

## Why hungry Guatemalans don't claim their food rights in court



“Guatemala is not a poor country, but it is one of the countries with the most inequitable distributions of wealth in the world, and the majority of its population is poor and hungry, particularly indigenous peoples”

Ziegler, Golay Mahon and Way, 2011

Guatemala suffers from high levels of undernourishment and malnutrition despite a strong political commitment to the right to food. Yet, there is an absence of food rights litigation. This brief explores why and suggests changes that will have to be made for food litigation to be possible.

In many countries, litigation is used as a strategy to protect socio-economic rights, including the right to food. Even though the legal conditions appear to be favorable to right-to-food litigation in Guatemala, such litigation has not taken place. This Brief argues that the absence of litigation can be explained by a combination of factors. It highlights the crucial conditions that will have to change for food rights litigation to emerge: more information and awareness around the right to food; better legal assistance and interpreter services; more trust in, and respect for, the legal system; a stronger focus on litigation strategies by civil society and advocacy groups; less strict standing rules; reduction of legal formalities; more innovative judges; and a heightened sensitization of judges to the concerns of the hungry and malnourished. This may provide guidance on where to focus attention for practitioners and those who work actively in Guatemala to promote food rights and for the justiciability of social rights more broadly.

### REVERSING INTO THE FUTURE

Considering Guatemala's income, it is somewhat surprising that the country's development indicators lag far behind those of other countries in the region. Despite being the largest economy in Central America, according to The Central American Institute for Fiscal Studies, social indicators are generally much lower than those of the poorest countries in the sub-region, such as Honduras and Nicaragua. Characterized by huge differences between the rich and the poor, Guatemala's rates of poverty and inequality are among the highest in the whole of Latin America and the Caribbean. The majority of the population still lives in rural areas, where poverty is widespread. Social indicators are particularly low for indigenous peoples, who make up more than half of the population. In spite of the end, in 1996, to the armed conflict that plagued Guatemala for almost 40 years, the human rights situation remains extremely gloomy. With regard to the human right to food, there

are persistent violations, and in many ways the situation has deteriorated the last twenty years. Both the total number of undernourished people and the proportion of people suffering from undernourishment have increased from 1990 to 2007 (see box 1). More Guatemalans, and a larger proportion of the population, are hungry today than 20 years ago. Also, acute malnutrition levels have increased, and Guatemala has the highest level of malnutrition in Latin America. Despite the lack of concrete, reliable disaggregated data, it is safe to say that the indigenous populations are struck harder, and continue to face much discrimination.

**“THE RIGHT OF EVERY PERSON”**

Guatemala has firm obligations to the right to food under international treaties and conventions, with the International Covenant on Economic, Social and Cultural Rights being the most important. The international agreements that Guatemala has committed to means that the country has the obligation to respect, protect, and fulfill the right to food, without discrimination. The country also has domestic obligations towards this right, both through the Constitution and other laws. Within the domestic legislative framework, the most important is the Law on the National System for Food and Nutritional Security, a food security law that entered into force in 2005. This law recognizes the country’s international obligations towards the right to food, defined as: “the right of every person to have physical, economic, and social access at all times to food of adequate quantity and quality, in accordance with cultural preferences, preferably of national origin, and biologically adequate, in order to sustain a healthy and productive life” (Ziegler et al. 2011). The right to food is thus broadly defined, and the state obligations are extensive and wide-ranging. Given that the right to food is so strongly protected by the law, the lack of right-to-food cases in court by the many hungry and malnourished Guatemalans seems peculiar.

**GLOBAL ACCELERATION**

Even though jurisprudence on civil and political rights is much more developed than for

socio-economic rights, the volume of social rights cases has accelerated globally, also in Latin American countries, since the late 80s. More recently, food rights jurisprudence has started to develop, with India and South Africa as prominent examples. Also Latin American countries such as Argentina, Colombia and Paraguay have experienced right-to-food litigation in recent years. That this has not happened in Guatemala can be explained by factors that obstruct the legal voice of the hungry and by conditions that make the courts unresponsive to the hungry people’s social rights claims. Based on a large body of theory and research on what contributes to, or hinders, successful social rights litigation (see e.g. Gargarella, Domingo and Roux 2006), and on an analytical framework developed by Gloppen (in the above mentioned volume), it is possible to identify factors that work against food rights litigation in Guatemala.

**LACK OF A LEGAL VOICE**

If the hungry and malnourished are to raise legal claims on food violations, they need to see their problems as rights violations. Even though there has been a strong political commitment to the right to food, there is a lack of knowledge about this right in the Guatemalan population. Rights awareness is also likely to be lowest among the marginalized sections of the population suffering the most from hunger. Insufficient information prevents them from knowing who is to blame, how they can be held responsible, and where claims can be addressed. Particularly for the indigenous populations, who are affected the most by hunger, lack of information is a serious barrier. This should be understood in context of a long history of social and political exclusion of the indigenous groups from Guatemalan society at large. Language is another barrier for indigenous people’s ability to formulate food rights claims. The majority of the indigenous people lack access to the official justice system in their own language, and very few judges or lawyers speak indigenous languages. Litigation is not permitted in indigenous languages, only in Spanish. This is problematic given that so many only speak their indigenous language. As the number of interpreters employed to assist these litiga-

Box 1: Undernourishment in Guatemala (1990-2007)

Year	1990-1992	1995-1997	2000-2002	2005-2007
Number of undernourished (millions)	1,4	2,1	2,5	2,7
Undernourishment (%), total population	15	20	22	21

Source: FAO 2010

tors is nowhere near sufficient to meet demand (Sieder 2007), either being able to litigate in their own languages, or a better legal assistance and interpreter service, seems necessary for enabling these groups to formulate food rights claims.

It appears that a change in how the marginalized view the legal system is also needed for food rights litigation to arise. That poor people often view the legal system with distrust and fear also functions as an impediment to the articulation of legal claims and involvement with the legal system. Guatemalans tend to see the law as something that operates to the benefits of powerful individuals and groups rather than as something to which they can make effective recourse to protect their fundamental rights. Most of the population in rural Guatemala view state law and state institutions as arbitrary, distant and ineffective, and therefore the judicial system lacks respect among large parts of the population.

#### **A CALL FOR ATTENTION**

Among the institutions promoting the right to food, the Human Rights Ombudsman is arguably the most important. Despite severe budgetary limitations and difficult working conditions, the Ombudsman performs an important role in protecting vulnerable groups and individuals; through mediation, conciliation, quasi-judicial decisions, and legal assistance (Ziegler et al. 2011). Thus, the office of the Ombudsman provides an alternative arena to litigation in court. However, according to numbers from the Ombudsman, out of the 20 000 cases brought before the office in 2010, only 61 cases related to the right to food. Considering the extent to which the right to food is being violated, this is surprising, indicating that stronger focus on the right to food in general, and on right-to-food litigation specifically, would be welcomed. It is important to keep in mind that the hungry are, due to their difficult situation, often socially and intellectually deprived. Consequently, for food rights litigation to arise, attention must be given to how to provide the hungry with litigation resources and to litigation strategies. Presently, rights advocacy groups, non-governmental organizations and other groups working on the promotion of the right to food focus mainly on getting attention to the issue of food insecurity.

#### **INDIFFERENT COURTS**

In Guatemala, victims of a violation of a fundamental right can invoke the procedure of 'amparo', which means that in theory hunger victims can claim their right to food before the Supreme Court and the Constitutional Court. Lack of jurisdiction should thus not make the courts unresponsive to socio-economic rights such as the right to food. However, the standing rules regarding procedures of 'amparo' (who

can lodge a claim and when) are restrictive in ways that hampers the possibility of litigating right-to-food violations. For there to be a violation that can be subject to an 'amparo' claim, a law or its implementation, must have immediate, direct, and personal consequences that repeal or modifies the complainant's personal legal rights. This means that only a person who is directly affected by a right-to-food violation can litigate. It is not possible for others to litigate on behalf of the hungry. This can be viewed as a hindrance to right-to-food cases, as those directly affected are rarely able to take their cases to court themselves because of their precarious situation. In addition, 'amparo' rulings are only binding on the parties in the specific trial. The decision does not have general effect throughout the legal system. This is a significant hindrance for such rulings in social rights cases to set jurisprudence and have larger social transformative effects. This unresponsiveness toward public interest litigation and class action suits discourages the types of legal claims with the most potential for social transformation.

More generally, direct popular access to judicial review through 'amparos' is not very citizen-friendly. It is impossible to file an 'amparo' writ without the support of a lawyer; the procedure tends to be used more often as a delaying tactic by those attempting to evade justice than as an accessible means for the underprivileged sectors to defend their fundamental rights; and the average duration of an appeal is much longer than the time requirements set (Sieder 2007). For right-to-food litigation to arise there is a need for less strict standing rules and a reduction of legal formalities.

#### **THE CONSERVATIVE ETHOS**

For the Guatemalan courts to be more responsive to social rights claims, changes in the legal culture are also needed. A conservative, formalist ethos continues to characterize the legal profession, and most judges and lawyers are unwilling to accept abstract constitutional principles as law. This attitude towards constitutional law is likely to affect negatively on the judge's acceptance of social rights claims in general, and possible also food rights claims specifically, as belonging within their domain. This might be the case even when, as with the right to food, auxiliary legislation is in place (the food security law). If right-to-food litigation is to become a reality, there is a need for more judges with better training in socio-economic rights issues. That many lower court judges are poorly trained, and have little interest in jurisprudential innovations, or international human rights conventions (Sieder 2007), are factors that prevent the courts from accepting social rights claims such as the right to food. Many judges working in Guatemala today were schooled under an old curriculum with little focus on subjects such as indigenous rights and human rights generally. Parts of the judiciary lack an understanding of the concerns and conditions of the marginalized hungry and

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malnourished that could make them more susceptible to social rights claims. The tendency to appoint judges to the lower ranks of the judiciary based on clientelism or nepotism negatively influences the social sensitivity of courts. Inclusive and transparent appointment processes could create more diverse and socially sensitive courts. More innovative lawyers and judges and a heightened sensitization of judges to the concerns of the hungry, are factors that would stimulate food litigation.

#### LOOKING AHEAD

A right is only a right when it can be claimed. If policy-makers in Guatemala are serious about their commitment to the right to food, not just by making law, many modifications would have to be made for the right to food to be justiciable and enforceable. This Brief points to a range of factors and conditions that promoters of food rights litigation should encourage to change. Changes will have to be

made both to increase hungry people's ability to voice their food rights claims – or have claims voiced on their behalf - and to make the courts and judges more responsive to such social rights claims. Even though the conditions for legal enforcement of the right to food do not look too promising in Guatemala today, there is hope that this will change in the future.

Social rights jurisprudence generally, and especially jurisprudence on food rights, is still a comparatively recent development within the human rights field. As more social rights jurisprudence develop worldwide, in addition to more arenas for litigation on both the regional and international level (such as the Inter-American Court and the Optional Protocol's appeal mechanism once it enters into force), it seems likely that also jurisprudence on food rights will accelerate. The decisive issue is whether food rights promoters in Guatemala will try to alter the conditions in favor of litigation, and if so, how national, regional and international developments and arenas can be utilized to secure the right to food.

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