

RIGHTS OR PRIVILEGES?

Fiscal Commitment to the Rights to Health, Education and Food in Guatemala

EXECUTIVE SUMMARY



The Central American Institute for Fiscal Studies (ICEFI by its acronym in Spanish) undertakes economic research and technical analysis related to fiscal issues in Central America. Founded in 2005, the Institute is independent from any kind of political, social or governmental group. ICEFI also provides information, training and consultancy about fiscal policy to governments, parliaments, social and political organizations, and private institutions to positively influence the creation of public policies that build thriving, fair, and democratic societies. ICEFI promotes debate and the exchange of information about fiscal issues in Central America, with a long term perspective, providing technical inputs in order to favor political and social consensus on fiscal policy. www.icefi.org

The Center for Economic and Social Rights (CESR) works to promote social justice through human rights. In a world where poverty and inequality deprive entire communities of dignity, justice and sometimes life, CESR seeks to uphold the universal human rights of every human being to education, health, food, water, housing, work, and other economic, social and cultural rights essential to human dignity. CESR exposes violations of economic and social rights through an interdisciplinary combination of legal and socioeconomic analysis. Together with civil society groups around the world, CESR advocates for changes to economic and social policy at the international, national and local levels so as to ensure these comply with international human rights standards. www.cesr.org

With the support of



Center for Economic and Social Rights (CESR)

Fuencarral 158, 1A, 28010 Madrid, España. Tel: +34 91 448 3971.

162 Montague Street, 3rd Floor, Brooklyn, NY 11201, USA. Tel: +1 718 237 9145. www.cesr.org.

Instituto Centroamericano de Estudios Fiscales (ICEFI)

9 calle 5-21 J, zona 10, Guatemala, Guatemala. Tel: +502 2361 1570 al 74. www.icefi.org.

© Center for Economic and Social Rights and Instituto Centroamericano de Estudios Fiscales 2009. Partial reproduction of this document is always permitted when the source is cited.

Project Supervisors:

Fernando Carrera, Ignacio Saiz and Alicia Ely Yamin

Principal authors:

Jonathan Menkos, Ignacio Saiz, María José Eva

Collaboration on specific sections:

Eitan Felner, Walter Flores, Juliane Walter, Luis Ochoa, Jorge Santos, Manuel Delgado, Sally-Anne Way, Shira Stanton

Collaboration on field research:

Walter Flores, Ismael Gómez and Flory Bailón

Production team:

Adelma Bercián, Kevin Donegan

Administration:

Iliana Peña, Constanza Niell and Annie Chan Fairchild

CESR and ICEFI recognize with gratitude the financial support of the following organizations in the production of this report:

Ford Foundation – Regional office for Mexico and Central America, Swedish International Development Cooperation Agency and the Royal Norwegian Embassy in Central America.

Editor: Isabel Aguilar, Tel.: (502) 5029 8676

Designer: Olga Vanegas, Intercreativa, olga@intercreativadesign.com

Cover photo: David Bacon, <http://dbaon.igc.org>

Printing: Serviprensa S.A., Tel.: (502) 2232 0237

RIGHTS OR PRIVILEGES?

Fiscal Commitment to the Rights to Health,
Education and Food in Guatemala

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

INTRODUCTION

In the final decades of the 20th century, the human rights violations committed on a massive scale during the armed conflict in Guatemala captured the attention of the international community. In the first few years of the 21st century, the country's human rights record has once again become tarnished by another widespread deprivation of fundamental rights: child malnutrition.

Almost 50 percent of boys and girls under five are severely stunted, an indicator of chronic malnutrition. This rate is higher than that of Haiti, by far the poorest country in the Americas, and is the fifth-highest rate in the world. The deaths of children from malnutrition in eastern Guatemala in the first months of 2009 caught the attention of the international media, which compared the images of children with emaciated bodies and swollen stomachs to those of Africa's worst famines.

Chronic malnutrition is just one of the social indicators in which Guatemala ranks lowest in the region. The country has the highest estimated maternal mortality rate in Latin America along with Bolivia; a Guatemalan woman is 20 times more likely to die from complications in childbirth or pregnancy than a woman in Costa Rica, for example. One in 20 Guatemalan children does not reach age five due to infectious and diarrheal diseases that are easily prevented and treatable. Two in three children do not complete primary school at the appropriate age and illiteracy levels are closer to the average in sub-Saharan Africa than that of Latin America.

The fact that Guatemala's development indicators lag so far behind those of other countries in the region is all the more surprising considering the country's income. Guatemala is a middle-income country with a gross domestic product (GDP) per capita comparable to that of Ecuador. However, more than half the population lives below the national poverty line and one in seven Guatemalans lives in conditions of extreme poverty. Despite being the largest economy in Central America, the country's social indicators are generally much lower than those of the poorest countries in the sub-region, such as Honduras and Nicaragua.

Two international indices highlight the disparity that exists between the economic resources available to the country and its economic and social rights outcomes. According to the United Nations Development Program, Guatemala has the lowest Human Development Index (HDI) in Latin America and the Caribbean except for Haiti, ranking 30 places below Ecuador. The Index of Economic and Social Rights Fulfillment index produced by The New School in New York that classifies countries according to the coherence between their social indicators and income levels places Guatemala 67th of 107 countries, below Malawi.

Guatemala stands out as much for its indicators of wealth as for the indicators of poverty and social exclusion just mentioned. It is the world's fifth-largest exporter of coffee and sugar as well as having the fifth-highest rate of undernourished children. The same week

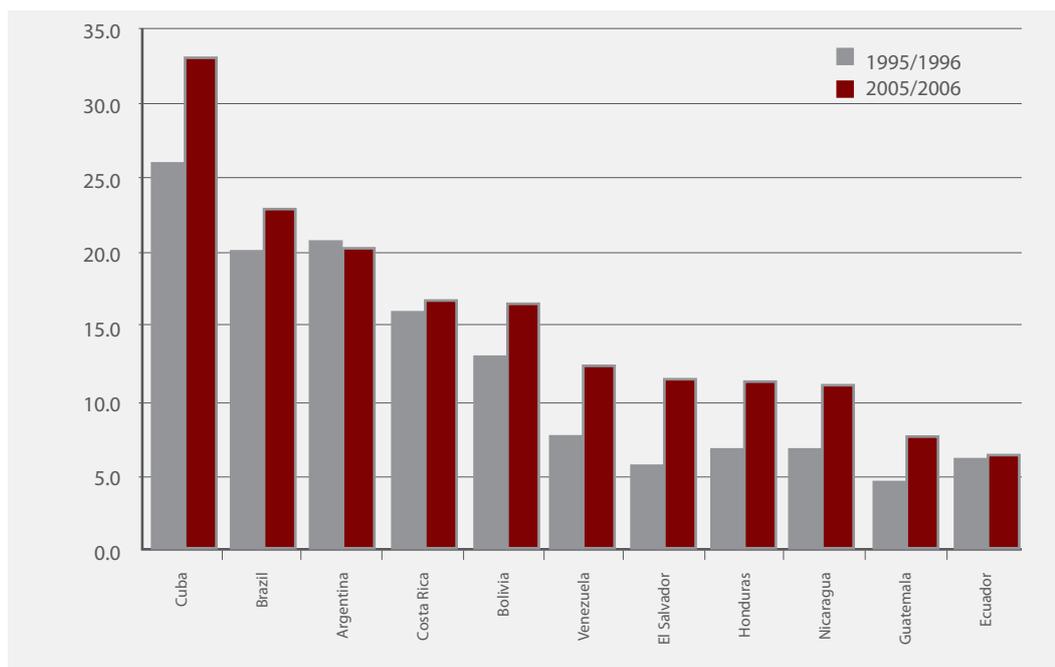
that reports of deaths from malnutrition in the east emerged, the Guatemalan Food Fair earned a place in the Guinness Book of Records for the lavishness of its buffet. The country with the highest number of private airplanes and helicopters per head in Central America is also the country with the highest rate of women dying from unresolved complications in pregnancy due to lack of affordable transportation to a health center. While more than half the population (approximately 6.5 million people) earns less than US\$2 per day, 0.003% of Guatemalans own 50 percent of the country's total bank deposits.

These stark contrasts suggest that the dismal state of economic and social rights in Guatemala cannot be attributed to a lack of state resources, but to the way in which they are distributed. They demand accountability from the Guatemalan state for its efforts to generate and manage the country's resources equitably and in accordance with its human rights obligations.

Guatemala's alarming social indicators must be seen in historical context. Although democracy was formally reinstated in 1986, the internal armed conflict did not conclude until 1996 with the signing of the Peace Accords. The transition to democracy is a project that is still under construction. The stubborn persistence of systemic inequality and discrimination in the country can be partially explained by the legacy of almost 40 years of armed conflict and five centuries of racial subjugation. Eradicating the patterns of poverty and inequality that fueled the armed conflict requires more than the signing of political agreements and must be understood as a long-term task.

However, this report demonstrates that Guatemala's poor performance in guaranteeing basic levels of economic and social rights for the entire population is due, in large part, to the lack of political will of successive governments to invest in these rights, using the maximum resources available in the most equitable way possible. For decades, Guatemala has been one of the countries in the region that invests the least amount of resources in social

**Social Spending in Selected Countries in Latin America
and the Caribbean as a % of GDP**
(1995/1996 and 2005/2006)



Source: Own calculations based on ECLAC data (2008).

policies; the proportion of GDP devoted to social spending is among the lowest in Latin America. In turn, it is a country with one of the lowest levels of tax collection, curtailing the ability of the government to respond adequately to the needs of the population through the public budget process. Guatemala has one of the lowest tax burdens in Latin America, as well as one of the most generous regimes of exemptions and tax breaks.

Since the signing of the Peace Accords, tax reforms agreed with civil society participation have been repeatedly blocked by the sectors of the country's economy that most benefit from these tax privileges. Thus, a small but powerful economic elite has prevented the generation of the necessary resources to maintain a level of social spending consistent with the country's needs. It is not a question of the state's incapacity or inefficiency in gathering and reassigning public resources; it is, rather, the historical co-optation of the state by socioeconomic elites which has ensured that public policymaking protects their privileges at the expense of the rights of the whole population.

This study, undertaken by the Center for Economic and Social Rights (CESR) and the Instituto Centroamericano de Estudios Fiscales (ICEFI), aims to contribute to a broader reflection on the role of fiscal policy in complying with a state's human rights obligations. Long considered as merely rhetorical statements of aspiration, economic and social rights are now recognized as norms to guide the formulation of public policy, whose binding nature derives from the judicial guarantees that embody them and the enforcement mechanisms available to the population. This report focuses on fiscal policy as an essential instrument for realizing these rights and provides an analytical framework for scrutinizing social policies from a human rights perspective.¹

The report focuses on three human rights —the rights to food, health and education— and on three serious threats to these rights: child malnutrition, maternal mortality and low primary school completion. These issues were selected because they have been declared a national priority by successive governments in Guatemala and represent three key fronts in the struggle against poverty to which all states have committed in the framework of the Millennium Development Goals. It is also in these areas where the negative impact of the lack of fiscal commitment to the realization of human rights is most apparent in Guatemala, in particular the rights of women, children and indigenous peoples. As a contribution to the debate on the fiscal policies required to address the consequences of the economic crisis, CESR and ICEFI urge the authorities and Guatemalan society as a whole to assume their respective fiscal responsibilities to the fulfillment of economic and social rights, as an essential means of consolidating solidarity as a founding principle of a truly democratic state.

HUMAN RIGHTS AND FISCAL POLICY

Fiscal policy plays a crucial role in putting a state's human rights commitments into effect, particularly those on economic, social and cultural rights (ESCR). In countries such as Guatemala, with persistent structural inequalities, high levels of poverty and unstable economic growth, fiscal policy gives the state leeway to generate and redirect resources towards the progressive realization of ESCR, reducing inequalities in their enjoyment. Fiscal policy, which encompasses the system of tax collection, income redistribution and financing of public social services, is the lynchpin of the rights-fulfilling state. A progressive

¹ The report does not intend to provide a comprehensive review of compliance of the Guatemalan state with all of its obligations with regard to economic, social and cultural rights, nor does it analyze the close relationship to civil and political rights violations that occur in the country. The study seeks to complement the work done by other national and international human rights organizations in Guatemala, focusing on fiscal commitment to the progressive realization of the rights to health, education and food.

and equitable fiscal policy is therefore a prerequisite to the realization of the full range of human rights.

The human rights treaties ratified by Guatemala recognize that the full realization of economic and social rights can only be achieved gradually as resources allow. However, all states party to these treaties are under the obligation to use the maximum available resources to advance progressively towards this goal, adopting deliberate and concrete measures to achieve it as expeditiously as possible. The “available resources” refer to those that can be generated within the state through progressive tax reforms as well as those that could come from international development cooperation and assistance.

This principle of *progressive realization* prohibits the adoption of regressive measures that represent a step back in existing levels of social protection, such as that which could result from a reduction in budget allocations to health or education. Moreover, the allocation of resources should give immediate priority to the state’s core obligations, and to those measures necessary to ensure at least the realization of minimum essential levels of each right for the whole population. The concept of core obligations is based on the principle of the *universality* of rights and the obligation to guarantee the minimum conditions to live a dignified life for everyone. The principle of *equality* implies a guarantee of non-discrimination in the measures taken by the state, as well as a commitment to reduce disparities between social groups and eliminate the obstacles that have kept women, indigenous peoples, the rural population and low-income groups at a structural disadvantage.

A rights perspective deals not only with the content of fiscal and social policies, but also with the way in these are designed and implemented. The process of formulation, consultation and implementation of policies should be transparent, promote full participation of all, and provide mechanisms for monitoring, oversight and accountability. While human rights treaties provide states with a margin of discretion to undertake the measures they consider appropriate and that emerge from their own processes of democratic deliberation, they also establish a set of binding principles that should guide the design and monitoring of public policies, including social and fiscal policies.

This report adopts a three-step framework of analysis to assess compliance of the Guatemalan state with its obligations to uphold the rights to health, education and food. Firstly, a number of outcome indicators related to child malnutrition, maternal mortality and low primary school completion are analyzed in light of the three principles outlined above. The objective is to determine the extent to which the population enjoys minimum essential levels of these rights, to identify inequalities between population groups and to assess to what extent progress over time is reasonable in relation to achievements in comparable countries.

The second step assesses the state’s policy efforts in each area over the past decade. It analyzes to what extent the state’s policies have promoted the accessibility, availability, quality and cultural appropriateness of public services for its population, without discrimination. In examining these policies in light of these criteria, the study uses as benchmarks some indicators of government efforts drawn from the field of public health, food security and education.

The third step analyzes budgetary limitations in the realization of these rights, examining how much has been allocated for each area, who has benefited and how spending has evolved over time. The report probes into the political causes of the historically meager social budget and analyzes the vehement resistance of certain economically powerful sectors to fiscal reform, with the purpose of determining whether budgetary restrictions

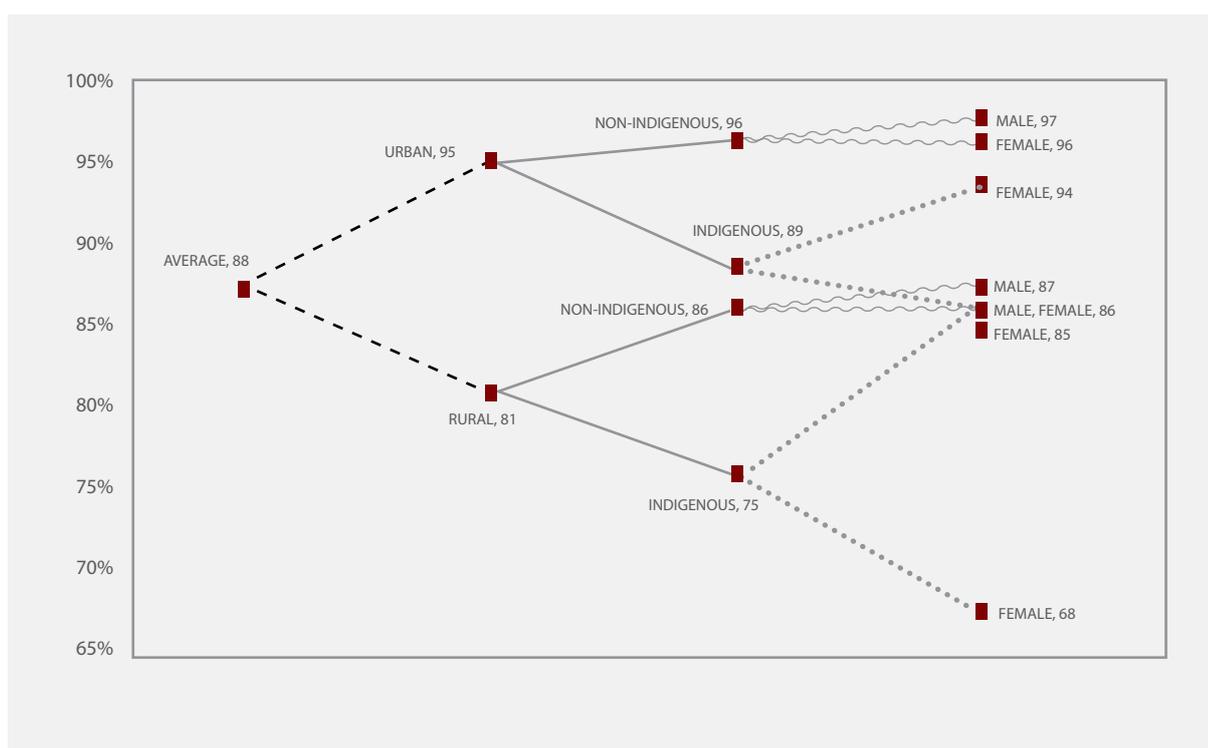
that are evident in each area can be legitimately attributed to lack of state resources or, instead, to a lack of political will to realize the rights of the whole population. The principal findings of each step are summarized below.

MEASURING THE ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: SLOW PROGRESS TOWARDS UNIVERSALITY

Despite some progress in health, education and nutrition indicators over the past decade, aggregate data show that Guatemala is still very far from satisfying what can be considered minimum essential levels of these rights for the entire population. This is evident from the fact that half the population under five suffers from chronic malnutrition; over 60 percent of children do not complete primary school at the appropriate age; and 290 women die for every 100,000 births in the country. When these indicators are compared with other countries with similar or even scarcer resources, Guatemala stands out starkly as one of the countries in the region that is furthest from using its resources to universalize a minimum level of enjoyment of ESCR.

Data disaggregated by gender, ethnicity and socioeconomic status reveal glaring disparities in the enjoyment of ESCR. For example, the rate of malnutrition among indigenous children (70 percent) is almost double that of non-indigenous children (36 percent). An indigenous woman is three times more likely to die during childbirth or pregnancy than a non-indigenous woman. In departments with a high proportion of indigenous populations – such as Alta Verapaz and Quiché – the rates of primary school completion are just half those in the department of Guatemala. Gender gaps are also striking: Guatemala is the Latin American country with the greatest disparity between boys and girls completing primary school. Gender inequalities intersect with ethnic and geographical ones, as seen in the marked disparities in youth literacy rates.

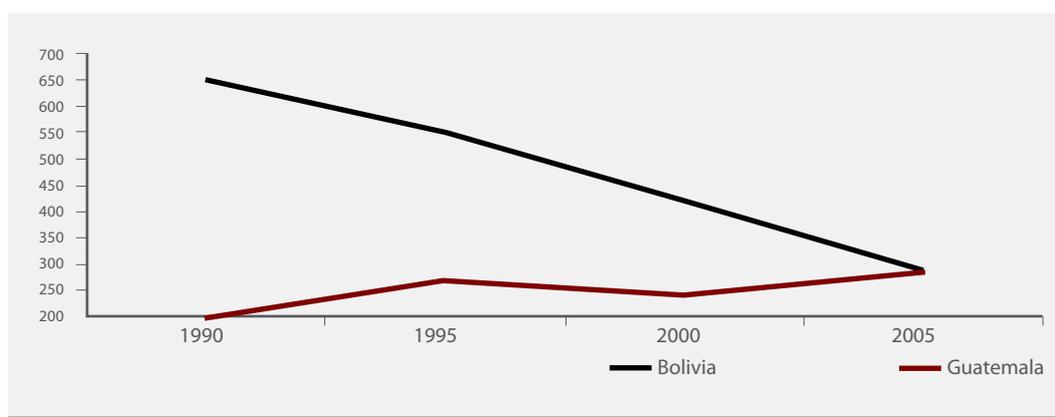
Youth Literacy Rate (15- 24), Disaggregated by Geographic Area, Ethnic Origin and Sex.



Source: Encovi, 2006

With regard to progressive realization, progress in these indicators has been slow and has not benefited people with the greatest need, widening existing inequality gaps. The reduction in chronic malnutrition rates has been very limited and very uneven among population groups. The gap between Guatemala and other Central American countries is much greater today than in the 1960s. Progress in reducing maternal mortality has also been slack in comparison with other countries in the region. In 1990, the rate of maternal mortality in Bolivia was three times higher than in Guatemala; today, both countries have similar rates. While there has been significant improvement in primary education coverage in the 1990s, progress with regard to completion rates has been unequal between boys and girls, and gender disparity increased between 1991 and 2006.

Progressive Realization: The Right to Health
Adjusted maternal mortality rate per 100,000 live births:
Guatemala and Bolivia (1990-2005)



Source: Own calculations based on ECLAC and United Nations statistics.

ASSESSING STATE EFFORTS: THE INADEQUACY OF PUBLIC POLICIES

A state's efforts to fulfill human rights cannot be measured solely in terms of its outcomes, since limited achievements in a certain country may be due to factors beyond their control, despite their best efforts. Compliance with economic and social rights obligations should be assessed not only in terms of the results achieved, but also the level of commitment and effort demonstrated to direct public policies towards the goals of universality, progressive realization and equality in rights. This commitment requires the adoption of legal, political, programmatic and fiscal measures.

With regard to legal commitments, economic and social rights are explicitly guaranteed in Guatemala's constitutional and national legal framework. The new democratic Constitution of 1985 enshrines the rights to health and education, among other social rights, and integrates the provisions of international and regional human rights treaties ratified by the country into its national normative framework.

Regarding the country's political commitments, the Peace Accords signed by government, the armed opposition and a wide spectrum of social and political actors were based on the explicit commitment to respect and fulfill the human rights of all Guatemalans, including economic, social and cultural rights, as the foundation for lasting peace and a new democratic co-existence. The Accords included specific commitments to tackle maternal mortality, malnutrition and lack of access to education, which were reinforced a few years

later with the adoption of the Millennium Development Goals (MDGs). It is worth noting that the laws and policies formulated by successive governments in these three areas have been framed, at least on paper, in terms that recognize health, education and food as human rights.

However, more than 12 years since the Accords were signed, these legal and political pledges appear to have remained a dead letter, as they have not translated into coherent programmatic and fiscal commitments. In fact, state policies in the past decade in the areas of health, education and nutrition have been marked by a series of common flaws—flaws that are attributable, for the most part, to the inadequacy of resources allocated to these sectors. These deficiencies have undermined the effectiveness of public policies in promoting the availability, accessibility, quality and cultural appropriateness of the services necessary for the realization of these rights.

Firstly, the policies adopted frequently fail to address the main underlying determinants of each problem. For example, programs to combat malnutrition do not focus sufficiently on the structural causes of food insecurity. This means that many social programs continue to be assistentialist in nature. In second place, programs tend to be manifestly insufficient in scope and fall very short of providing services with universal coverage. Thirdly, an analysis of who benefits from these programs shows that they often fail to reach the most disadvantaged populations by failing to overcome the obstacles faced by poor, indigenous and rural populations in accessing these services. They have therefore not been effective in reducing the country's marked disparities in social outcomes.

Policies also suffer from serious deficiencies in design and implementation. The absence of inter-institutional coordination is a recurring problem, as is the lack of transparency in objectives and results. Neither have they enabled genuine civil society participation in policy design and decision-making. Instead, participation has sometimes been used as a pretext to transfer responsibilities from public authorities to families, as in the case of school boards created to manage school food programs.

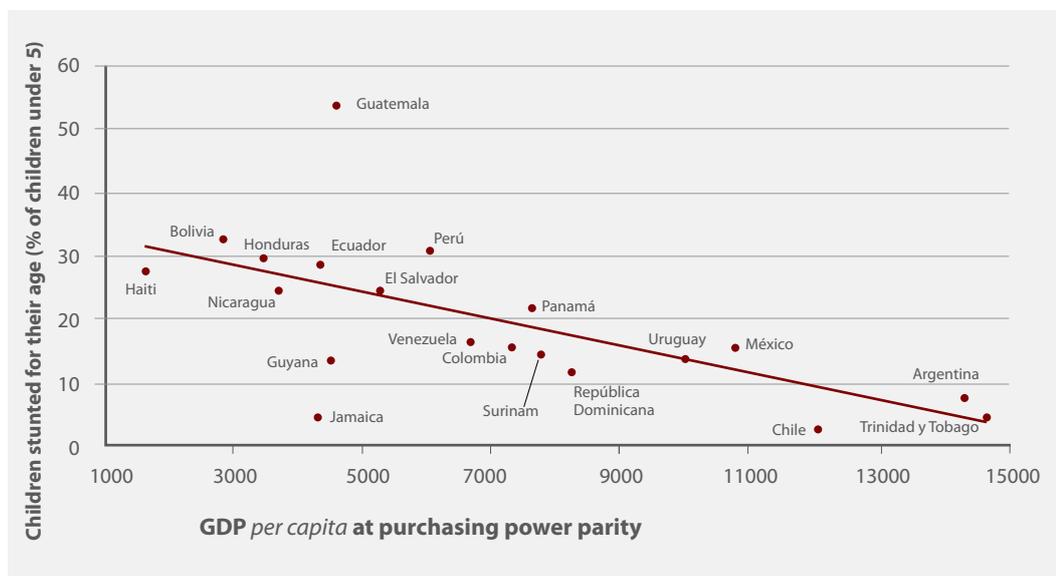
State efforts with regard to food security

Although the 2005 Food and Nutrition Security Policy (PSAN, the acronym in Spanish) appears to offer a coherent framework for inter-ministerial interventions based on the right to food, in practice it has been characterized by lack of vision and appropriate prioritization, weak coordination across institutions and a lack of will to dedicate the resources necessary to translate the rhetorical commitments of successive governments into practical and effective measures.

Despite the political importance given to combating malnutrition, the programs implemented under the PSAN have not been able to address the structural causes of the problem. One of the main determinants of the lack of access to food is poverty among rural families. Despite a gradual increase in the salary of agricultural workers, this continues to fall short of the cost of a basic food basket (*canasta básica alimentaria*) and is well below the cost of the *canasta básica vital*, which includes other basic provisions necessary for subsistence. Food availability is still negatively affected by market liberalization policies that increasingly compromise basic grain production and threaten the small-scale production of peasant farmer families. Moreover, policies to address the problem of land concentration, another structural determinant of food availability, have been limited in scope and impact. The resources allocated to the *Fondo de Tierras* (Land Fund), a mechanism created by the Peace Accords to grant greater access to land to the peasant farmer population, have been very limited and actually declined in recent years.

Minimum Core Obligations: The Right to Food

Rates of chronic malnutrition in Central America (1996-2005) and GDP per capita 2005



Source: Own calculations based on data from the UNDP Human Development Report 2007/2008

As regards access to food, the *Programa de Alimentación Escolar* (School Food Program) is one of the programs with greatest coverage and receives one of the highest budget allocations. However, the funds allocated allow only little more than one quetzal per student per day (about 12 U.S. cents). This amount barely covers one-third of the daily caloric intake recommended by nutritional experts in Guatemala. Moreover, the level of funding has not increased significantly in the past few years. The program still does not reach all of the school population and there are disparities in coverage (of all children that do not receive it, 84 percent live in rural areas). The lack of resources is exacerbated by problems in the program's execution and management, which mean that only a proportion of those enrolled in school actually benefit.

State efforts with regard to maternal mortality

Despite repeated pledges by governments over the last decade to promote safe motherhood as a national priority, little progress has been made in building a maternal health system that minimizes the risks faced by Guatemalan women and guarantees their right to life and health. Less than half (41 percent) of women that give birth are attended by qualified personnel. This figure is only slightly higher than that of Sierra Leone, the country with the lowest human development index in the world. In addition to the problems of physical and economic access to reproductive health services in rural areas, the cultural inappropriateness of these services is one of the most significant obstacles faced by indigenous women, who report derogatory treatment and disregard for their language and cultural traditions, such as a preference for vertical childbirth.

Women in predominantly indigenous regions also lack adequate access to emergency obstetric care (EOC) in cases of complications in pregnancy, childbirth or postpartum care. The cost of transportation, both in time and money, is one of the principal obstacles to access adequate treatment, which primarily affects the poorest families. While EOC is in theory more readily available since the creation of the *Centros de Atención Integral*

Materno-Infantil (Centers for Integral Maternal-Child Attention, CAIMI), the apparently low demand by the population for the services of the CAIMIs is indicative of how much remains to be done to overcome the barriers that affect physical and economic access to these centers and to hospital facilities and referral centers. A lack of resources also limits the response capacity of these centers, which lack essential medical and surgical equipment.

In practice, little progress can be observed in programs that seek to promote access to other sexual and reproductive health services, including family planning services for adolescent women. These are crucial for the prevention of maternal mortality, since adolescent pregnancy and a high number of births increase the risk of mortality. Guatemala is among the countries with the worst indicators in Latin America with regard to unmet contraceptive need, which is much greater among indigenous than among non-indigenous adolescents. As a result, Guatemala has the highest fertility rate in Latin America and one of the highest rates of adolescent pregnancy. One significant setback has been the delay in implementing the 2006 Law of Universal and Equitable Access to Family Planning Services, following several appeals brought by organizations close to the Catholic Church, which argued that the law was unconstitutional. While thousands of women die each year from abortions conducted in unsafe conditions, public policies have yet to address the implications of the criminalization of abortion for maternal mortality.

State efforts with regard to primary school completion

The education system in Guatemala remains inaccessible to a large part of the population; its infrastructure is manifestly inadequate and its content is seriously lacking in quality and cultural relevance. Although the right to primary education is guaranteed in the Constitution, the indirect costs associated with going to school are the primary reason why children do not enroll or remain in school. The low rates of primary school completion are also linked to deficient teacher training, inadequate infrastructure and the absence of a model of bilingual education.

The specific programs aimed at preventing school desertion have had limited results. A scholarship program was implemented in the mid-1990s to increase enrolment and retention of girls at primary school level, especially in rural areas. Just 14 percent of indigenous girls and 36 percent of non-indigenous girls in rural areas complete primary school. While there is no doubt that such a program is necessary, its effectiveness was undermined by limited coverage and insufficient and inequitable allocation of resources, as the program did not appear to target those most vulnerable to abandoning school. School food programs have been another key mechanism to increase school retention. However, these have also been characterized by insufficient coverage as well as inequitable distribution. For example, according to data from 2006, the regional departments with the highest percentage of children benefitting from school food programs were not those with the highest desertion rates.

One of the main policies to increase access and improve the quality of primary education in rural areas has been the creation of the 1996 *Programa Nacional de Autogestión para el Desarrollo Educativo* (National Program for Self-Managed Educational Development, PRONADE). This program established a decentralized system of schools that are run by parents. Studies suggest that the system has been effective in increasing education coverage among poor, rural and indigenous populations, and that those in the poorest quintile have benefitted the most. From March 2008, PRONADE teachers were integrated as permanent staff of the Ministry of Education, on grounds that the parents did not have the capacity to supervise the teachers and that, while PRONADE had contributed to increasing education coverage, it had not done the same with regard to quality.

In order to promote higher quality education, there is an urgent need to improve teacher training as well as to implement a salary scale that attracts and retains qualified teachers, including performance incentives and measures to attract teachers to work in rural areas. Little progress has been made in training and hiring bilingual teachers and there has been unsatisfactory results in production of teaching materials with an intercultural focus and in other languages. Bilingual education is only offered to students in a limited number of public schools during the first three years of primary school and is not available in all of the country's indigenous languages.

Another factor that affects school attendance and educational achievement is the lack of adequate infrastructure. According to the Ministry of Education, only 14.5 percent of public schools have the basic facilities needed for teaching and learning, and over 85 percent of educational establishments require renovation to comply with minimum established conditions. Half of schools did not have drinking water and 36 percent lacked electricity. The Ministry of Education's budget for maintenance of school infrastructure has been minimal, consisting of approximately 1,500 quetzals (about US\$180) for painting and remodeling.

FISCAL COMMITMENT TO ECONOMIC AND SOCIAL RIGHTS

The pattern of inadequate and inequitable investment in the programs outlined above has been one of the principal reasons behind Guatemala's limited progress in economic and social rights fulfillment. It is a pattern observed across each of the three areas. The low level of spending dedicated to the protection and promotion of ESC rights in Guatemala reflects the level of priority given to these rights on the country's political agenda.

The need to increase social spending so as to enable the realization of human rights was reaffirmed in the Peace Accords. The Agreement on a Firm and Lasting Peace committed the state to "increase tax collection and prioritize public spending on social investment." However, social spending – understood as resources allocated to health, education, housing, water and sanitation, social security and welfare, among others – continues to be among the lowest in Latin America. While social spending has risen since the Peace Accords, budget allocations for health, education and food security have not varied significantly since 2000. Social spending in Guatemala is among the most regressive in Latin America and benefits the higher-income population disproportionately.

Guatemala allocates even fewer resources than its neighbors to the promotion of food security, a mere 0.66% of GDP in 2007 (compared to 1.26% in El Salvador; 1.6% in Nicaragua and 0.95% in Honduras). According to the Food Security Law of 2005, a minimum of 0.5% of the total budget must be dedicated to food security programs aimed at those living in poverty or extreme poverty. However, according to the *Procuraduría de Derechos Humanos* (Human Rights Ombudsman), from 2005 to 2007 the budget was not managed so that who benefitted from expenditures could be determined or whether the proportion stipulated by law was being dedicated to the poorest sectors of the population.

The allocation for health has also been scarce in general terms. On average, between 1996 and 2008 the budget allocation for the Ministry of Public Health and Social Assistance (MSPAS) – the primary source of public spending – did not exceed one percent of GDP. The Latin American countries with the best health outcomes, including Argentina, Chile, Costa Rica, Cuba and Uruguay, dedicated an average of approximately five percent of GDP to the health sector, five times more than Guatemala. Public spending on health per capita has remained relatively stagnant since 2000, and was actually lower in 2008 than in 2001.

It has also become evident that households are taking on the increased burden of health costs. Public spending by the MSPAS represented 25 percent of total health spending in 1996, yet it has reduced to only 13 percent in 2007. Meanwhile, household expenditure on health has increased from 31 to 66 percent as a proportion of total health expenditure over this period. The distribution of spending is inequitable, with per capita health spending in 2006 three times higher in the metropolitan area of Guatemala than in Quiché, the department with the highest percentage of people living in poverty. The incidence of public spending on health by quintile is also regressive: a lower proportion of resources benefits the poorest sectors of the population. Spending on hospitals tends to benefit the two wealthiest quintiles of the population.

The situation in education is no different. The budget executed by the Ministry of Education in 2008 represented two percent of GDP. In Latin America, average public education spending has remained at around 4.5% of GDP since 2000. The countries in the region with the best education indicators devote, on average, 6.2% of GDP to the educational system. Since 2000, spending on education in Guatemala has not increased significantly. Indeed, public per capita spending on education for children age five to 18 was lower in 2008 than in 2001. As in the health sector, the distribution of the education budget is highly inequitable. The allocation of resources largely benefits urban centers, where the most experienced teachers and most modern educational facilities can be found. Overall, education spending benefits the richest quintiles of the population. This bias is especially marked at university level.

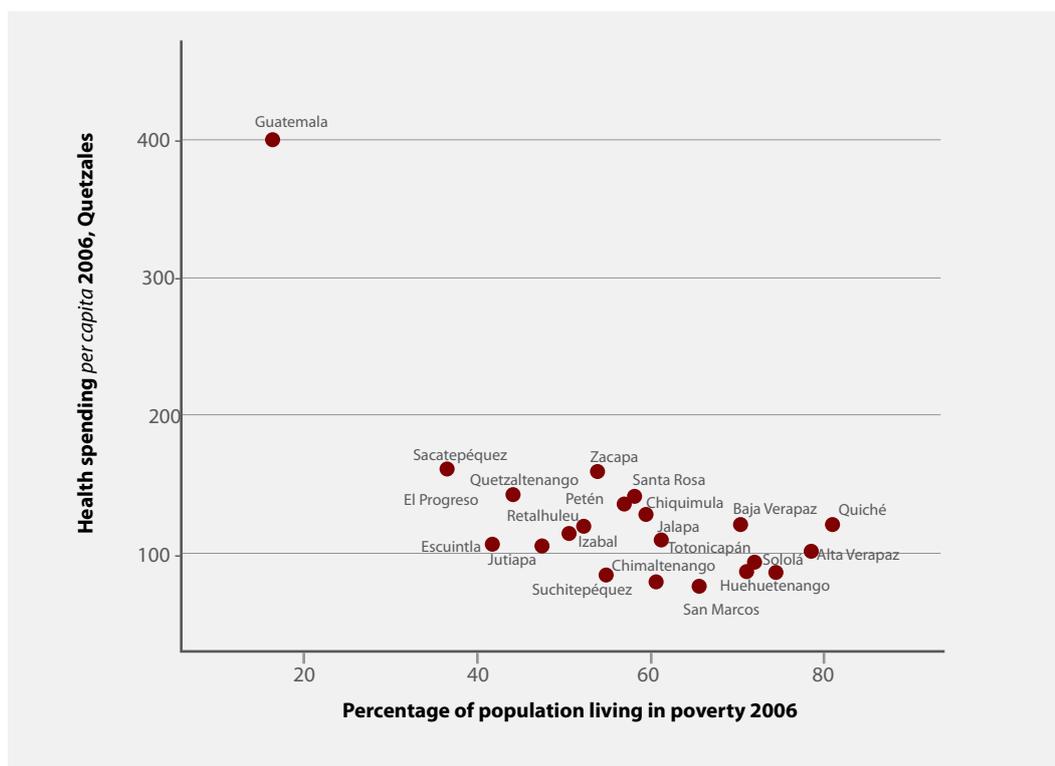
The low level of social spending is, in turn, a result of the reduced size of the public budget, which is one of lowest in the region (15 percent of GDP, while the regional average is almost 27 percent). The country's economic growth over the last 10 years has not translated into a notable increase in the size of the national budget. This has led to Guatemala being described, in fiscal terms, as a "bonsai state." Given the "chronic malnutrition" of the public budget, it could also be considered a "stunted state."

One the main reasons for Guatemala's limited social spending lies in a tax base that deprives the state of its capacity to generate the necessary revenue. The tax system does not collect or distribute resources so the state can comply with its obligation to realize economic and social rights progressively. The tax burden in Guatemala is one of the lowest in Latin America and the Caribbean. While it increased between 1996 and 2002 after the signing of the Peace Accords, since 2003 it has decreased slightly. In 2007, it reached a historic 12.1% of GDP, the closest it has come to meeting the goal set for 2000 by the Peace Accords (13.2% according to the new national accounting system). Unlike other countries with low tax burdens, tax revenue constitutes the main source of total revenue for the Guatemalan state (94 percent in 2008).

The distribution of the tax burden reflects the highly inequitable nature of the Guatemalan tax system. Direct taxation (on income and assets) is very low. The tax structure consists primarily of indirect taxes on consumption, which affect the poorest sectors of the population disproportionately. The tax burden therefore weighs most heavily on the poorest families who are effectively financing a larger portion, in proportion to their income, of the state's social programs. Indirect taxes represent such a large proportion (over 75 percent) of total tax collected, that they reverse the progressive effects of direct taxation in Guatemala.

Moreover, the system is riddled with tax exemptions and privileges that undermine its effectiveness and equity. The country's most profitable business sectors enjoy significant tax incentives, including coffee and sugar producers, textile "maquilas", and the tourism, mining, energy and telecommunications sectors. In 2008, the total amount of these tax

Spending *per capita* by Ministry of Public Health and Social Assistance and % of Population Living in Poverty, by Department (2006)



Source: Own calculations based on statistics from the Ministry of Public Finances.

breaks, deductions and exemptions was twice the amount the state expected to collect in income tax. For each quetzal collected in income tax, the state “gave back” more than 2.5 quetzals in exemptions and deductions.

The tax system also lacks effective control mechanisms to prevent tax evasion, which benefits the rich disproportionately. While the system for tax oversight and the legal regime against tax evasion have been strengthened since 1998, evasion continues to have a devastating impact on tax collection. It has been estimated that in 2006, tax evasion and exemptions applied to VAT cost the state approximately 10 billion quetzals (about US\$1.2 billion) in uncollected revenue, that is, 4.3% of GDP. This was more than the total amount invested by the State in the health and education of its citizens that year. Tax collection has also been negatively affected by the reduction in import tariffs due to trade liberalization policies and agreements.

The budgetary constraints caused by low tax collection have prompted numerous attempts at fiscal reform. Following the Peace Accords, a fiscal pact was agreed to create a more just and equitable tax system that was progressive, universal and obligatory. However, the pact did not win approval in Congress, adding to a long list of failed tax reforms.

For decades, attempts at fiscal reform have been systematically thwarted by the politically powerful business sector, which has for years used a series of tactics to block any attempt at reform perceived as a threat to its economic interests and fiscal privileges. These tactics have included negotiating with allies within the government, threatening to hold production strikes, media campaigns against the reforms and appeals before the Constitutional Court, taking advantage of the constitutional provision that limits the scope of the state’s powers to levy taxes.

The exceptional degree of influence that the economic elite has over Guatemalan political life has enabled it to maintain tax privileges on a scale surpassing those in other countries in the region. While there have been some minor shifts in recent years in the political role of the economic elite, it returned to the same tactics of resistance following the commitment made by President Alvaro Colom to carry out fiscal reforms so that Guatemala would not continue to be a “fiscal paradise that benefits a select few.”

FROM PRIVILEGES TO RIGHTS

The lack of adequate investment in the fulfillment of economic and social rights is not just a historical problem. The government of President Colom has made an explicit objective of promoting social development and fighting poverty within a framework of fundamental rights and equity, as part of its “solidarity” agenda. Nevertheless, it has yet to make the necessary shift in fiscal policy which would allow an agenda of social solidarity to be put in place.

One of the most promising elements of the government’s social policy was the creation of the program *Mi Familia Progresas*. This program provides a cash transfer to certain poor families in 140 municipalities, conditional on eligible children attending and staying in school as well as on children, mothers and pregnant women attending relevant health and nutrition check-ups. The program has begun to report positive results, and has generated an increased demand for health and education services in the beneficiary communities. Demand has also increased as a result of the commitment announced by the government that all basic public health and education services would be free of charge.

However, there was no corresponding increase in the 2009 budget for health and education to accommodate this increase in demand. On the contrary, these budgets were reduced. In the wake of the decline in tax revenue as a result of the global economic crisis, the MSPAS’ budget suffered cuts of 378 million quetzals (about US\$45.5 million), depriving it of the increased resources it had requested to fund the commitment to abolish fees, and exacerbating the already severe problem of lack of capacity in health facilities.

The draft national budget for 2010, presented in September 2009, continued the trend of undermining the state’s capacity to generate public policies aimed at fulfilling human rights. The size of the public budget was reduced in real terms from the previous year. With regard to revenue, no changes were contemplated in the taxation scheme, meaning that income from taxation would amount to an estimated 9.9% of GDP – more than three percentage points below the goal for 2000 set by the Peace Accords. Meanwhile, the total amount of tax exemptions for 2010 was estimated at 6.7% of GDP. The proposed budgetary allocation for education fell to 1998 levels. While a significant increase was proposed in the allocation for health and social assistance, it was feared that, as in the previous year, a considerable percentage of resources allocated for this sector may eventually be transferred to other budget headings.

Two positive elements of the draft 2010 budget can be highlighted. The design of the budget significantly improved, enabling greater transparency in budget execution. Targets were also set in priority human rights areas, such as maternal and child health, although these were not as ambitious as might be expected (they failed to contemplate, for example, a significant increase in the proportion of childbirths in public health facilities). However, the amount of resources allocated undermines the capacity of the state to meet its targets. The budget continues to reflect an absence of political consensus around the need to generate increased public resources in order to fulfill the basic economic and social rights of all Guatemalans.

Economic and social rights are the unfulfilled agenda of Guatemala's post-conflict transition. While the return to democracy and the end of conflict have made it possible for many Guatemalans to exercise their right to freedom of expression and to periodically elect their representatives, the right to an adequate and dignified standard of living is still far from being universally enjoyed. This is dramatically illustrated by alarming levels of child malnutrition, maternal death and youth illiteracy, perhaps the most disquieting manifestations of social injustice and exclusion in Guatemala. That the democratic transition has not resulted in significant progress in the fulfillment of economic and social rights is due, in large part, to the vision of the state that has dominated policymaking in recent decades. Guatemala has become a weak state that has increasingly ceded more space to private markets, meanwhile transforming education, health and food into privileges for those who can afford them, rather than upholding them as universal rights, and treating people as consumers rather than rights-holding citizens.

Guatemala's dismal economic and social rights outcomes are evidence that the fulfillment of these rights cannot be left exclusively in the hands of the market, nor does it automatically result from increased economic growth. It requires an active role by the state in harnessing the benefits of the economy toward the goals of progressive realization, universality and equality in rights. Consolidating democracy implies adjusting public policy, in particular fiscal policy, to a new conception of the state and the citizen as duty-bearers and rights-holders, respectively. The global economic crisis, whose impact is all too evident in Guatemala, has created an opportunity to debate and build consensus on the fiscal policy necessary to improve democratic governance in the country, as well as around the vision of the state that underpins it: one that respects, protects and fulfils the rights of all citizens or a minimal state that is captive to the interests of a privileged few.

RECOMMENDATIONS

CESR and ICEFI urge the government to make the fiscal commitment necessary to honor its obligations regarding the rights to health, education and food in Guatemala, in order to make effective the constitutional guarantees and political commitments put in place over the past decade. The following recommendations seek to complement those made by civil society organizations in Guatemala and internationally with respect to the rights to health, education and food, by focusing on the link between the realization of these rights and fiscal policy. Their implementation would give meaning and effect to the concept of "solidarity" which the government has placed at the foundation of its agenda.

1. Invest in the realization of the right to health

- a) Establish the creation of an integrated system of healthcare with universal coverage at all levels as a guiding principle for health policy, one which guarantees access to quality and culturally-appropriate services to all people, without discrimination.
- b) As a first step towards achieving this objective, increase public spending on health by between 0.1% and 0.6% of GDP in the next six years², in order to gradually universalize coverage of primary health care and reduce the cost burden that is currently being assumed by households. The system for financing this goal should include the capacity to continuously measure the progress made in achieving results, using human rights indicators.

² The methodology for these estimates is based on estimated individual costs of expanding coverage of primary health services through a package of basic interventions identified by the WHO Commission on Macro-Economics and Health.

- c) On maternal mortality, establish and adequately fund the interventions and policies needed to ensure the availability, accessibility, quality and appropriateness of Emergency Obstetric Care (EOC), skilled childbirth attendance and referral networks, in order to reach at least the target set in MDG Goal 5. End delays in implementing the Law on Universal and Equal Access to Family Planning Services and bring laws and protocols on abortion into line with international standards regarding the right of all women to the highest standard of sexual and reproductive health.

2. Invest in the realization of the right to food

- a) Carry out a thorough review of resources allocated to food security and nutrition policies as well as the way these resources are used, in order to ensure resource allocation is consistent with principles of universality, progressive realization, and equality/non-discrimination. The institutional framework that governs the funding and implementation of the food security policy should also be reviewed and changed to articulate, with clearly defined responsibilities, specific objectives and benchmarks toward the realization of the right to food and the resources needed to meet them.
- b) Reinforce the budget line of the PSAN dedicated to the prevention and treatment of chronic malnutrition, and define other adequately-funded measures to enable the eradication of child malnutrition, to make it possible to reach at least the target set under MDG Goal 1 by 2015.

3. Invest in the realization of the right to education

- a) Design a participatory education strategy that will attract and retain children and young people who have been traditionally excluded from the education system, and that will promote multiculturalism, gender equity and educational quality.
- b) Gradually increase the education budget from the current two percent of GDP to about 3.9% in 2010, reaching 4.5% in 2015. This increase is based on a cost estimate of the minimum interventions necessary to meet the goals set by Guatemalan society, whereby all boys and girls should complete primary school and coverage of secondary education should increase (*básico* to 53 percent and *diversificado* to almost 30 percent). This estimate includes an additional increase of between 0.8% and 1.6% of GDP between 2010 and 2015 to: improve the quality of education through hiring of new teachers; improve the professional training and work conditions of teaching staff; promote the transfer of staff to rural areas and specialization in intercultural bilingual education; and improve school management and transparency. An additional investment would be required to cover the costs of improving education infrastructure, training of new teachers and extending the coverage of adult education programs.

4. Bring tax collection levels in line with the needs of the country

Design, with the full participation of all sectors of civil society, an equitable set of tax policies aimed at fulfilling the human rights of all Guatemalans without discrimination. Measures to be considered include:

- Eliminating tax privileges and reducing tax incentives that respond to the vested interests of powerful business sectors, which undermine the capacity of the state to guarantee the inherent rights of all Guatemalans. Reduce tax exemptions in such a way

as to achieve an increased tax burden of at least 0.4% of GDP in 2010 and an increase of one percent of GDP in 2014.

- Centralizing the process of franchise concession in the Ministry of Finances in order to ensure greater transparency in the concession of franchises that grant exemptions and tax breaks.
- Improve the system of tax administration and its transparency and accountability mechanisms. Strengthen tax evasion programs and improve coordination of efforts to pursue tax non-compliance.
- Increase tax revenue more equitably by increasing the rate of income tax (from five percent at present to nine percent) and strengthening the Single Tax on Buildings (IUSI).
- Consider using debt as a viable instrument to increase funds available for the realization of human rights and evaluate the use of sectoral loans in the areas of education, health and food security in order to improve future funding strategies.

Center for Economic and Social Rights

Board of Directors

- **Victor Abramovich**, *Inter-American Commission of Human Rights*
- **Linda Cassano (Treasurer)**, *Commonwealth Bank of Australia*
- **Sakiko Fukuda-Parr**, *The New School, New York*
- **Richard Goldstone**, *International Bar Association–Human Rights Institute*
- **Irene Khan**, *Amnesty International*
- **Chris Jochnick**, *Oxfam America*
- **Alicia Ely Yamin (President)**, *Harvard Law School*

- **Ignacio Saiz**, *Executive Director*

Instituto Centroamericano de Estudios Fiscales

Board of directors

- **Alma Quiñónes** (*President and Board of Directors' representative at the Consultant Board*)
- **Edmundo Vásquez** (*Vice president*)
- **Rubén Nájera** (*Treasurer*)
- **Fabiola Cifuentes** (*Secretary*)

Consultant Board

- **Julio Francisco Báez**, *President of the Nicaraguan Institute of Tributary Studies*
- **Juan Alberto Fuentes K.**, *Minister of Treasury in Guatemala*
- **Juan Carlos Gómez Sabaini**, *Advisor for the Fiscal Department of IFM, ECLAC, IDB, and ILO*
- **Fernando Herrero**, *Director of the Regulatory Office of Public Services in Costa Rica.*
- **Hugo Noé Pino**, *Advisor to Executive Director for Central America, Mexico, Spain and Venezuela of World Bank*
- **Alma Quiñónes**, *expert in taxation law, member of the Fiscal Dialogue Group Promoter*
- **Isabel Saint Malo**, *expert in governability and social and democratic dialogues.*
- **José Félix Sanz**, *Spanish economist specializing in taxation, professor of the Universidad Complutense de Madrid*
- **Aaron Schneider**, *political scientist and professor of the Tulane University, New Orleans*
- **Alex Segovia**, *Technical Secretary for El Salvador Presidency*
- **Ana Sojo**, *First Officer of Social Affairs at the Division of Social Development in ECLAC*
- **Fernando Carrera**, *ICEFI's current Executive Director*

RIGHTS OR PRIVILEGES?

Fiscal Commitment to the Rights to Health, Education and Food in Guatemala

More than half of Guatemala's people live below the national poverty line and one in every seven people lives in extreme poverty. These indicators reflect a reality marked by maternal and child deaths due to preventable causes, boys and girls without education, and citizens without decent work opportunities. Overall, Guatemala's socioeconomic indicators are notably worse than other comparable Central and Latin American countries. The situation is all the more surprising because Guatemala is a middle-income country and has one of the largest economies in the region. This illustrates that the precarious and unequal levels of enjoyment of economic and social rights cannot be attributed exclusively to a lack of state resources, but instead to the way in which the country's income is generated and distributed.

In this context, this report analyzes the compliance of the Guatemalan state with its obligation to use the maximum resources available to advance progressively toward the realization of economic and social rights of all citizens, without discrimination, as well as the role of fiscal policy as an important tool to comply with this obligation. The report conducts an in-depth analysis of three indicators that illustrate the situation of economic and cultural rights in the country: child malnutrition, maternal mortality, and low primary school completion.

The recommendations include an estimation of resources necessary to advance toward the realization of the rights to education, health and nutrition, as well as a series of mechanisms that could strengthen state funding of these rights. Advancing toward the construction of a state that guarantees human rights will require a consensus on mechanisms to increase public resources and promote a fiscal reform designed to strengthen democracy and realize the rights of all Guatemalans.

