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Violations of the Right to Access Clean Water and Sanitation in Guatemala

A Stakeholder's Report

**By the International Human Rights Clinic
Willamette University College of Law
Salem, Oregon U.S.A.**

**Professor Gwynne Skinner
Legal Interns Keith Kueny and Emily Guildner**

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1. The International Human Rights Clinic at Willamette University in Salem, OR, USA regularly engages in international human rights advocacy. The Clinic is not affiliated with any organization other than Willamette University and its College of Law, both of which value service to the World. The Clinic and its Director, Professor Gwynne Skinner, regularly engage in Human Rights fact-finding and reporting. Moreover, the Clinic has worked for several years in the area of the Right to Food, and Professor Skinner has been involved in academic conferences regarding the Right to Water. The Clinic also was assisted in its work in Guatemala by The Ecumenical Water Network (EWN), a project of the World Council of Churches (WCC), an organization dedicated to the right to clean water. The Clinic interviewed several Guatemalans in preparing this Report.
2. This report focuses on Guatemala's international obligations to provide clean and safe water, as well as sanitation. Guatemala has ratified three treaties that create these obligations. In addition, Guatemala's own laws provide for, but have not protected, the right to access proper sanitation and drinking water that is clean and safe. Deforestation, contamination, lack of access to water sources on land owned privately, and a dearth of corporate regulations are the largest areas of concern regarding access to clean and safe water. To help Guatemala comply with its international obligations, there needs to be increased clarity in regulations, stronger enforcement and violation provisions, access to critical water sources on private lands, and increased availability of information.

A. International Obligations

3. Guatemala became party to the International Convention of Economic, Social and Cultural Rights (ICESCR) in May 1988; the Convention on the Elimination of Discrimination against Women (CEDAW) in June 1999; and the Convention of the Rights of the Child (CRC) in June 1990. These conventions provide that access to clean and safe drinking water is a basic human right. Comment 15 of ICESCR clarifies that Articles 11 and 12 of the ICESCR include a right to water among the guarantees for an adequate standard of living.¹ Article 14(2) of CEDAW mandates access to water supply and sanitation as part of adequate living conditions.² Article 24 of the CRC requires appropriate measures be taken for access to clean drinking water.³

B. Constitutional and Legislative Framework

4. Guatemala's Constitution has several provisions that provide for or implicate the right to clean and safe water. Among these provisions are Article 3, Right to life; Article 94, Obligation of the State, Health, and Welfare; Article 97, Environment

and Ecological Balance; and Article 127, Water Regime.⁴ Guatemala has interpreted these provisions as positive obligations.⁵

C. Promotion and Protection of Human Rights on the Ground

5. Guatemala has a population of approximately 14 million people. Children under the age of 17 make up about half the population. There are over 20 recognized indigenous Maya peoples, as well as Afro-Caribbean Garifuna, each speaking their own distinct language. Because of its extensive geographic diversity, estimates regarding access to water vary considerably. However, it can be said with certainty that less than half the population has access to piped water. More than half of the population lives below the poverty line, and 74% of indigenous peoples live below the poverty line.⁶

6. Guatemala is in direct violation of ICESCR Article 11, paragraph 1 and Article 12, paragraph 2 (b) because many people in the country are forced to drink water that is contaminated by industrial waste disposed of by corporations.⁷ The Guatemalan government has done little to stop, deter, or remedy the problems caused by the corporations. Guatemala's disproportionate emphasis on private land rights has impeded the right to access water sources by community members, which is a violation of the right of people to have water that is physically accessible under Article 11, paragraph 1. The lack of access to clean and safe water, disproportionately felt by women and children, is a violation of Article 2, paragraph 2 of ICESCR, Article 14, paragraph 2 of CEDAW, and Article 24, paragraph 2 of CRC.⁸ Guatemala's lack of immediate action to remedy this impact is a violation of article 2, paragraph 1, article 11, paragraph 1 and article 12 of CESCR.

a. General Areas in Need of Improvement.

7. *Deforestation.* Guatemala is experiencing large areas of deforestation, and has one of the highest rates of deforestation in the region. Since 1940, 40% of all land in the Laguna del Tigre National Park, which is in the rainforest of the northeast, has been cleared. Currently the rainforest is being cleared at a rate of 3.72% per year. Deforestation impacts water distribution through the water cycle and climate change. These changes have led to longer dry periods, decreasing the water table. During these dry periods, people must obtain water from contaminated, unprotected sources. Deforestation also contributes to more runoff and flooding when there are heavy rainfalls. Thus, clearing the forests leaves people living in rural areas, who are most vulnerable, in a precarious situation because of their subsistence living.⁹

8. *Pollution.* Contaminated water has been one of the largest obstacles in providing safe and clean water to Guatemalans. Guatemala's largest river, the Motagua River, is also one of the most polluted. Pollution in the river consists of garbage, human waste, and chemicals. Lake Atitlan is also experiencing high levels of

pollution, which is affecting the local economy both because it is a contaminated source of water for agricultural, and due to declining tourism. Additionally, Guatemala is without large-scale sanitation services. Many cities have sewage lines; however, treatment facilities are nearly non-existent. Approximately 80% of people in rural areas do not have access to basic sanitation facilities, leading to water-borne illnesses. Rivers often run through agricultural areas and past mining facilities that dump pesticides and chemicals, including cyanide, into the water.¹⁰

9. *Water Sources on Private Land.* Private land owners also present challenges for access to clean water. Large landowners usually own the best and most desirable land. These lands include water source access points that the owners use for their own financial gain. It is difficult for the rest of the population to gain access to the water sources on that land. Many of the pipes that funnel water from mountain sources to lower communities cannot be maintained by the government because of the private status of the land and the owner's unwillingness to allow such maintenance. Some private land owners have also blocked access to water sources through the use of barriers. Additionally, interviews have indicated retribution by private land owners against people protesting the lack of access. Retribution has come in the form of threats, harassment, and intimidation, both through legal and non-legal means.¹¹
10. *Corporations.* The decentralized regulatory scheme places an emphasis on local control that prohibits a broad application of environmental protection. Many municipalities lack the resources and the ability to mandate that companies comply with environmental regulations. No specific regulations have been promulgated, even with the passage of The Environment Protection and Improvement Law, Decree 68-86. Fines for violations are unreasonably low. Generally, fines range from \$5 US to \$500. Laws have shielded corporations because of the incredibly high standards required to prove a claim. Additionally, the laws only hold individuals responsible for actions, and not corporations. People who bring a tort action must prove that there was intent to break the law or cause injury to a person. The water source must also be directly contaminated and not a tributary of the contaminated source. Moreover, there are no standards that indicate what level of contamination would be a violation or what substances are prohibited in the water. Another serious issue is the dual-permitting system for mining companies. The government issues both mining permits and environmental permits to mining companies. However, companies continue to operate even with the revocation of the environmental permit.¹²

b. Specific Examples of Water Access Problems

11. A community organizer living in a town located in the dry corridor region, has described how he has been personally affected by deforestation, polluted water, lack of access by private land owners, and lack of regulation. He estimates that around 70% of the people in the area are affected by these water issues. He has gone without clean water for days at a time. Water cut off is often due to the

failing of water infrastructure that is unable to be repaired because it is on private land. He and his community members have been forced to use the dwindling and polluted river that runs near the community. When the community does have access to clean water, community members will store water in containers that harbor insects and create breeding grounds for diseases and parasites. The nearby mountain is the main source of water for the community. This man estimates that 80% of the forest on the mountain has been cut down. The deforestation has resulted in lower water tables and diminished the river. The forest is being cut down to accommodate an expanding cattle ranch business. Such businesses are preventing access to the source of the water and the pipes that bring the water to the community. Not only is the river flow being diminished, it is being polluted by agricultural pesticides and chemicals. In other nearby areas with mines, the chemicals often include cyanide. This community organizer would like to see conservation of the mountain to protect and gain access to the water sources. Another issue presented in this community has been the privatization of water. Privatizing water has increased the flow of water, but not the access because of the expense. This gentleman estimates water costs about \$1 per month when it is provided by the community versus privatized water at 50 cents per bottle.¹³

12. Another man who works with communities regarding water issues also described how he had been personally impacted by lack of access to clean water sources. He estimates that 80% of the water in his area is contaminated with garbage, chemicals, and human waste. Because of the contamination, the health effects are self-evident in the communities. This area is also in the dry corridor region that relies heavily on the Motagua River, which is also the most polluted river in the country. The water is so polluted that it cannot be used for agriculture means; crops are dying, affecting local economies. The organization this man works for is in the process of developing proposals to recover the natural strength of the water by preventing contamination. He would like to see treatment facilities to help clean the water. In his community, there have also been problems with logging companies preventing access to the clean water sources. The limited access to clean water sources is not only caused by the logging companies, but also by private landowners in the area.¹⁴
13. The extent of Guatemala's water access problems is illustrated by the lack of access to water even in the cities. For example, a middle class lawyer in an apartment complex in Guatemala City has had running water cut off for several hours at a time. This is an irregular, but frequent occurrence. His family members, who also live in Guatemala City, have been without water for long periods of time. During these instances, the family members have to walk miles to the nearest working clean water pump.¹⁵ Another resident in Guatemala City stated that in order to prevent illness, the water must be treated before any use.¹⁶

D. Possible Solutions and Remedies

14. Guatemala has made some progress regarding water access. Their main focus has been the passage of legislation in the last two years. Guatemala amended the

Constitution to include environmental issues; the Ministry for Environment and Natural Resources oversees environmental protection laws.¹⁷

15. *Increased Community Involvement and Information.* Community involvement is essential because more information would empower community members to make more informed decisions regarding impacts of contaminated water. The information would also allow for increased awareness about health effects and actions to mitigate the effects. Community involvement would, ideally, also pressure corporations to make projects safer. Community members can provide insight to the local impacts of the projects that the companies may not have considered. Increased community involvement can be accomplished through translation of documents into local languages, refraining from technical language except when absolutely necessary, and broadcasting important information over the radio.
16. *Treatment Facilities and Water Education.* Treatment facilities are crucial for mitigating the widespread health effects of polluted water. Areas that may not be able to financially sustain a treatment facility should implement water and sanitation education to ensure that communities are healthy. The education should include homemade filtration and purifications systems and proper management of human waste.
17. *Easements to Private Land for Water Source Access.* There should be access to natural water sources on private land for the benefit of community members. Private land owners have prevented access to water sources or infrastructure that has caused communities to be without clean water for days or weeks at a time. The lack of easements diminishes the likelihood of community members being able to access clean water sources or infrastructure for repairs.
18. *Enforcement and Creation of Environmental Regulations.* Enforcement of regulations is crucial so that there is legal recourse for violations. As it is now, the dual permit system allows for continued operation with a mining permit even when the environmental permit has been revoked. A more integrated permitting process would allow environmental regulations to be implemented when mining violations have occurred. Guatemala's current environmental laws are overly broad and do not provide clear language on when violations occur. Technical language will help define clear violations.
19. *Increased Investment in Water Infrastructure.* Reliable water infrastructure is vital to maintain consistent water flow to communities. Water-borne illness healthcare costs will decrease with increased investment of infrastructure, improving the overall economic health of the county. Water infrastructure will also increase the availability of clean water to the rural population.

¹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, available at: <http://www.unhcr.org/refworld/docid/4538838d11.html> [accessed 26 February 2012]

² UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <http://www.unhcr.org/refworld/docid/3ae6b3970.html> [accessed 26 February 2012]. U.N. Convention on the Elimination of All Forms of Discrimination against Women Article 14 (2) states that States parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular shall ensure to women the right: (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

The Committee on the Elimination of Discrimination against Women considered that this article obliges States parties to take all appropriate measures to ensure adequate living conditions in relation to water and sanitation, which are critical for the prevention of diseases and the promotion of good health care. (Committee on the Elimination of Discrimination against Women, general recommendation No. 24 (1999) on article 12 of the Convention (women and health), para. 28).

³ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.unhcr.org/refworld/docid/3ae6b38f0.html> [accessed 26 February 2012].

1. States parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health ...

2. States parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (c) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, (...) the provision of adequate nutritious foods and clean drinking water (...) The United Nation Committee on the Rights of the Child underlined that under article 24 States have a responsibility to ensure access to clean drinking water and that such access is particularly essential for young children's health. (Committee on the Rights of the Child, general comment No. 7 (2006) on implementing child rights in early childhood, para. 27)

⁴ Political Constitution of the Republic of Guatemala May 31, 1985, As Amended by Legislative Decree No. 18-93 of 17 November 1993.

Article 3 - The Right to life. The state guarantees and protects human life from conception, as well as the integrity and security.

Article 94 – Obligation of the State, health, and welfare. The State will see to the health and social assistance of all its inhabitants. It will develop through its institutions preventive measures, promotion, recuperation, rehabilitation, coordination, and appropriate auxiliary measures in order to procure for them the most complete physical, mental, and social well-being.

Article 97 – The environment and ecological balance. The State, the municipalities, and the inhabitants of the national territory are obliged to promote social, economic, and technological development that would prevent the contamination of the environment and maintain the ecological balance. It will issue all the necessary regulations to guarantee that the use of the fauna, flora, land, and water may be realized rationally, obviating their depredation.

Article 127 - All the waters belong to the public domain and are inalienable and imprescriptible. Their exploitation, use, and enjoyment are granted in the form established by law in accordance with the social interest. A specific law will regulate this matter.

Other Articles that implicate the right to water include Articles 55, 57, 67, 93, and 95.

⁵ United States Agency for International Development; *Guatemala Economic Performance Assessment*, 2006.

⁶ Cifuentes, *supra*, note 5.

⁷ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, article 11 para. 1, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.unhcr.org/refworld/docid/3ae6b36c0.html> [accessed 29 February 2012]. Article 11 (1) of CESCR states that Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

⁸ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, article 2 para. 2, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.unhcr.org/refworld/docid/3ae6b36c0.html> [accessed 29 February 2012]; UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, article 14 para. 2, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <http://www.unhcr.org/refworld/docid/3ae6b3970.html> [accessed 29 February 2012]; UN General Assembly, Convention on the Rights of the Child, article 24 para. 2, 20 November 1989, United Nations, Treaty Series, vol.

1577, p. 3, available at: <http://www.unhcr.org/refworld/docid/3ae6b38f0.html> [accessed 29 February 2012]. Article 24 (2) of CRC states that Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention. Article 14 (2) of Elimination of All Forms of Discrimination Against Women states that Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women.

⁹ Catherine Early, Deforestation in Guatemala, the Guardian,

<http://www.guardian.co.uk/journalismcompetition/deforestation-guatemala> [accessed 29 February 2012]

¹⁰ The information regarding Guatemala was gathered during interviews with residents. The name of the interviewees, and interview notes, are on file with the author.

¹¹ The information in this section comes from contacts located in Guatemala. The interview notes are on file with the author.

¹² Cifuentes, *supra*, note 5.

¹³ The name of the interviewee and interview notes are on file with the author.

¹⁴ The name of the interviewee and interview notes are on file with the author.

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