

Investments that do not guarantee rights



When public-private associations that provide basic services do not guarantee economic accessibility – one of the key components of economic, social, and cultural rights – and both coverage and access are defined by the ability to pay, the Government fails to fulfil its obligation to satisfy these rights. Also, if the Government allows or favours foreign direct investment in development projects that are neither socially nor environmentally responsible it fails to comply with its obligation to protect human rights.

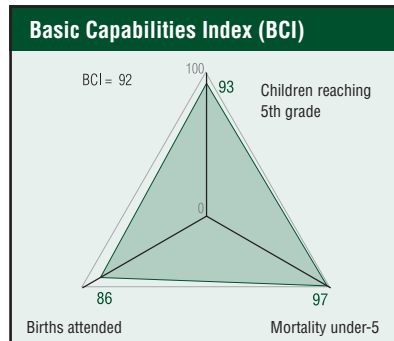
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The hotly contested and disputed results of the 2 July 2006 federal elections, and the ensuing socially and politically tense climate, have brought out into the open the ideological confrontation between the different visions of the country, and the very different experiences lived by the various sectors and regions with respect to the impact of the economic and social development model. The profound divide and inequality that we are living demands a profound, serious and participative revision of the economic liberalization model that has been dominant in Mexico for the last quarter of a century. As a contribution to this challenge, the Social Watch Mexico report analyzes from a human rights perspective some of the schemes applied by the Government to mobilize resources – public, private, national and foreign – toward development, and looks into their effects on the living conditions of the population. It also proposes alternatives and recommendations toward the attainment of the right to development.

Associations that are more private than public

The report made by UN Secretary General Kofi Annan to the Preparatory Committee to the Monterrey Conference on Financing for Development, stated that although private foreign capital can play an important role insofar as it supplements domestic resources, there have been negative experiences when these investments do not comply with labour or environmental regulations. Annan emphasised that both governments and transnational corporations should act responsibly in these areas (A/AC.257/12, paragraphs 46, 47 and 60, 18 December 2000).

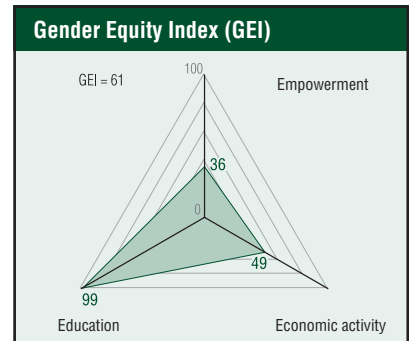
Alleging budget restrictions that made it difficult to meet the need for infrastructure and basic services, between 1983 and 2006 governments pro-



moted foreign direct and indirect investment and set up different kinds of public-private associations (PPAs) in the energy, roads, water supply, health, housing, and higher education sectors. For example, the Vicente Fox administration (2001-2006) implemented a mixed investment scheme called Projects for the Provision of Services, a different kind of PPA.⁴

Fox maintains that the PPAs improve the quality and coverage of public services because they bring efficiency and capital from the private sector, they promote the development of domestic providers and make them more professional, and they reduce costs and free resources for other social projects⁵. But this is simply not happening. As health, education and drinking water services and the construction of new housing are privatized, the coverage they provide is now determined by people's capacity to pay. In addition, transnational capital has replaced the domestic private sector, and contrary to what is claimed, the Government has de-capitalized key social sectors like education, health and social security. The State has not fulfilled its obligation to allocate the maximum resources available to working towards establishing the rights enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The PPAs are "following the general trend towards the commercialization of services ... and they are still a form of privatization" (McDonald and



Ruiters, 2006) so they are more geared to making profits than to enhancing social development. To make matters worse, the privatization of services can lead to violations of human rights if economic accessibility, a basic element in economic, social and cultural rights, is not guaranteed. This happens, for example, when a transnational corporation raises its charges for basic services so much that this compromises the enjoyment of other rights. In all cases of privatization the State should fulfil its obligation to protect people's human rights against non-State third parties by supervising and regulating how these organizations operate, and by providing mechanisms and resources to defend human rights if violations take place. The example below is a good illustration of this situation.

Privatizations that trample human rights

The National Water Commission claims that Aguas de Saltillo in the state of Coahuila, a mixed public-private association that involves the Spanish corporation Aguas de Barcelona,⁶ is a successful privatization scheme that provides drinking water and sewage facilities.

However there was no adequate prior consultation with the local population, charges for the services were illegally increased above the level of the National Consumer Price Index, and the demands of the Users Association of Aguas de Saltillo were not considered in due time. The Public Treasury Auditor's Office of the Coahuila Congress discovered a series of irregularities like the fact that the

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5 Presidency of the Republic. Press release, 21 October 2004: "Inaugura el Presidente Vicente Fox la Primera Cumbre de Asociaciones Público-Privadas para las Américas", at: <http://presidencia.gob.mx>

6 The Municipal System of Aguas de Saltillo holds 51% of the shares and 49% are held by Aguas de Barcelona, of which the French transnational Suez is a shareholder.

main officers of the corporation were receiving salaries in excess of the levels stipulated in the legislation by which it was set up, some work was not reported to the Administration Council, some vehicles were purchased in contravention of the Acquisitions Law, and there have been labour rights violations such as unjustified dismissals and threats (Castañeda Bustamante, 2006).

In General Observation No. 15 concerning the right to water, the UN Committee on Economic, Social and Cultural Rights (CESCR), interpreting the ICESCR, ruled that “water, and water services and facilities, must be accessible to all. The direct and indirect costs and charges associated with the provision of water must be affordable and must not compromise or endanger the exercise of other rights recognized in the Covenant” (E/C.12/2002/11, paragraph 11, c, ii). Therefore Aguas de Barcelona is contravening the ICESCR and various ILO conventions and other commitments involving good business practices. When it comes to managing water in Mexico, the new Government must consider “the great potential of participation and democratization to improve the public water supply” and should recognize that “privatization is not the answer” (Balanyá *et al*, 2005).

Negative impacts of foreign direct investment

The way that foreign direct investment (FDI) operates was also analyzed by the DESCA Alternative Report that 105 NGOs submitted to the CESCR in May 2006. We reported how FDI projects in areas where the local people are highly dependent on the environment for farming or because they inhabit areas rich in biodiversity are doing social and environmental damage with the consent or complicity of the State. Such is the case of the Plan Puebla Panama (PPP), which affects the area from the south-southeast of Mexico to Panama in southern Central America, for which the Inter-American Development Bank as part of the High Level Committee seeking to raise financing for the PPP projects, is channelling its own funds and promoting leadership from the private sector as a financing alternative. In its fourth periodic report to the CESCR (E/C.12/4/Add.16), the Government mentions the PPP as one of the measures it is taking, in line with a 1999 recommendation by the Committee, to alleviate the negative impact that the North American Free Trade Treaty has had on economic, social and cultural rights.⁷ Unfortunately, this project lacks a holistic vision of the right to development, and there are no measures to guard against or compensate for land appropriation, to prevent damage to the environment, to limit the appropriation and over-exploitation of natural resources, or to safeguard the country's cultural heritage.

At Espacio DESC we have also documented reports from communities that have suffered or are suffering violations of their human rights as a result of mega-projects. One typical case is a plan,

which is part of the PPP, to build a hydroelectric dam at La Parota in the state of Guerrero. This will involve the flooding of 17,000 hectares of farmland, roads and bridges in an area that is home to 21 communities, and around 25,000 people will be displaced. The project will indirectly affect more than 75,000 people downriver and will cause irreparable damage to their health and to the ecosystem (for example, an endemic species of frog will become extinct). The La Parota project is opposed by the joint owners of common land in the area on the grounds that it does not constitute sustainable development and is a threat to community life because of its high ecological, social and economic costs. The municipal, state and federal governments have ignored these complaints, and in promoting the project at all costs they are acting in an authoritarian and undemocratic way (Espacio DESC, 2006).

The new Government, which will take office on 1 December 2006, should not fail to take action in this situation, which is so serious that it merited a specific recommendation from the CESCR urging Mexico to ensure that the indigenous local communities affected by this project, or by other mega-projects, should be duly consulted so as to obtain their informed consent beforehand. This applies to all decision-making processes connected to projects that affect people's rights and interests, as recognized in the ICESCR. The Committee also urged Mexico to recognize the rights of indigenous communities to the possession and ownership of lands they have traditionally occupied, and, should the need arise, to ensure that the indigenous and local rural communities affected by the work at La Parota, or other PPP infrastructure projects, should be suitably re-located and receive adequate compensation and alternative fertile farmland, and that their economic, social and cultural rights should be protected.⁸

The need for prior informed consent

Another mega-project that is to be undertaken with mixed investment is a wind energy facility in the Tehuantepec Isthmus, in the state of Oaxaca. Some 14 firms have shown interest in this, including Spanish corporations like Gamesa Eólica and Iberdrola (Castañeda Bustamante, 2006). While legal problems that are delaying the start of construction work are being resolved, the foreign investors are negotiating with the co-owners of common land to acquire leasing contracts for sites where the wind turbines can be located. The Government has promoted a Certification Programme for Common Land Rights and Title Deeds (PROCEDE) to be able to take possession of the land, and community representatives are having to negotiate without sufficient information or counselling, which makes it difficult for them to reject the project or strike a bargain that will benefit the community. This means the transnational corporations involved are taking advantage of the fact that the community is poor. In this situation it is very important for the authorities to analyze seriously the possible

environmental, economic and socio-cultural impacts about which various organizations that are absolutely opposed to the construction of the energy facility have already sounded the alarm.

Conclusions

It is clear that unrestricted free trade and foreign investment has mostly worked in favour of transnational corporations. We agree with the UN commentators that the negative impact of globalization on the exercise of human rights “is multi-dimensional, and therefore calls for a critical re-think of trade policies and instruments, international investments and finance, and that human rights should no longer be treated as something peripheral to how the system is formulated and how it operates” (E/CN.4/Sub.2/2000/13).

In the light of these problems, the new Government should apply every human rights instrument, principle and recommendation,⁹ and show that it has the political will to act in accordance with them. We also demand that it take account of the proposals and recommendations regarding ESCR set out in the national diagnosis from the Office of the UN High Commissioner for Human Rights as it is faced with an economic model that has not been socially responsible (Office of the UN High Commissioner for Human Rights, 2003). The Government should also consider the 1999 and 2006 CESCR recommendations; promote UN standards in the new Human Rights Council (of which Mexico is the current president) and UN standards concerning the responsibilities of transnational and other commercial corporations in the human rights area (E/CN.4/Sub.2/2003/38/Rev.2); promote the facultative protocol of the ICESCR to set up a mechanism to report violations; uphold the supremacy of international human rights instruments over other kinds of treaties – in line with the UN Charter – and set up suitable spaces for civil participation in public economic and social policies. Investment in economic and social development with a human rights perspective is a crucial task and one of the major challenges in the 2007-2012 period. ■

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7 Final observations made by the CESCR to Mexico in 1999: E/C.12/11/Add.41, paragraph 35.

8 Final observations made by the CESCR to Mexico in 2006: E/C.12/CO/MEX/4, paragraph 28.

9 The impacts of economic globalization on human rights have been analyzed by various bodies, commentators and specialist UN agencies. For example the Human Rights Commission resolution on globalization and human rights (E/CN.4/RES/2003/23) and the High Commissioner for Human Rights report on trade, investment and human rights (E/CN.4/Sub.2/2003/9), etc.

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the Government.⁸ The largest share of the district's tax revenue, 47.5%, comes from a combination of petty trading and tolls at the open-air market, both of which are dominated by women. Despite contributing the largest share, traders, both itinerant and fixed-location ones, are seldom the beneficiaries of essential services. Garbage collection and disposal, for example, is undertaken by the traders themselves, not the district assembly. The lack of sanitary facilities like public toilets and a potable water supply also means that the incidence of sanitation-related diseases at the market may be higher than would otherwise be the case. With women dominating market activities, they would be the disproportionate victims of such diseases. In turn, this means that they spend a disproportionate share of their earnings on health services. Indeed, it is interesting to note that pharmacies account for less than one percent of the district's revenue, despite the fact that there are many pharmacies in and around the market that cater to the widespread practice of self-medication among the traders at the market.

While there is no disaggregated data on the gender of taxpayers, given the disproportionately high percentage of women involved in economic activities, especially in the informal sector, and the high incidence of poverty in this sector due to the generally low earnings, it is important that policy makers take appropriate action in the course of revenue mobilization to insulate poor women in particular against the adverse effects of unfair tax incidence. ■

8 Under Ghana's decentralization system, district assemblies constitute the structures through which policies and programmes are formulated and implemented at the local level. Women represent less than 10% of elected members and are therefore largely absent from critical decision-making processes.

The Maltese Government has paid too much attention to the need for consumption-led economic growth and too little attention to issues of equity and the fulfilment of basic human rights. A clear example is the consumption of beauty products. In 2003, the Maltese people spent MTL 5,379,541 (USD 12,427,160) on perfumes and beauty products (NSO, 2005a) while Malta's ODA was MTL 2,167,853 (USD 5,007,740), as reported by the government (Malta Foreign Office, 2006). A key role of government is not simply to reflect public preferences, but to offer leadership in shaping public priorities on important issues such as development aid to poor countries. Malta and Cyprus are now the only EU countries that do not have a development policy, despite the commitment to do so entailed by becoming members of the bloc. The Maltese Government must live up to the promises it made by signing the *acquis communautaire* and the UN Millennium Declaration. ■

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