



State of the availability of WATER for human consumption and sanitation in Guatemala, as well as other facts of violation of the rights of the general population and of the Maya, Garifuna and Xinka People.

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Status of water availability for human Consumption and sanitation

1. Introduction

The following paragraphs describe the situation of availability and quality of water for human consumption in Guatemala, briefly analyze the impact of this factor on people's quality of life, and finally make some suggestions for action. This situation affects most of the members of the Indigenous Peoples in the country, taking into consideration that the majority of the Guatemalan population is Mayan and inhabits different parts of the Guatemalan territory.

This is the reason why the International Indian Treaty Council -CITI- in Guatemala develops a generalized analysis, apart from mentioning issues related to Indigenous Peoples.

2. Context

According to the Census elaborated in 2018 by the National Institute of Statistics, 59% of the population uses water for consumption from pipes inside the dwelling, 15% from pipes

outside the dwelling, but on the ground, 12% from drilled well, 3% from public jet, and 11% from other sources such as rainwater, river or lake, spring or source and truck or barrel.¹

Guatemala has favorable natural conditions that allow it to have abundant water for people, the environment and economic productivity. Annually, 97 billion m³ of water is produced. However, only 10% of this is used at the national level.²

According to the National Survey of Living Conditions (ENCOVI) 2011-2012, 70% of Guatemalan households have access to basic services, i.e., piped water and drainage at the urban level, while in rural areas, only 30% of households have access to these services. For all departments, coverage with better water sources is higher in urban areas than in rural areas. The coverage deficit for sanitation services is close to 83% in rural areas, while in urban areas the coverage is 76.7%, which demonstrates a clear situation of inequity.

Of 334 municipalities registered in the ENCOVI, only 4% apply wastewater treatment, while the rest is discharged into water bodies, mainly rivers, ravines and lakes.

Regarding water quality, according to the National Water and Sanitation Plan the Ministry of Health 2015, by 2014 only 40% of water samples analyzed for residual chlorine in water complied with national regulations; by 2013 at least 40% of water for human consumption received disinfection in urban areas; in many cases the water is captured directly from the river or lake and distributed directly without any treatment. The levels of coliform and pathogenic bacteria are high and are characteristic of untreated wastewater rather than river water, which puts the health of the population at risk.

Acute diarrheal diseases are among the first 5 causes of morbidity and mortality in the country³; 24% of deaths are due to diarrheal diseases, mainly in children under 5 years of age. Sanitation problems are directly related to the water distribution network and highlight the contamination of the resource due to sewage leaks.

On the implementation of Integrated Water Resources Management (IWRM), the Private Institute for Climate Change Research (ICC) concludes that Guatemala in 2017 has a low performance due to a number of factors such as lack of coordination between different initiatives, institutional limitations coupled with low budget availability for interventions. This study does not mention that such limitations are due to factors such as corruption, impunity and influence peddling, which is why the absence of political will is not a coincidence, but rather an unwritten pact not to affect the interests of those who benefit from the State's inaction to seriously address this issue.

A monitoring published by the Human Rights Ombudsman in October 2020 shows that the municipality of Chinautla in the department of Guatemala, a territory inhabited mostly

¹ <https://www.ine.gob.gt/ine/2021/03/23/hogares-por-fuente-principal-de-agua-para-consumo/>

² Government of Guatemala. Guatemalan Water Agenda, 2013

³ Ministry of Public Health and Social Assistance. National Health Diagnosis, March 2012

by indigenous people of the Mayan Poqomam people, is the one with the most reports of non-compliance with the requirements of residual chlorination.

The Department of Investigation and Environmental Quality -DICA-, of the Authority for the Sustainable Management of the Lake Atitlán Basin and its Environment⁴ (hereinafter, AMSCLAE) in its report on the monitoring of the healthiness of water sources for human consumption October/2020 in which it evaluates parameters of microbiological and physicochemical quality of the lake water that supplies the municipalities of Santiago, San Lucas Tolimán and San Pedro La Laguna; reports that the microbiological results indicate that the pumping points have high densities of coliform bacteria and *Escherichia coli*. In this regard, it concludes that:

- A. The water from Lake Atitlán, without any treatment, is unfit for human consumption. It is widely known that surface water contains a wide range of microorganisms that are not necessarily harmful to health, including some belonging to the coliform group (free-living bacteria that do not cause disease to humans) (Aurazo, 2004). However, there are those that reach the water through natural events or anthropogenic activities (e.g. agriculture, sewage, leachates from landfills), which do imply a risk of transmission of waterborne diseases. Among the pathogens involved in transmission by this route are bacteria, viruses, protozoa, helminths and cyanobacteria, which can cause diseases with different levels of severity (Aurazo, 2004).
- B. Lake and other surface waters are, in most cases, sources of water unfit for consumption without adequate treatment. The use of these resources without potabilization is one of the most worrisome health problems in Guatemala.

On the shores of Lake Atitlán live 12 villages belonging to the Mayan people and are grouped into K'iche, Kaqchikel and Tzutuhil that make up 95% of the total population along with the Ladino people.

Mining is another factor with an impact on water quality, as water bodies are significantly affected in the project area in terms of quality and quantity. In general, at least four aspects are considered to have a significant impact on local water capital: a) acid mine drainage and contaminating leachates; b) soil erosion and mining waste in surface waters; c) impacts caused by dams, rock waste and leaching in heaps and dumps; and d) impacts caused by mine dewatering.

Regarding this type of contamination, in 2010, Mr. Luis Ferraté, Minister of Environment and Natural Resources, filed a criminal complaint with the Public Prosecutor's Office (MP) against Montana Exploradora, S.A., a subsidiary of Canadian Goldcorp, to investigate the discharge of wastewater from the tailings dam of the Marlin mine, San Marcos, for the possibility of contaminating the Quivichil⁵ River.

⁴ <https://www.amsclae.gob.gt/>

⁵ https://www.prensalibre.com/guatemala/justicia/ministro-presenta-accion-legal-montana_0_347365300-html/

In 2013, the Rural Communities in Resistance and Defense of Territory, "ADISMI", pointed out that the water system they consume did not qualify for human consumption, according to studies conducted by the Environmental Technology Consultant entitled HYDROGEOLOGICAL STUDY MINE MARLIN I San Miguel Ixtahuacán, San Marcos, Guatemala June 2011, IPC002-11-122-052 Hydrogeological Study Montana Exploradora de Guatemala, S.A. - Marlin I Mine. The water from the springs: Txeshiwe (GW3), Agua de Pueblo (1CDC) and Ideas (2CDC) is not suitable for human consumption, because the manganese values obtained (2.4, 1.2 and 0.9 mg/l, respectively) are higher than the maximum permissible limit given by COGUANOR 29001 (0.5 mg/l).

On the activities of this mine in San Marcos. A study developed by E-tech (2010) established that the water stored in the tailing's impoundment exceeds IFC effluent guidelines for pH, cyanide, copper and mercury. The maximum concentrations of cyanide, copper and mercury measured in 2006 were three, ten and twenty times the IFC guidelines, respectively. Although treatment was in place for tailings water that is discharged to the environment, the treatment resolves the leaching of contaminants to groundwater.⁶

3. Serious situations that deserve the attention of the Special Rapporteur on the Right to Water

As is public knowledge, Guatemala was dominated by Spain from 1524 to the year 1821 when the colonial elite groups achieved their independence and from there on the Guatemalan State was reformed, configuring its own laws and norms.

However, the Kingdom of Spain between the period 1600 to 1700 celebrated different agreements and treaties with different Peoples that make up the Mayan People, specific treaties on the limits of Lands, Territories and Natural Resources, with recognition of self-government according to their own organizational structures. Part of the principle of Law and International Law is that these agreements have not expired and continue to be legitimate, despite the fact that the government authorities and the Guatemalan State founded in 1821, ignore these documents of collective or communal property.

In the last decades of the nineteenth, twentieth and present centuries, various public entities, including private individuals, as well as agricultural, industrial and extractive companies, have carried out a process of dispossession of the properties of these Peoples. Without the free, prior and informed consent of the Mayan People, thousands of hectares of land with natural resources have been used for municipalities, urbanizations, imposition of monoculture agricultural industries, forced occupation of mining companies such as Marlin in Sipacapa territory, San Marcos, CGN-PRONICO and MAYANIQUEL in El Estor⁷, Izabal and others.

⁶ <http://biblioteca.clacso.edu.ar/Guatemala/icefi/20140903122033/mineria-impresion.pdf>

⁷ In Guatemala, the Ministry of Energy and Mines, in January 2021, published a list of 290 mining companies operating throughout the country, most of them in the territory of the Maya, Garifuna and Xinka Peoples. The list is attached to this document.

Together with the dispossession of lands and territories mentioned above, it goes hand in hand with the usurpation of the tenure and use of water, rivers, lakes and other biodiversity assets, in addition to violating the individual and collective rights of Indigenous Peoples to the use of their land for food, The use of their medicinal plants, the care of their animals for their sustenance, and with this, limiting or disappearing the collective life of these peoples, because many of them have to leave to the cities or in the worst case to be migrants to countries such as Europe, and mainly to the United States. When displacement or migration occurs, identity, language, scientific knowledge are lost, many indigenous people die, children reach degrees of malnutrition, a phenomenon that could be described as silent genocide in the modern era of globalization.

Faced with the indiscriminate abuse and usurpation of indigenous property, little by little communities and peoples, as well as indigenous authorities are appearing to claim their rights under the aforementioned Agreements and Treaties: The Kaqchikel Mayan people of Santiago, Sacatepéquez, just 15 km from the capital city, are claiming their right to water that was privatized without their consent in the 1970s to supply water to the inhabitants of Guatemala City. Along with the dispossession of the water, the capital's municipality appropriated the forest and natural resource where the water source is located. The Kaqchikel inhabitants of Santiago have confirmed to the International Indian Treaty Council that they are interested in recovering their right to the water and their lands lost over the years.

We can mention some other Pueblos that have official documents from the Spanish crown such as: Santiago Atitlán, in Sololá; Santa Catarina Ixtahuacán, Sololá, Kaqchikel Pueblo of Chuarrancho, Guatemala; of San José Chacayá, Sololá, among others.

The majority of Indigenous Peoples are claiming their rights to lands and territories, as well as their right to water, but the Guatemalan government, instead of analyzing solutions, has applied and continues to use repression, impunity, militarized states of exception, states of siege to limit freedoms, in addition to the criminalization of individuals, leaders, leaders and communities that fight for their rights.

4. National and International Responsibility of the State to guarantee access to water

Article 67 of the Political Constitution of the Republic of Guatemala establishes the protection of indigenous lands, regardless of the form of tenure, whether communal or collective tenure of agrarian property. On the other hand, Article 121 literal "b" of this same legal body establishes that "the waters of the maritime zone bordering the coasts of its territory, the lakes, navigable rivers and their banks, the rivers, slopes and streams that serve as international limit of the Republic, the falls and springs of water for hydroelectric exploitation, the subway waters and others that are susceptible of regulation by law and the waters not exploited by individuals in the extension and term established by law".

In principle, it is possible to point out a contradiction or conflict in the same legal body, since on the one hand it recognizes the right of the indigenous peoples over their lands, but when referring to the resource "water", it indicates it as a resource of the State. Even when the Constitutional Court has pointed out that it is necessary to reconcile the rational use of non-renewable natural resources with respect for the substantial rights of any person and social conglomerate, especially when dealing with members of groups marginalized from the decision-making processes of public⁸ power (referring to indigenous peoples); in practice, the officials responsible for guaranteeing the rights of indigenous peoples through constitutional and conventionality control do not demonstrate the political will to do so.

In this regard, it should be recalled that the Guatemalan State is a party to a series of international instruments on the rights of Indigenous Peoples, therefore, it has the obligation to guarantee these Peoples to participate in the use, administration and conservation of their resources (ILO Convention 169, Article 15.1); to maintain and strengthen their own spiritual relationship with the lands, territories, waters, coastal seas and other resources that they have traditionally owned or otherwise occupied and used; and to assume their responsibilities in this regard. 1); to maintain and strengthen their own spiritual relationship with the lands, territories, waters, coastal seas and other resources which they have traditionally owned or otherwise occupied and used, and to assume their responsibilities in this regard to future generations (United Nations Declaration on the Rights of Indigenous Peoples, Article 25); the conservation and protection of the environment and the productive capacity of their lands or territories and resources; to conserve, restore and protect the environment and to the sustainable management of their lands, territories and resources, as well as to be protected against the introduction, abandonment, dispersal, transit, indiscriminate use or deposit of any hazardous material that could negatively affect indigenous communities, lands, territories and resources (American Declaration on the Rights of Indigenous Peoples, Article XIX).

Among other instruments: the Convention on the Elimination of All Forms of Discrimination against Women stipulates that States must ensure that women enjoy adequate living conditions, particularly in the areas of housing, sanitation, electricity and water supply (Art. 14 (h)); and the Convention on the Rights of the Child requires the provision of adequate nutritious food and safe drinking water, taking into account the dangers and risks of environmental contamination (Art. 24.2 (c)).

With regard to the situation concerning the quality of water for consumption and sanitation, the Committee on the Elimination of Racial Discrimination, in evaluating the State's reports 12 and 13⁹ in compliance with the ICERD Convention, learned that 90% of the 38 watersheds in Guatemala are polluted, which prevents adequate access to

⁸ Gaceta 119. Expediente 3753-2014. Fecha de sentencia: 12/01/2016

⁹ At its 1981st and 1982nd meetings (CERD/C/SR.1981 and CERD/C/SR.1982), held on 19 and 22 February 2010, the Committee considered the twelfth and thirteenth periodic reports of Guatemala submitted in a single document (CERD/C/GTM/12-13). At its 2003 meeting (CERD/C/SR.2003), held on 8 March 2010.

drinking water, the most affected areas being those of San Marcos, Huehuetenango, Quiché and Sololá.

In this regard, CERD recommended that the State party should take urgent measures to guarantee access to drinking water for all the indigenous communities affected, particularly in the areas mentioned above. It should also establish appropriate instruments for the prevention and monitoring of water pollution and provide adequate treatment to those watersheds that are polluted. It also recommends the adoption of domestic legislation guaranteeing access to drinking water for all communities.

5. General Recommendations

1. Adapt policies and legislation regarding the availability, quality and accessibility of water to international standards on human rights and the rights of Indigenous Peoples, and that such measures concerning Indigenous Peoples be designed and implemented in accordance with the Free, Prior, and Informed Consent Consultation.
2. It is urgent to create public policies that regulate the behavior of companies, industries of all kinds, especially extractive industries or exploitation of mineral resources that are produced in Indigenous Territories, but in the Guatemalan national territory. Another measure could be for the State to impose an extraordinary tax on companies and industries whose activities have direct and indirect consequences on water pollution, which isolates the population and prohibits the right of use and possession of water, especially for Indigenous Peoples.
3. The different study initiatives on water and sanitation should have data disaggregated by Linguistic Communities or member communities of the Maya, Garifuna and Xinka Peoples, for a better analysis of the results and feasibility of the conclusions. To date, the data are general and imprecise without making visible the situation in which these peoples live in terms of access to water and their environment.
4. It is important that the public institutions mandated to address the issue of water and sanitation establish parameters in accordance with international law on the rights of Indigenous Peoples and related to water, their natural resources, their lands and territories and other rights, specifically with regard to articles 1, 3, 8.2.b), 18, 19, 23, 24, 25, 26, 27, 29, 37, 38, 40, not to mention all the articles of the United Nations Declaration on the Rights of Indigenous Peoples.
5. It is urgent to take into account the Science, Knowledge and Practices of Indigenous Peoples in the administration, treatment, conservation and service of water, considering that water, from the indigenous cosmovision does not represent merchandise, but a life-giving good with a sacred character, in order to comply with

articles 3 and 4 of the United Nations Declaration on the Rights of Indigenous Peoples.

6. Considering that the Indigenous Peoples, for the most part, are the custodians of the Natural Goods that make possible the generation, conservation and cleaning of water resources, the State, together with the authorities and the Indigenous Peoples themselves, should create a measure of reparation and compensation for this service, due to the fact that many cities take away water resources without leaving any benefit to the population or community.
7. The State must guarantee the necessary infrastructure so that the transportation and service of water is of quality that has an impact on the improvement of the quality of life of people and families, mainly those living in rural areas.
8. That the Guatemalan State urgently address the recommendations made by treaty bodies and other mechanisms on access to quality water and sanitation.

The International Indian Treaty Council in Guatemala will follow up on the situation of the supply and consumption of water, which is a vital liquid and the fundamental right of the Indigenous Peoples to have access to it, in addition to the right to life that depends on water.

Guatemala, January 19, 2022.