rights defenders and other activists of social protest against the mine.
- Constant and independent monitoring of the water to check contamination levels.
- End the excessive use of water of the Marlin Mine, which does not pay for it.
- Restrain the desertification process caused by the Marlin Mine in the region.

### ***Response by the authorities***

The Mission had the opportunity to meet Dr. Luís Ferraté of the Ministry of Environment and Natural Resources (MARN) to tell him about the grievances in this case. The Minister responded as follows:

- MARN has obliged the mining company to construct two other tailing dams and a water treatment plant, as it only recycles 83% of the used water (the Mine administration affirms it is 87%).



- MARN argues that there is no evidence of water contamination at the moment. However, a sample has been sent to a laboratory in Texas to have an independent report.
- The mining company has not fulfilled its social duties, as it has not carried out an analysis of the development of the communities after launching activities in the region.
- On November 17, 2009, the company was called to a meeting with the Public Ministry, after MARN had made a formal complaint against it for not having paid for an environmental license. The company owes Q21 million for unpaid cyanide and sodium import taxes, which it imported into the country for 12 years without the proper license to do so.
- If the environmental damages of the Marlin project are compared with its investment in the country, it can be said that the **negative effects are larger, as desertification and droughts will increasingly become more acute.**

## 6) Environmental conflict in the Granadillas Mountain

### *Location and identification of the case*

The Granadillas Mountain has an extension of 740 km<sup>2</sup> and is the principal water source for Zacapa, including 22 communities of the departments of Zacapa and Chiquimula. The problem started due to the excessive logging of the woods carried out by big landholders and land licensees (by the land fund FONTIERRA), to whom the National Forest Institute (INAB) granted licenses to fell trees.

### *Description of the case*

The Association for the Protection, Defence and Environmental Restoration of the Granadillas Mountain (*Asociación para la Protección, Defensa y Restauración Ecológica de la Montaña de las Granadillas*) and several communities opposed the wood logging because of the high risk this entails for the access to water of the city of Zacapa and the communities of the region. This has already been reflected in the reduction of the water flow and in the resulting rationing to which some communities are subjected. On this account, they have urged the authorities to declare the mountains a protected area.

The conflict worsened at the end of 2008 when some big landowners prevented the access of the peasants to the water wells and in retaliation, the peasants blocked the road to the farms. At the beginning of January 2009, judicial authorities and the police, accompanied by armed civilians, tried to dissolve the demonstration of the 19 communities. The then Magistrate of Chiquimula, Lic. Victor Hugo Salguero, being present at the place, threatened the participants and members of the Lutheran Church. In addition, the Deputy representative of Zacapa had announced a few days before that arrest warrants would be issued against those who “provoke conflict”. Indeed, some big landowners, including Magistrate Salguero, pressed criminal charges against members of the Association for the Protection, Defence and Environmental Restoration of the Granadillas Mountain, as well as against religious representatives who support them. They were charged with coercion, incitement to crime and interference with property (process CP-14-2009-1). In spite of the creation of a working group for dialogue, integrated by the affected parties and observing representatives of various instances, churches and organizations, the conflict lingered on during 2009.



The case of the community of Los Achiotes, located in the Granadillas Mountain, is the result of legal proceedings for land between the community and big landholders. This conflict led to several acts of violence, which have resulted in the death of community leaders and some of their family members. Even though the conflict seems to be coming to a solution through the recognition of rights and allocation of lands to the community, there are still disagreements with the neighboring community La Trementina, due to the difficulties of access to the grazing grounds by small cattle holders. On the other hand, it is also feared that differences with other communities arise, either for similar reasons or for the access to the fields. The conflicts have resulted in threats and intimidations, even leading to an agreement of special protective measures for members of the Lutheran Church and the Association for the Protection, Defence and Environmental Restoration of the Granadillas Mountain. Moreover, some community leaders of Los Achiotes were murdered at the beginning of 2007 (Israel Carias and his two sons) and at the end of 2008 (Wili Morales died under suspicious circumstances).

In reality, several persons have been criminalized through the proceedings initiated directly by Magistrate Salguero, who also presumably exerted influence on the proceedings of other court officers and the Public Ministry with regard to this case. Accordingly, on January 8, 2009, several arrest warrants were issued, including one against the representative of the Lutheran Church, Rev. José Pilar Álvarez Cabrera, who was arrested on January 25 in Zacapa and later released due to his state of health. Nevertheless, charges of “interference with private property” were upheld and subsequently, unsupervised house arrest and the obligation to sign a book of presence every 15 days was ordered, a measure which was canceled later on.

### ***Violated rights***

The persons concerned have been particularly affected in their rights to life and to physical and psychological integrity. Also violated were the freedom of association, of expression and of peaceful protest, as well as the right to a fair trial, amongst others. Evidence of such violations are the reported deaths and other acts of violence and repression, threats, intimidations, arbitrary arrest, imprisonment and legal proceedings against human rights defenders. In a broader sense, the following rights of the inhabitants of numerous settlements have also been violated: the right to access to water, to land and consecutively to food security and health.

The Mission considers that the responsibility for these actions and violations lies, either by action or omission, with the jurisdictional authorities, of which some were directly involved in the events (like Magistrate Salguero), and with the administrative and environmental authorities (CONAP, INAB, FONTIERRA), which granted logging licenses in an uncontrolled manner.

### ***Demands for the fulfilment of rights supported by the Mission***

- To initiate dialogue and negotiations with the broad and effective participation of the communities, organizations and institutions concerned, in order to reach joint solutions and guarantee their sustainability.
- To safeguard the physical integrity of Rev. José Pilar Álvarez Cabrera, of the leaders of the Los Achiotes community, and of the representatives of the Association for the Protection, Defence and Environmental Restoration of the Granadillas Mountain.





- To investigate and put an end to the criminalization of social activists and human rights defenders. Also to examine the action of the then Magistrate of Chiquimula, as well as of other court officers and of the Public Ministry, with regard to the initiation of trials and the utterance of threats.

### ***Response by the authorities***

The authorities (Governor) and officials (of INAB and MARN) regard the controlled logging of trees as a component of forest management, necessary for the regeneration of the forest, which had presumably been the reason why the license was granted to the farm.

On November 14, in the context of the presidential program “Governing with the People”, “Agreement 47” was established, in which the President of the Republic committed himself to declare the region of the Granadillas Mountain a protected area and to order the suspension of the forest license.

Authorities of the Judicial Power have indicated that the former Magistrate of Chiquimula Salguero was transferred to another office due to his intervention in the mentioned judicial actions against social leaders and members of the Lutheran Church. However, he has not been penalized yet, given that the affected persons did not press charges.

With regard to the disagreement between the communities Los Achiotes and La Trementina, the Governor of Zacapa agreed with the two parties to convene a working group for dialogue to solve the conflict, which is intended to meet in the second week of December.

## **Construction of the Xalalá hydroelectric dam**

### ***Location and identification of the case***

The Mission visited the community Margaritas Copón, one of the communities located upstream from the place where the construction of the Xalalá dam is planned, namely at the confluence of the rivers Chixoy and Copón<sup>42</sup>. The Xalalá project would affect 49 communities in three municipalities: Cobán, in the department Alta Verapaz, and Uspantán and Ixcán, department El Quiché. These communities consist principally of indigenous people Maya Q’eqchi, most of which were displaced during the armed conflict.

### ***Description of the case***

The Xalalá hydroelectric project has been promoted by the Government, through the Ministry of Energy and Mines (MEM) and the National Institute of Electrification (INDE), using a scheme of investment and joint investment of private companies. On September 25, 2007, INDE published an invitation to tender asking for offers for the integrated development of the Xalalá hydroelectric dam. The bidding terms establish that the studies, including the social, environmental and legal ones, would be assigned to the company which would construct and operate the hydroelectric plant. However,

<sup>42</sup> Xalalá is a Q’eqchi’ word meaning ‘confluence’.



none of the interested companies signed a contract with INDE because of the lacking guarantees by the State with regard to possible socio-environmental conflicts.<sup>43</sup>

It must be pointed out that the affected communities were never informed nor consulted during the whole planning process. Moreover, preliminary studies were carried out without their consent and even secretly. The community consultation undertaken on April 20, 2007 in Ixcán, during which 89% of those present voted against the hydroelectric dam, was not taken into consideration by INDE. Thus the right to previous consultation of the communities was systematically denied and the lack of transparency continues up to now, even though a new transparency law was passed in 2009.

The socio-environmental impacts have been estimated based on the capacity intended for the dam (181 MW). According to these estimations, the water level will rise 85 to 90 meters, inundating approximately 41.5 kilometers along the river Chixoy and 16.4 kilometers along the river Copón. The flooded area will thus be about 43 km<sup>2</sup>. The Association for the Defence of Land and Natural Resources (ACODET) calculates that 49 communities comprising more than 6,000 inhabitants could be affected. Moreover, the fertile fields cultivated by the families upstream of the dam could also be inundated, as well as many houses and social spaces of the communities. Those persons living near the banks of the river Chixoy below the dam will be affected due to changes in quantity and quality of the water, which will gravely limit their access to water and the possibility to fish.

The communities do not have any legal certainty about their rights to this land but they identified the legal owner of the land to buy it and paid the first instalment in December 2009. To avoid having some families sell their plots in the future, the territory will be registered as communal property. The construction of the dam will particularly affect women, as they are the ones who are in charge of the feeding and security of the family.<sup>44</sup>

On November 6, 2009 information was published stating that “INDE will pick up again the Xalalá project” with a new financing model<sup>45</sup>. This alarmed and scared the communities, as INDE is interested in promoting the construction of another 5 dams in the region as part of the development project of the Northern Transversal Belt (*Franja Transversal del Norte*, FTN).

### **Violated rights**

The State has repeatedly violated the rights of the indigenous communities to be consulted and to participate in the decision making about planned projects on their territories, particularly in relation to the construction of hydroelectric dams. These violated rights are enshrined in art. 6 of the ILO Convention 169 and in art. 32 of the United Nations Declaration on the Rights of Indigenous Peoples.

The following rights have also been violated in relation to this case: the right to life, enshrined in the Constitution of the Republic of Guatemala and in the American Convention on Human Rights; the human rights to food, to water, to health and to housing, defined in the International Covenant on Economic, Social and Cultural Rights; as well as the rights of indigenous peoples to territory, to

43 In the first tender, nine international companies acquired the bidding terms: AES Corp. of the United States; Empresas Públicas de Medellín, of Colombia; ISAGEN of Colombia; Constructora Norberto Odebrecht of Brazil; Sinérgica of Guatemala, Duke Energy of the United States; ENEL of Italy; Unión Fenosa of Spain; and Dong Myon of Corea. However, they did not make any offer as there were no guarantees needed for their investments.

44 Testimonials of the population, including the special concerns of women, can be seen in the video report “Who is the principal violator of the Human Rights in Guatemala? See in: [www.youtube.com/watch?v=wAJbg2TcEJE](http://www.youtube.com/watch?v=wAJbg2TcEJE).

45 Rosa María Bolaños: “INDE will pick up again the Xalalá project” in *Prensa Libre*, November 6, 2009.



collective ownership of land and to a sustainable and inclusion-oriented development, which are recognized by the Constitution of the Republic (art. 67 and 68), the ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples<sup>46</sup>.

### ***Demands for the fulfilment of rights supported by the Mission***

- That the tendering process for the Xalalá project be suspended as it affects the fundamental rights of the communities.
- That the State fulfils its obligation to inform and consult all affected communities and that it will respect the results of the community consultation undertaken in Ixcán on April 20, 2007.
- That the Government and INDE take into account the recommendations of the World Commission on Dams (WCD) and analyse technical alternatives to the Xalalá megaproject.
- That objective and impartial studies on the potential impacts of the dam construction will be conducted.
- To promote a rational and sustainable use of electric power.
- To propose a national and participative debate about the energy policy, aiming at promoting a national development strategy which includes the access to electrification of the local communities.
- To reform the energy legislation for the benefit of the whole population and national interests.

### ***Response by the authorities***

The Mission met the Minister of Environment and Natural Resources, who has provided the following information:

There is currently no call for bids for the Xalalá project. The Minister also emphasized that he wishes to avoid another case like that of the Chixoy Hydroelectric Dam, whose construction displaced several local communities, which have never been indemnified nor received any electricity until now, 30 years later.

The Ministry of Environment and Natural Resources, which is in charge of supervising environmental studies, has pledged to give importance to the studies which will be carried for the Xalalá dam. However, it cannot guarantee objective and impartial studies because this largely depends on the quality of work of the consultant in charge.

It is important to point out that the Ministry of Energy and Mines (MEM) did not receive the Mission, even though this was tried several times. However, there was a meeting with the Commission on Energy and Mines of the Congress. There, Deputy Christian Boussinot, president of the Commission, denied that there is any kind of process started with regard to the Xalalá dam. He stated to believe that this was a kind of misinformation strategy of the media and local organizations to spread anxiety amongst indigenous communities.

Finally, the Human Rights Ombudsman (PDH) indicated on this issue that it must be informed in advance about community consultations in order to be able to attend and then support its recognition.

<sup>46</sup> These rights are defined and supported, in first place, by the Constitution of the Republic, Article 67, which declares that “the lands of the indigenous communities...the family property and popular housing, enjoy the special protection of the State... which guarantees their ownership and development in order to assure all inhabitants a better quality of life”. This is also supported by the Convention 169 of ILO (see in particular articles 6, 7, 13 and 15) and by the United Nations Declaration on the Rights of Indigenous Peoples.



## 8) Land conflict on the La Perla Farm

### *Location and identification of the case*

The individuals affected by this case belong to the four following Ixiles communities located in the department of Quiché: Ilom and Sotzil, of the municipality Chajul; and Sacsiguan and Ixtupil, of the municipality Nebaj.

### *Description of the case*

The four affected indigenous communities have been victims of the historic dispossession of their lands, which concerns about 830 families (approx. 5,100 persons) who do not have sufficient land to be able to cover their basic necessities. According to studies of CONTIERRA, the Presidential Office for the Resolution of Land Conflicts, the La Perla Farm, which had an extension of 990 ha in 1896, has progressively annexed about 2.790 ha. Nevertheless, in reality it owns 5,800 ha, whereas the average family has 0.5 ha, although they are entitled to between 3.5 and 4 ha.

The communities concerned are located in the Ixil Triangle, one of the regions most affected by the civil war, which ended in 1996. The farm which dispossessed these communities belonged to Enrique Arenas Méndez, who was one of the principal promoters of paramilitary groups jointly responsible for crimes in the area.

The expansion of the farm illustrates the complicity of state agents, who enabled it to acquire small properties of other farms, often located far away. An example is the case of the fragmentation of a farm which was handed over to the militiamen of Momostenango just one day prior to a judgment in favor of the registration of the communal land, located in the northern area of the Nebaj and Chajul municipalities. Although this farm was originally registered with 1,035 ha, later on turned up registers granting it 5,535 ha. However, there exists a verdict that declares this development illegal, as the farm is on communal lands, and orders its devolution. The acquisition of fragmented land enables the La Perla Farm to further expand, dispossessing the communities of the traditional lands which its owners consider convenient.

The Peace Accords establish that the processes of illegal land grabbing, particularly of indigenous lands, must be regulated and reverted. The Mission confirmed the deep helplessness and vulnerability of indigenous communities. They were victims of dispossessions and the war was particularly brutal in their region, where whole villages were completely devastated. However, these communities currently do not receive any support to produce food nor land, so in order to survive they had to buy a piece of land to build a simple house. They did not receive any document for their purchase, so if there should be a private contract, they would not be able to register it. Consequently, they are often forced to work at almost no cost for those who dispossessed them. They can be hired only when needed, employing the whole family and without paying women and children. Moreover, the farm has established barriers which restrain the free transit and intimidate those who live on the farm. This provokes some to leave their houses, which are then integrated into the farm. Also eviction processes have been initiated, which affect mostly old people who have always lived on this land.



### ***Violated rights***

The State of Guatemala has violated its obligation to respect the rights of indigenous peoples, seeing that communities were dispossessed of their historic territories and that it contravened the Peace Accords, which were signed to correct this omission that fostered the war.

The obligation to protect has been neglected by the State, thereby leaving the communities exposed to the abuses of the landholder, who extends his territory by illegal means, exploits the need of the people to sustain themselves and imposes his law.

The obligation to fulfil has also been violated, as there are no public policies that allow the communities victimized by historic omissions and the armed conflict to recover their capacities. This aspect especially concerns women: they have been the main victims in this context, as they are mostly affected by violence and impoverishment.

#### **The violated rights identified by the Mission are:**

- The right to food, as the families do not have access to land and productive resources.
- The economic, social and cultural rights, as the individuals concerned do not have any kind of social security that allows them to enjoy a decent life through the access to health, education and housing.
- The right to work and to acceptable working conditions.
- The freedom of circulation.
- The right to restitution based on the Peace Accords.
- The ancestral rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention 169.

#### ***Demands for the fulfilment of rights supported by the Mission***

- Fulfilment of the Peace Accords through measures that solve the land tenure conflict and guarantee the recognition of the culture of the communities.
- Implementation of production projects that strengthen the communities' capacities and of projects for women, especially for victims of the war.
- Passing of the Integrated Agricultural Development Law and of public policies which, from a human rights perspective, promote the solution of agrarian conflicts and allow the rural development of the historically most affected areas.

### ***Response by the authorities***

The Secretary for Agrarian Affairs (SAA) has wide knowledge of the case. One of the possible solutions it proposes is to compensate the communities with land; the other is that a judicial process will define the property. However, it acknowledges that it does not have the funds necessary to carry out the first measure. It also admits that the second measure will be very costly, that the owners have sufficient funds to resist during a long legal process and that the legal clarification could be hindered by corruption.



The solution of this case requires the adoption of legislation such as the Integrated Rural Development Law and public policies which, from a human rights perspective, promote the clarification of agrarian conflicts and facilitate rural development in the historically most affected regions.

## 9) Land conflict on the San Luis Malacatán Farm

### *Location and identification of the case*

This case takes place in the village El Carmen Frontera, in the municipality Malacatán, department of San Marcos.

### *Description of the case*

In 1953, President Jacobo Arbenz Guzmán granted “lifelong use” of the San Luis Malacatán Farm to 300 families. However, in 1954 the governing Military Junta returned to the State all usage of the national farms, thus initiating the conflict of the San Luis Malacatán Farm and the fight of the families who worked on the farm for generations.

In 1981, the conflict worsened due to the massive dismissal of farm labourers by Ramón Campollo, who bought the farm in 1969. The families started to fight for their labour compensation payments. In 1982, a union leader was murdered and another 11 peasants were assassinated between 1982 and 1986, as a military post had been established on the farm. In 1996, 35 persons occupied the farm for the first time, with the help of the Peasant Unity Committee (CUC). In 1997, a second occupation was carried out, resulting in 2 dead and 4 injured persons. The farm was occupied for the third and last time at the end of 2002, in a massive way. This was a means of asserting pressure on the Government of Guatemala to force it to pay more attention to their demands to regulate the matters on the farm.

In order to attend to the problem, several governmental and non-governmental instances have met. However, three government administrations have not succeeded in solving the case. At this moment, 105 families are organized and continue to fight. They are associated since 2000 with the Peasant Association for Integrated Development of Malacatán (ACDIM), belonging to the Coordinating Marquense Madre Tierra, which is member of the Agrarian Platform.

The conflict has not been solved yet and the affected families did not receive any kind of indemnification for the dispossession and violations they were subjected to. Consequently, they are still living in poverty, not being able to exercise their right to food. Other of their rights are also being violated, such as their rights to health, to education, to decent housing, to free association and to life. The majority of the peasants are forced to work temporarily as labourers in Mexico and women are obliged to wash clothes of others. Moreover, women have been doubly affected during the conflict: firstly, because they do not receive equal salaries for equal work on the farm, and secondly, because many of them are widows or single mothers and must therefore carry twice the workload.



***Violated rights***

The rights of the communities that have been violated during more than five decades can be subsumed in the following way:

- Violation of the historic right to land ownership of the San Luis Malacatán Farm (a national farm) and dispossession to convert it into a private farm.
- Dispossession of their condition of landowners and violation of labour rights when the salary compensations of the dismissed labourers were not recognized.
- Violations of the right to life, to personal integrity and liberty through forced disappearances, torture and extrajudicial executions (16 dead and disappeared persons between 1982 and 1986), and through violent evictions (2 dead and 4 injured persons).
- Violations of the right to food, to health, to education and to housing.

***Demands for the fulfilment of rights supported by the Mission***

- Indemnification of the families so that they can find a place to live, land to cultivate and have opportunity to enjoy access to education and health.
- Compensation of the peasants dispossessed of utilizing the lands of the San Luis Malacatán Farm.
- That the Social Works Office of the Wife of the President (SOSEP) accepts the petition presented by the families in 2008 to be able to participate in social cohesion programs, in particular to receive solidarity bags, needed because of the lacking food.

***Response by the authorities***

After the Governmental Agreement reached with the Agrarian Platform in July 2009, there was a follow-up meeting with SAA and COPREDEH on November 17, 2009. Due to the lack of resources of SAA, it was agreed that this case will be transferred to the Secretary of Peace (SEPAZ) in order to find a quick solution.

**10) Founding of the SITRAPETEN labour union*****Location and identification of the case***

City of Guatemala, 6<sup>a</sup> Calle between 6<sup>a</sup> and 7<sup>a</sup> Avenida, Zone 1; or alternatively in the Trade Union Federation of Food, Agricultural and Allied Workers (FESTRAS).

***Description of the case***

The case of the Union of Workers of the Empresa Distribuidora del Petén (SITRAPETEN) clearly illustrates the violations of trade union and labour rights of those who spearhead the working sector



in the country. These easily lead to other violations of civil and political rights, resulting from threats and violent actions they are subjected to. These violations happen in the light of the impunity and inefficiency of the judicial system, not to mention that this even might be instrument of the applied repression.

In February 2007, workers of the company Distribuidora del Petén S.A.. organized themselves to found a labour union with the goal of defending their labour rights. Since February 2007, when the trade dispute with social character was treated in the Labour Court for the first time, the formation of the labour union was rejected five times by the Ministry of Labour and Social Protection. According to the complaints of the unionized workers, the reason to reject the final formation of the union corresponds to the dilatory strategies used by the company. These have consisted of strong measures of pressure, such as the application of unfavourable working conditions and money offers, as well as physical pressure, intimidations and threats. Through such actions, the company partly achieved the division of the organized workers. Therefore, several members of the labour union to be founded were forced to report the existence of anomalies in its formation, and also to present their renunciation to be part of the union.<sup>47</sup>

The delay and retardation in the formation of the union was used by the owners of the Distribuidora del Petén to wind it up and to constitute other incorporated companies, to which the assets, rights and obligations of the company were transferred. This transfer was completed 4 days before the Ministry of Labour and Social Protection recognized the legal representation of the labour union. The labour obligations towards the members of the SITRAPETEN union were not transferred to the new companies. However, through intervention of FESTRAS, the reinsertion of the SITRAPETEN union members into the newly founded company Distribuidora Primordial S.A. was achieved, as successor with regard to the labour obligations towards the union members. This was declared legal by the Labour and Social Provision Court no. 6, but it was revoked by the Chamber 3 of the Court of Appeals. The mentioned resolution of reinsertion has initiated a legal battle, presently at the constitutional level. The Constitutional Court must resolve an appeal for legal protection presented before the Supreme Court of Justice.

Although the members of SITRAPETEN have appealed to all legal instances needed for the solution of their labour situation, they have not achieved any definite sentence yet. In view of this delay, they chose to organize a permanent manifestation on the Constitutional Square, which has already lasted for more than one year. Their objective is that the State of Guatemala guarantees the proper protection of their labour and trade union rights, as well as their rights to enjoy a decent life and to adequate food.

### ***Violated rights***

The members of the SITRAPETEN labour union have been victims of a severe infringement of their trade union and labour rights, which has led to the violation of their civil and political rights. The mere fact of forming a labour union at their working place has led to the arbitrary ending of their employment contracts and the loss of their salary incomes, on which they depend to assure their livelihood and that of their families. Moreover, they also suffered attacks to their physical integrity.

<sup>47</sup> The Guatemalan Labour Law establishes a minimum amount of 20 workers for the valid formation of a labour union.





Both the lack of a prompt application of justice by the administrative authorities and the usual delay of the Guatemalan legal instances to protect labour and union rights, hidden behind various legal formalities which seem to favour the most powerful part of the employment relationship, indicate a possible violation by the State of Guatemala of its obligation to protect the economic, social and cultural rights, especially the right to food, of the members of SITRAPETEN and their families.

### ***Demands for the fulfilment of rights supported by the Mission***

- Reinsertion of the SITRAPETEN members into their jobs in the commercial successor of the company, which must recognize its labour obligations, so that the workers receive a salary to assure the livelihood of their families; as well as the payment of the unpaid salaries.
- The prompt intervention of the administrative and judicial authorities responsible for the solution of the conflict.
- The strict fulfilment of the Guatemalan labour legislation, as well as of international labour and human rights treaties to which the State of Guatemala is State Party, abandoning simple formalisms and legal subterfuges which only distort the economic, social and human reality of the conflicting parties.

### ***Response by the authorities***

The Mission tried on several occasions to arrange a meeting with the Ministry of Labour and Social Protection in order to reach a clearer understanding of the efforts undertaken by the State of Guatemala to resolve the present labour conflict. However, no answer was received from the ministry.

Nevertheless, members of the Mission were able to conduct an interview with Juan Francisco Flores Juárez and Carlos Enrique Luna Villacorta, respectively president and vice president magistrates of the Constitutional Court, and to transmit them their concern regarding a prompt attention and solution of the case in the Constitutional Court.

After the visit of the Mission on December 9, a municipal judge, accompanied by several officers of the National Civil Police, appeared on the main square where the former workers are precariously living. The judge, who had no jurisdiction in the matter, announced that an eviction order had been issued. In fact, such eviction order never existed, neither at that moment nor later, but several representatives of SITRAPETEN declared that the judge referred to “a verbal notification”. However, the union members insisted on their constitutional rights to demonstrate and protest peacefully, and also demanded the creation of a high ranking working group for dialogue to find a solution to the labour conflict.

The following day, the International Human Rights Day, the judge returned to the square accompanied by a hundred riot police officers to carry out the eviction, which lasted about two hours. Assisted by the Municipal Traffic Police, the National Police violently removed all belongings of the workers and forced them to leave the square using teargas grenades. After this first eviction, the members of SITRAPETEN, together with other solidarity organizations, reoccupied the place to continue their peaceful protest. But they were again evicted, in the evening of the same day, by riot police officers. Once again, several persons were attacked with teargas, including members of the Human Rights Convergence (*Convergencia de Derechos Humanos*). It seems that the justification



for the eviction was that the program “La Academia” of the Mexican TV station “Azteca” was to be televised on the Constitution Square. After a dialogue with the Deputy Minister for Community Support of the Ministry of the Interior, it was agreed that the union members could remain on the square. Moreover, it was also decided to form a negotiation group, whose first session was held on December 16 in the Office of the Human Rights Ombudsman. Nonetheless, they have not been able to find a solution for the problem yet.

## 11) Labour conflict on the Nueva Florencia Farm

### *Location and identification of the case*

The Nueva Florencia Farm is located in the region of Chuvá, municipality of Colomba Costa Cuca, department of Quetzaltenango.

### *Description of the case*

Since being dismissed illegally in March 1997, the 38 women and men who worked on the Nueva Florencia Farm demand their reinsertion and the payment of the salaries they did not receive. They were dismissed when they organized themselves into a labour union. The group won the sentences in all legal instances, even in the Constitutional Court. The legal resolution ordered firmly their immediate reinsertion and payment of the salaries withheld since 1997. However, the owners of the Nueva Florencia Farm, the family Bruderer Berger, have refused to implement the judicial sentences, adopting delaying measures instead. Consequently, up to October 2008, the judicial resolution had still not been implemented. On October 23, 2008, the case was presented and discussed with the Inter-American Commission on Human Rights (IACHR) and, in this framework, the Government of Guatemala, in a joint effort with the judicial power, the Ministry of Labour and Social Protection, the Department of Labour Inspection, the Public Ministry, the Ministry of the Interior and the General State Attorney of the Nation accepted to convene a specific commission dealing the inefficiency of labour justice, with the purpose of finding a solution to this and other similar cases.

However, instead of being solved, the situation worsened: confronted with multiple threats and the destruction of the house of Eswin Ranferi López, the legal representative of the dismissed persons, during Christmas 2008, the families finally abandoned the farm and searched for shelter in surrounding communities and cities. Already in former years, many of the families of the labourers dismissed in 1997 were forced, in view of the need to feed themselves, to abandon the fight and to accept the ridiculous indemnification paid by the owners. During the whole conflict, the farm administration restricted more and more the possibility to live in the place. This affected particularly women: the access to the mill and the recollection of firewood on the farm were denied, and electricity was cut arbitrarily to apply pressure. Finally, in February 2009, the 8 remaining families became desperate and negotiated with the owners for an indemnification of Q25,000 per family. This was only a minimal part of the debt that the family Bruderer Berger had to pay to compensate the retained salaries and other labour costs, in accordance with the law and the judicial sentence.

The State of Guatemala, by signing the agreement with the Agrarian Platform on July 30, 2009, accepted that the lacking access to effective justice had affected the families of Nueva Florencia.



Therefore, it signed a commitment to provide Q1 million to indemnify the workers. However, the mechanism proposed to distribute this sum, namely buying a farm through the Secretary for Agrarian Affairs (SAA), has proved to be unfeasible due to two reasons: the amount is not sufficient to buy a farm in the region and, in view of the low budget of the SAA, it is also not possible to increase this amount. The Mission had the opportunity to take part as observers in the dialogue between women and men labourers, COPREDEH and the SAA on November 17, 2009, and confirms that it is almost impossible that the indemnification can be channelled through SAA.

### ***Violated rights***

The Mission verified that the following rights were violated in this case: the right to form or join a union, the right to food, the right to justice, the right to personal integrity and the right to housing.

### ***Demands for the fulfilment of rights supported by the Mission***

- The indemnification of the families of labourers who were dismissed in 1997, and who never enjoyed the implementation of the judicial sentence ordering their reinstatement and the payment of retained salaries.
- COPREDEH must submit shortly a report about the case and about the progress of the commission dealing the inefficiency of labour justice to the IACHR, given that according to the agreement reached on October 23, 2008, the report should have been presented six months later, and that it has not been delivered yet, one year later.

### ***Response by the authorities***

The Secretary for Agrarian Affairs committed itself to revise the database of the Land Fund (FONTIERRA) in order to thoroughly evaluate the possibility of buying a farm to compensate the affected families. If this should not be possible, COPREDEH and the Secretary of Peace (SEPAZ) will search a more appropriate way to solve this issue.

## **12) Distribution of genetically modified food donations**

### ***Location and identification of the case***

This case is situated in the municipality of San Mateo Ixtatán, department of Huehuetenango, zone Chuj, which has an extension of 560 km<sup>2</sup>. San Mateo Ixtatán is the municipality with the highest poverty rates in the department. It has a population of 49,000 inhabitants, of whom approx. 13,000 are children and 3,000 women are widows, the majority with children. The official index of malnutrition is 73%.



### ***Description of the case***

This case refers to the distribution of food with genetically modified ingredients to the families in the municipality of San Mateo Ixtatán by the State of Guatemala.

The food donations are produced by Alimentos S.A, a private enterprise contracted by the Government. The distribution of the product “Vitacereal”, whose main ingredients are corn and soya, is part of the National Strategy for the Reduction of Chronic Malnutrition. Based on complaints, the Development Council (*Consejo de Desarrollo*) supported the municipality to commission a first analysis, in which 5 genetically modified varieties of corn and 3 of soya were detected. In the second analysis, no genetically modified corn was found, as it was replaced by national corn. However, the genetically modified soya was still present.

The Mission ascertained that many mothers rejected the food whose security is not duly certified by the Government. This is due to the fact that some children suffered from diarrhea and skin diseases after consumption. Moreover, it is alarming that even though this is a very poor municipality with a high rate of malnutrition, there are no other government programs which comply with the necessities according to international standards: government programs must acknowledge the principle that also food aid has to respect what the recipients consider a culturally adequate alimentation and must also respect the principle that these persons have the right to be duly informed about the nutritional content of the donations they receive.

### ***Violated rights***

The State of Guatemala does not fulfil its obligation to respect the right to food of the communities, by providing food which is contrary to the culture of indigenous peoples and not informing them adequately about its ingredients.

This is also valid for the obligation to protect the right to food: the State permits companies to use products whose innocuousness has not been proven, thereby contravening the precautionary principle. It also violates this obligation by allowing the use of foreign products that compete under advantageous conditions with the national production.

The State of Guatemala also does not fulfil its obligation to guarantee the right to food, when it ignores the importance of letting the local population participate in the recovering of productive capacities in the communities, which would be achieved if local products were used.

### ***Demands for the fulfilment of rights supported by the Mission***

- Disallow the distribution of genetically modified products in order to prevent the environmental damages they cause to the biodiversity and cultural patrimony of the people, and to give priority to the use of local products to strengthen the local market and the productive capacities of the communities.
- Provide other modes of support, such as the development of production projects that supply resources to eradicate malnutrition in the region and, in view of the rich forest resources of the area, of programs to preserve and manage the forests sustainably, as well of projects to grow vegetables and raise small domestic animals. Such projects should especially be targeted at women, because they are not only the most affected by malnutrition, but they also are responsible for feeding their families.



### ***Response by authorities***

It was on the initiative of the municipal Mayor of San Mateo Ixtatán that samples of the food donations had been collected. He is therefore the main promoter in the defence of an adequate alimentation of those who receive donations. The Mayor commented to the Mission that he demanded the expansion of the program “My Family Progresses”. However, he was not very hopeful that he would receive a positive response: the program requires children to go to school and to the health clinic, but poor people, like the widows, are forced to go out to work with their children, who therefore cannot fulfil such requisites. The community has presented charges with different authorities and has also communicated its inconformity to the communal organizations and to the Community Council for Development (COCODES). Consequently, the use of the food product concerned has been rejected in other communities.



## 10. Conclusions and recommendations of the Mission

Based on the study of the cases and on the analysis of the situation of the right to food and of human rights defenders, the Mission has established the following:

- It recognizes that there exists a well-defined legal and institutional framework with relation to the protection of the right to food in Guatemala.
- The food crisis represents a serious and ongoing threat to the development of the country and the wellbeing of its population, in particular of indigenous and peasant communities.
- The Government's response to the food crisis has entailed unprecedented public expenditures, with the assistance of international cooperation, to combat the immediate consequences of acute malnutrition.
- However, the policies of the State have not considered nor implemented the broadest application of the right to food in order to fulfil its obligations to respect, protect and fulfil.
- The Mission has observed violations of the obligation to respect in the context of forced evictions, the expansion of agrofuel production and megaprojects, which have severe consequences for the right to food, the right to water and the right to housing.
- With regard to the obligation to protect, the Mission has verified cases of violations of labour rights and of dispossession of peasant and indigenous communities, with negative impacts on their enjoyment of their rights to food, land and territory.
- In order to meet its obligation to fulfil, the State of Guatemala must implement policies on agriculture and rural development, as well as an integrated agrarian reform and a minimum wage which is sufficient to cover the basic basket for subsistence.
- In all verified cases, the Mission observed multiple discriminations against women, in particular regarding their right to food, to health, their labour rights, and their rights to land and water.
- The State must use the maximum of its available resources in order to progressively achieve the full realization of economic, social and cultural rights. Therefore, it must bring about a tax reform that allows the collection of resources for such purpose.
- The Mission has noted with concern the increasing violence and threats against social, community, indigenous, peasant and union leaders who promote and defend the rights of the population.
- At the same time, it also ascertained a strong tendency to criminalize human rights defenders and different demands and claims of the population, particularly with regard to community conflicts related to land, territory and the protection of natural resources.
- Considering the great challenge of effectively fighting the causes of hunger in Guatemala, the Mission observes the need of a greater rationalization of resources, and of better inter-institutional cooperation and coordination between the different State bodies, as a joint effort with the civil society.
- In view of the identified problems, the Mission makes the following recommendations to the State of Guatemala, to the international community and the civil society:



**To the State:**

- To resume the unfulfilled agenda arising out of the Peace Accords, with special emphasis on the follow-up to socio-economic aspects, as for instance access to land, to natural and productive resources and to justice. This would allow the most vulnerable sectors of the country to be fully reintegrated into society, thereby contributing to break down the barrier of social inequality.
- To declare the promotion and protection of the right to food a national priority, thus guaranteeing its strict and coherent implementation in all State policies and activities that might impact the food situation of families, communities, municipalities, departments or the nation as a whole.
- To adopt integrated rural development policies, for which an appropriate budget would be necessary to execute the approved Agricultural and Integrated Rural Development Policies, and to promptly pass the Law for a National System of Integrated Rural Development.
- To declare a moratorium on the forced evictions, as long as there are no coherent legislation and administrative proceedings which are consistent with international human rights law with regard to the right to food and housing. Also to elaborate, in coordination with international human rights bodies and the civil society, legal and administrative directives for the implementation and protection of human rights in cases of agrarian conflicts.
- To adopt, on the municipal, departmental and national levels, programs of land use planning which emphasize the democratization of the access to land and of land tenure and the execution of an integrated land reform, and which also promote family based agriculture, protect the lands of indigenous peoples and preserve natural resources. These programs must be developed with the full participation of the rural population and organizations which represent it.
- To stop the expansion of agrofuel production, giving priority to the sustainable production of food and to the overcoming of the crisis by means of the promotion of peasant and indigenous agriculture and economy.
- To create a legislation to restrict and control the purchases/sales of land by foreign companies, establishing limits to the concentration of land in the hands of private actors.
- To redirect the energy policies which at present are focused on the implementation of megaprojects, with the aim of converting these into strategies adjusted to the necessities of the rural population and in harmony with the protection of the environment, through projects agreed by consensus with the population.
- To revise the Mining Law based on the full recognition of ILO Convention 169 and the results of community consultations, taking into account the prohibition to use cyanide in the mining industry, guaranteeing the right to food and water, and thus preventing processes of desertification and environmental damages, and ensuring a just distribution of the profits.
- Considering that there is a historic debt to women, it is necessary that all public policies effectively incorporate the gender aspect and the equal rights of peasant women, indigenous women and mothers living under conditions of social vulnerability.
- That the social policies and programs executed by the Government be more equal and democratic, and that they observe the human rights principles of public participation, transparency, non-discrimination and accountability, avoiding their exploitation with political purposes.



- To strengthen the enforcement of labour legislation, with special attention on the effective extension and action of the Department of Labour Inspection and of labour justice, with the aim that labour rights will be respected and promoted.
- To ensure the effective access of the population to the legal system, working to strengthen the capacities of the administrative institutions of justice, in particular in relation to the implementation of international standards on economic, social and cultural rights.
- To adopt measures to guarantee the effective protection of human rights defenders and to institutionalize the Institute for the Analysis of Attacks against Human Rights Defenders.
- To stop and prevent any kind of action which might lead to criminalization of human rights defenders and activists of the peasant, indigenous and labour union movement.
- To provide a rapid and effective investigation and responsible assumption of charges related to human rights violations, with the aim of ending impunity, even in situations in which economic and political interests might interfere.
- To strengthen, democratize and diversify the tax collection system in order to increase the public spending capacities of the State, specifically with regard to funds allocated to improve the living conditions of the most vulnerable segments of society.

***To the international community:***

- To resolutely support the efforts undertaken by the Government of Guatemala to confront the immediate consequences of the food crisis.
- To support politically and financially the policies and programs of the State aimed at achieving the full realization of the right to food, as it has been itemized by the Mission in its recommendations to the State.
- To revise all trade policies and agreements which have been made or are in a process of negotiation with the Government of Guatemala and the Central American region, so as to examine and guarantee their consistency with human rights, especially with regards to economic, social and cultural rights. We recommend a thorough revision of the Dominican Republic – Central America Free Trade Agreement (DR-CAFTA).
- We urge the European Union to suspend the negotiations regarding the Association Agreement with Central America until democracy and the constitutional order are fully restored in Honduras. The situation in Honduras is a further reason to put these negotiations on hold and to allow more time in order to ensure the full restoration of democracy in the region and to pay more attention to the social and environmental consequences of the agreement.
- To revise policies directed at promoting investment into the production of agrofuels and mining and energy megaprojects, with the purpose of preventing severe violations of the right to food, to water and of the rights of indigenous peoples.
- To promote measures and actions intended for the protection of human rights defenders in Guatemala.





***To civil society:***

- We express our profound gratitude for the hospitality and company offered to the members of the Mission by the Guatemalan organizations. We would also like to reemphasize our solidarity with the courageous fight of the Guatemalan people for the defence of human rights and resistance to all measures that threaten the peace process.
- We recommend to the organizations defending human rights to maintain a close relationship to the different social, peasant, indigenous, environmental and labour union organizations in order to monitor the evolution of the situation of human rights in the country, with special regard to the cases of violations of economic, social and cultural rights, particularly of the right to food.
- The Mission commits itself to follow up the cases verified in this visit to contribute to the promotion and defence of the right to food and other human rights in Guatemala.



## 11. List of Acronyms

|           |                                                                                                                                                               |
|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ACDIM     | Asociación Campesina de Desarrollo Integral Malacateco (Peasant Association for Integrated Development of Malacatán)                                          |
| ACODET    | Asociación de Defensa de la Tierra y los Recursos Naturales (Association for the Defence of Land and Natural Resources)                                       |
| APRODEV   | Agencias de Desarrollo ligadas al Concejo Mundial de Iglesias (Association of World Council of Churches related Development Organisations in Europe)          |
| CALDH     | Centro de Acción Legal y Derechos Humanos (Centre for Legal Action on Human Rights)                                                                           |
| CCS       | Consejo de Cohesión Social (Council for Social Cohesion)                                                                                                      |
| CEDAW     | United Nations Committee on the Elimination of Discrimination against Women                                                                                   |
| CGN       | Compañía Guatemalteca del Níquel (Guatemalan Nickel Company)                                                                                                  |
| CIDSE     | Coalición de Agencias Católicas para el Desarrollo (International Cooperation for Development and Solidarity), Coalition of Catholic Agencies for Development |
| CIFCA     | Iniciativa de Copenhague para Centroamérica y México (Copenhagen Initiative for Central America and Mexico)                                                   |
| CIIDH     | Centro Internacional para Investigaciones en Derechos Humanos (International Center for Human Rights Research)                                                |
| CNOC      | Coordinadora Nacional de Organizaciones Campesinas (National Coordinating Committee of Peasant Organizations)                                                 |
| COCODES   | Consejo Comunitario de Desarrollo (Community Development Council)                                                                                             |
| CONAP     | Consejo Nacional de Áreas Protegidas (National Council of Protected Areas)                                                                                    |
| CONASAN   | Consejo Nacional de Seguridad Alimentaria y Nutricional (National Council for Food and Nutritional Security)                                                  |
| CONIC     | Coordinadora Nacional Indígena Campesina (National Indigenous and Peasant Coordinating Committee)                                                             |
| CONTIERRA | Comisión Presidencial para la Resolución de Conflictos de Tierra (Presidential Office for the Resolution of Land Conflicts)                                   |
| COPAC     | Comisión Presidencial para la Atención a Crisis (Presidential Office to Address the Crisis)                                                                   |
| COPAE     | Comisión Pastoral Paz y Ecología (Pastoral Commission for Peace and Ecology)                                                                                  |
| COPREDEH  | Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos (Presidential Human Rights Commission)                         |
| CSJ       | Corte Suprema de Justicia (Supreme Court of Justice)                                                                                                          |
| CUC       | Comité de Unidad Campesina (Peasant Unity Committee)                                                                                                          |
| DEIC      | Unidad de Derechos Humanos de la División Especializada de Investigaciones Criminales (Human Rights Unit of the Special Division for Criminal Investigation)  |
| ECSR      | Economic, Social and Cultural Rights                                                                                                                          |
| ENRDC     | Estrategia Nacional para la Reducción de la Desnutrición Crónica (National Strategy for the Reduction of Chronic Malnutrition)                                |
| FAO       | Food and Agriculture Organization of the United Nations                                                                                                       |
| FESTRAS   | Federación Sindical de Trabajadores de la Alimentación, Agro Industrias y Similares (Trade Union Federation of Food, Agricultural and Allied Workers)         |



|            |                                                                                                                                      |
|------------|--------------------------------------------------------------------------------------------------------------------------------------|
| FIAN       | FoodFirst Information and Action Network (International Organization for the Right to Food)                                          |
| FIDH       | Federación Internacional de Derechos Humanos (International Federation for Human Rights)                                             |
| FONAPAZ    | Fondo Nacional para la Paz (National Fund for Peace)                                                                                 |
| IACHR      | Inter-American Court of Human Rights                                                                                                 |
| ICTA       | Instituto de Ciencia y Tecnología Agraria (Institute of Agricultural Science and Technology)                                         |
| ILO        | International Labour Organization                                                                                                    |
| INAB       | Instituto Nacional de Bosques (National Forest Institute)                                                                            |
| INDE       | Instituto Nacional de Electrificación (National Institute of Electrification)                                                        |
| INTA       | Instituto Nacional de Transformación Agraria (National Institute for Agrarian Transformation)                                        |
| MAGA       | Ministerio de Agricultura, Ganadería y Alimentación (Ministry of Agriculture, Livestock and Food)                                    |
| MARN       | Ministerio de Ambiente y Recursos Naturales (Ministry of Environment and Natural Resources)                                          |
| MEM        | Ministerio de Energía y Minas (Ministry of Energy and Mines)                                                                         |
| MSPAS      | Ministry of Public Health and Social Assistance (Ministerio de Salud Pública y Asistencia Social)                                    |
| OBS        | Observatorio para la Protección de los Defensores de los Derechos Humanos (Observatory for the Protection of Human Rights Defenders) |
| OMCT       | Organización Mundial Contra la Tortura (World Organization Against Torture)                                                          |
| PCA        | Plan de Contingencia y Emergencia Alimentaria (Food Contingency and Emergency Plan)                                                  |
| PDH        | Procuraduría de Derechos Humanos (Human Rights Ombudsman)                                                                            |
| PNC        | Policía Nacional Civil (National Civil Police)                                                                                       |
| PNLL       | Parque Nacional Laguna Lachuá (National Park Laguna Lachuá)                                                                          |
| REDSAG     | Red Nacional por la Defensa de la Soberanía Alimentaria en Guatemala (National Network for the Defence of Food Sovereignty)          |
| SAA        | Secretaría de Asuntos Agrarios (Secretary for Agrarian Affairs)                                                                      |
| SEPAZ      | Secretaría de la Paz (Secretary of Peace)                                                                                            |
| SESAN      | Secretaría de Seguridad Alimentaria y Nutricional (Secretary for Food and Nutritional Security)                                      |
| SINESAN    | Sistema Nacional de Seguridad Alimentaria y Nutricional (National System on Food and Nutritional Security)                           |
| SITRAPETEN | Sindicato de Trabajadores de la Distribuidora del Petén (Union of Workers of the Empresa Distribuidora del Petén)                    |
| SOSEP      | Secretaría de Obras Sociales de la Esposa del Presidente (Social Works Office of the Wife of the President)                          |
| UDEFEUGUA  | Unidad de Defensores de los Derechos Humanos de Guatemala (Unit for Protection of Human Rights Defenders in Guatemala)               |



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