



Executive summary

The right to adequate food and nutrition and the situation of human rights defenders in Guatemala

Report by the Third International Mission

2015

1. EXECUTIVE SUMMARY

In November and December 2014 the third International Mission on the right to adequate food and nutrition and the situation of human rights defenders in Guatemala took place. The Mission was made up of six organisations, networks and international social movements: ACT Alliance EU, the International Alliance of Catholic Development Agencies (CIDSE), the Copenhagen Initiative for Central America and Mexico (CIFCA), FIAN International, the Latin American regional secretariat of the International Union of Food Workers (Rel-UITA), and La Via Campesina International.

In order to address the situations and heed the denunciations from the two previous missions, which took place in 2009 and 2010, the respective reports had presented recommendations. Several state-level authorities and the international communities had committed to implementing specific redress measures. Four years on, very little progress was noted in the implementation of these recommendations. Moreover, the Mission received information and proof of the deterioration of the realisation of the Right to Adequate Food and Nutrition (RtAF), of violations of the RtAF, as well as of the worsening of human rights (HR) defenders' situation.

Backed by international organisations, the 2014 Mission undertook intensive fieldwork and held several meetings with state offices and with the international community. The objective was to receive and update information on the six emblematic cases of HR violations and on the attacks of HR defenders: La Puya, San Rafael Las Flores, Valle del Polochic, La Blanca/ Ocós, Xalalá and Camotán. In addition, the meetings addressed the problems that hinder the full realisation of the RtAF. Based on this work, the Mission concluded the following:

Access to and control over natural resources

The state imposes a development model that has not been legitimised by an appropriate democratic process. It is based on the extraction of natural resources for export, benefitting the transnational business sector. This model is contrary to the development model of indigenous peoples, peasants and other rural populations, as it leads to the grabbing of natural resources, thus limiting the communities' access to and control over them.

The State of Guatemala does not recognise the right of indigenous peoples over their ancestral territories, nor does it have effective legal mechanisms that guarantee collective property titles over ancestral territory. The lack of a registry of indigenous territories exacerbates the legal uncertainty over land tenure. There is no recognition or protection of legitimate rights of tenure over land and forests of other rural populations, nor is there a transparent authorisation mechanism in place to assess industrial agricultural investments in order to ensure that they do not jeopardise territories that are used for environmentally sustainable, traditional, indigenous-peasant, agro-ecological practices.

Free, prior, informed consent and access to information

The Mission noted that the state systematically fails to fulfil its duty to seek free, prior and informed consent from affected communities on projects and development on their territories. There is no record of consultation or even of independent human rights, environmental and social impact assessments. In those cases where environmental impact assessments have been carried out, they have been impartial. In technical terms, they have not been thorough; there has been a lack of access to relevant information to guarantee that communities can participate as citizens. The right to consultation is not regulated at national level due to the State's lack of political will and, as a result, the dearth of consultation is partly related to the weakness or nonexistence of adequate mechanisms. In three of the six cases that the Mission visited, the state offices that were responsible for promoting the consultation actually impeded their implementation, while in the two cases where consultations were undertaken in good faith, the authorities did not respect the results.

Addressing hunger and malnutrition

The fight against hunger has had meagre results, despite the existence of a Zero Hunger Pact Plan. There has been a visible violation of the RtAF of women, children and other population groups. This is partly due to weak coordination mechanisms between the State offices that are responsible for the food security programmes in question, along with the low budget earmarked for them. Furthermore, a predominantly aid-centred approach was taken. The Mission heard from several witnesses describing political clientelism and conditioning of food aid programmes. Generally speaking, the structural causes of hunger are not addressed and there is scarce coherence between legislation that widely recognises the RtAF and public policies and laws on the use and governance of labour, trade and natural resources, leading to negative impacts on the ever-increasingly vulnerable population.

Extraterritorial Human Rights Obligations

Transnational corporations investing in Guatemala are involved in violations of human rights and legitimate land tenure rights. However, their States of origin do not adopt measures to prevent, protect or redress these violations. Therefore, investor states and those promoting investment in Guatemala are not complying with their extraterritorial obligations in the area of economic, social and cultural (ESC) rights and environmental protection. Evidence can be found in La Puya, San Rafael Las Flores and Polochic, involving the states of Canada, the United States of America and Nicaragua respectively.

The role of the private sector

The private sector is replacing the State in areas related to its human rights obligations, such as food aid, education, health, security and job creation. The private sector is thus using public spaces for propaganda and to condition people regarding access to their services. Women

and children from communities that show resistance towards the companies' projects are discriminated against, excluded or even threatened. The Mission heard from several witnesses about the direct intervention of private companies in public spaces such as education or security.

Some communities are being coerced to accept that companies involved in violations against their rights also participate in dialogues between the State and the communities. One example is the case of La Puya. This type of dialogue is of public interest and is based on the State's HR obligations towards its citizens. Companies should not participate in the one-on-one relationship between the State and its citizens, as there is a conflict of interests. Moreover, companies do not have HR obligations. The State of Guatemala has the obligation to regulate the activities of companies in order to prevent, investigate, punish and redress the serious consequences for affected communities.

The situation of human rights defenders

Since the last visit in 2010, there has been a highly alarming increase in stigmatisation, threats, criminalisation and violence by the States and other actors towards human rights defenders. ESC rights defenders are particularly criminalised; there is a clear lack of due process and a breach of the principles of legality and proportionality in criminal law enforcement. In many cases, the proceedings against defenders are too swift, while the proceedings against company representatives are hampered by appeals that are aimed at lengthening them. Most attacks against defenders go unpunished due to an inefficient and biased justice system. The testimonies and evidence regarding smear campaigns against international organisations across different media are worrying, as they go against national efforts to defend HR. Among the communities that the Mission visited, there were reports on intimidation, excessive use of force, increasing militarisation, the abuse of state emergencies and the involvement of private security forces in those areas that fall under the remit of public security forces, including the state's response to maintain public order and defend its rights.

The situation of women

Women are particularly affected by violations of the RtAF and the right to land and water, as they are generally responsible for providing and preparing food, caring for their children, the family's health and hygiene and other domestic and productive activities. Women strongly identify with their territory and with natural resources and feel strongly about their children's future and about the surrounding environment, leading to a greater awareness, will and courage to defend their rights and HR in general. During this Mission, we saw that women are more empowered and further involved in civil society struggles, yet it is extremely worrying to note that, in recent years, there has been a rise in violent attacks against them.

Based on these conclusions, the Mission recommends the State of Guatemala to:

Regarding the right to adequate food and nutrition and related rights:

- Recognise and treat hunger and malnutrition as a problem of national interest, addressing the historical and structural problems that generate it, from a human rights-based approach. Different government offices responsible for implementing policies and programmes for the eradication of hunger and malnutrition (the Zero Hunger Pact, Programme and Plan) need to be better coordinated and should ensure that there are enough financial and human resources to this purpose. The State should strengthen the capacities of the Ministry of Environment and Natural Resources, the Ministry of Energy and Mines and the Ministry of Agriculture in order to ensure policy coherence and consistency in their actions within the framework of international human rights standards, by guaranteeing for instance, free, prior and informed consent as well as impartial and good quality social and environmental impact studies.
- Ensure the primacy of HR and the interests of the population over the private sector's economic interests, which put the RtAF at risk, by involving communities in the decision-making process surrounding the development model.
- Create an institutional political framework by means of a democratic process that includes civil society, thus enabling the implementation of the Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries and encouraging a greater coherence between the State's policies and HR.
- Adopt a HR-based legislation and approve the Law on Rural Development, while giving priority to rural development and agrarian policies, in accordance with the demands of peasant movements and other sectors and in line with the land tenure guidelines.
- Promote the adoption of a Law on Water to regulate its use, in order to guarantee priority access for communities and setting limits for its use in monocultures and mining. An independent body should regularly monitor water and sediments for levels of contamination. Legislation should be put into place to restrict and control the purchase of land by foreign companies, thus establishing limits to the concentration of land and the expansion of extractive industries and monocultures.
- Define mechanisms to prevent conflict of interests that arise when the private sector participates in and supports public policies, such as for example in health, security, education and food aid, thus ensuring that the private sector does not supplant state actions, but complements them instead. Any support granted must be in line with principles of equality and non-discrimination in the provision of services.
- Ensure that dialogue processes between the State and affected communities are built on the premises that the State is the only entity that holds HR obligations, which is not

the case of companies. Any additional mechanisms that involve the private sector should fittingly regulate their participation in order to gain transparency and avoid conflict of interests.

Regarding human rights defenders:

- Ensure that citizens can freely exercise their right to social protest and freedom of expression and particularly protect human rights defenders by means of actions that are aimed at preventing and eliminating violence, criminalisation, intimidation and stigmatisation, to which these persons are subjected.
- Respect due process and guarantee the principles of legality and proportionality in the application of criminal law, especially in cases filed against human rights defenders.
- Comply with the principle of proportionality in the use of force by the authorities during states of emergency, i.e. not recurring to militarisation and guaranteeing non-violence while enabling citizens to freely exercise their constitutional rights.

The Mission recommends the international community to:

- Monitor and contribute further to State FSN policies, programmes and institutions by centring their efforts on combatting the structural problems of poverty and hunger and promoting the integration of a human rights-based approach.
- Take into account the need to ensure the proper functioning of the institutional support group, focusing on ESCR, such as in the protection of human rights defenders.
- Embassies of those countries of origin of companies that are investing or promoting investment in Guatemala should comply with extraterritorial obligations within the framework of ESCR and in line with the Principles of Maastricht, which states have a duty to fulfil in foreign investments.
- Monitor that their countries' financial investments in projects do not foster land grabbing, which leads to land conflicts.

The Mission recommends the European Union to:

- Guarantee coherence between European policies on human rights and policies that have a direct or indirect impact of poverty, hunger and the situation of human rights defenders, such as for example the Association Agreement between the EU and Central America.
- Within the framework of policy dialogue with the Government of Guatemala, express concern over the violation of human rights, such as communities' right to food and decent housing, and remind them of their responsibility to protect, promote and realise human rights.

- Continue making stronger efforts to protect HR defenders, by means of the implementation of guidelines on defenders through public demonstrations of support for them and their organisations, more direct communication, and visits to communities and their defenders, especially those in rural areas far from the capital.
- The European Union should base its activities to protect HR defenders on the state's HR obligations, in that sense, companies should not be encouraged to participate in dialogues with communities, nor participate as a filter group for institutions that protect HR.

The Mission recommends Guatemala's civil society to:

- Continue its efforts to promote unity, foster coordination and create strategic alliances.
- Continue fomenting the participation and the empowerment of women in the defence of FSN and HR.
- Continue promoting knowledge about and the defence of HR in Guatemala through public events and campaigns.
- Demand that the State undertake and respect the results of free, prior and informed consultations among communities.
- Remain committed to advocacy and dialogue with the State. The State is responsible for development policies and programmes and for its obligations to respect, promote and guarantee HR.
- Insist on institutional and budgetary support to state bodies responsible for rural development, food security and HR and oppose budget cuts in these areas.
- Demand that the State and international community respect human rights in the implementation of trade agreements and investments.
- Reiterate that the State, and not companies, holds human rights obligations, as a result of power bestowed upon it by means of democratic elections. Human rights are a tool derived from people's sovereignty, with which to inform and limit state activity.