



Guatemala

11/15/2022

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## INTRODUCTION

This analysis follows the mapping methodology used by Human Right 2 Water to assess the integration of the human rights to water and sanitation (HRWS) into law and policy at national level. It has been adapted and extended to give voice to the human right to a clean, safe<sup>1</sup>, healthy and sustainable environment (HRHE), with the aim of assessing the combined advantages of recognising both these sets of human rights.

It draws upon the criteria and principles that were originally laid out in General Comment No.15<sup>2</sup> for the human right to water and sanitation, with further elaboration of the right to sanitation after it was recognised as a separate human right in 2015. Alongside this and noting that the HRHE was also recognised as a human right by the General Assembly in July 2022<sup>3</sup>, we have compared the main principles of the HRHE as related to water. For this analysis, we draw upon the Framework Principles from the paper published by the Special Rapporteur on Human Rights and the Environment from 2018<sup>4</sup>, Good Practices on the Right to a Safe, Clean, Healthy and Sustainable Environment<sup>5</sup>, and the paper titled ‘Human Rights Depend on Safe and Sufficient Water’, 2021<sup>6</sup>.

In addition to the principles of a human rights-based approach<sup>7</sup>, there are the normative criteria of the human rights to water and sanitation which are specific to the realisation of these rights. The substantive elements of the HRHE, as referenced in the Good Practices<sup>8</sup> paper mentioned above, are also considered here, where they are linked to water, specifically element 4 on the access to safe water and adequate sanitation. Given the significant advances in the design and measurement of national indicators for the supply of clean and safe drinking water and sanitation through the Joint Monitoring Programme<sup>9</sup>, General Comment No.15 has been augmented, especially on the topic of sanitation, which was recognised as a separate right in 2015. For the purposes of this analysis, the criteria have been maintained as the five elements of the human rights to water and sanitation, and there are additional questions relating to specific environmental aspects that support these rights.

For reference, Annex 2 collates the two sets of human rights principles, looking at how they relate under each category.

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<sup>1</sup> Note that the word ‘safe’ has been included in several places, including the title of the Special Rapporteur, and the framework principles, but not in the latest UNGA resolution.

<sup>2</sup> General Comment No. 15 on the Right to Water, was adopted in November 2002, by the Committee on Economic, Social and Cultural Rights and then explicitly recognized on 28 July 2010, through [Resolution 64/292](#), the United Nations General Assembly

<sup>3</sup> The human right to a clean, healthy and sustainable environment, July 2022 (A/76/L.75)

<sup>4</sup> Framework Principles from the paper published by the Special Rapporteur to the Healthy Environment from 2018, ARC/37/59

<sup>5</sup> Good Practices on the Right to a Safe, Clean, Healthy and Sustainable Environment, March 2020, A/HRC/43/53

<sup>6</sup> ‘Human Rights Depend on Safe and Sufficient Water’, 2021, HRC/26/48

<sup>7</sup> The elements of the HRBA are Participation, Accountability, Non-discrimination and Equality, Empowerment and Legality.

<sup>8</sup> Good Practices on the Right to a Safe, Clean, Healthy and Sustainable Environment, March 2020, A/HRC/43/53

<sup>9</sup> JMP, WHO and UNICEF data found at [www.washdata.org](http://www.washdata.org)

## Overview of national water governance for Guatemala

### General Legislation

	Supreme Law	<b>Constitution</b>
1.A.1	State Organization	<b>Unitary</b>
1.A.2	Relationship between International and National Law	<b>Dualist</b>
1.A.3	Name of Institution possessing regulation-making authority	<b>The Congress of the Republic</b>
1.A.5	Popular consultation as part of governing/legislative process	<b>No</b>
1.A.8	Member of a regional integration organization	<b>Yes</b>
5.C.1	Independent National Human Rights Institution (NHRI)	<b>Yes</b>

### Water Governance

3.A.1	Right to Water mentioned in Constitution	<b>No</b>
3.A.2	Right to Sanitation mentioned in Constitution	<b>No</b>
3.A.3	Right to a clean and healthy Environment in Constitution	<b>Yes</b>
3.A.4	A water code or a law specific to water resources	<b>Yes</b>
3.A.5	National Strategy, Policy, Action Plan etc. on Water and Sanitation	<b>Yes</b>
1.A.8	International institution for Transboundary Water Resources	<b>Yes</b>
3.C.7	Priorities in the allocation of water for different uses?	<b>Yes</b>

**KEY**

	Mostly included
	More than half
	Partially included
	Few references

### Benchmark Scores<sup>10</sup>

4.A	Availability and Accessibility	
4.B	Quality and Safety	
4.C	Water Pollution Control	
4.D	Affordability	
4.E	Acceptability	
4.F	Non-Discrimination, Equality, Universal Access	
4.G	Right to Information, transparency	
4.H	Public Participation	
4.I	Accountability, remedies and complaints procedures	
4.J	Sustainability	
<b>TOTAL</b>		

<sup>10</sup> Score up to 10 allowed for each element, with a score of 10 suggesting that all relevant laws are fully included, zero suggests there are no laws to fit this criterion, and scores on a scale of 1-10 represent the degree of inclusion of pertinent laws (double click to activate excel sheet for calculation).



## CHAPTER 1. WATER GOVERNANCE OVERVIEW

A- Preliminary questions:

1. **What type of State is the country? (e.g. Federal, Unitary, etc)**

[Guatemala is a unitary republic with one level of sub-national governments, autonomous municipalities.]

2. **Is there any division of government powers? If yes, please elaborate on their functions.**

[Yes, powers are vested in three government branches – executive, judicial, and legislative branches. The executive branch is the head of government and state and in charge of executive tasks. The judicial branch is entrusted with the duty and the authority to render justice independently. The constitutional court interprets the law when the constitution is affected, and the supreme court is the highest court of the land. The judiciary is independent of the executive and the legislature. The legislative branch is in charge of forming the legislature (the Congress of the Republic) which makes the laws of the land.]

3. **Which institutions and levels of government have legislative powers?**

[The Congress of the Republic has the sole legislative power, but draft laws could be proposed by deputies, the President, the judicial branch, and the national university (La Universidad de San Carlos de Guatemala).]

4. **Who has the power to ratify treaties?**

[The Congress of the Republic has the power to ratify treaties.]

5. **Is there popular consultation as part of governing/legislative process?**

[No.]

6. **Has the country established one or several basin management agencies? Is it autonomous?**

[In 1996, the Authority for the Sustainable Management of the Atitlán Basin (AMSCLAE) was established to plan, co-ordinate and implement measures and actions of the public and private sector that are deemed necessary to conserve the ecosystem of Lake Atitlán and its Basin. It produced a Master Plan in 2000. However, the plan is still under revision. AMSCLAE is not fully autonomous as funding depends on the political will of the

current authorities, resulting in inadequate funding. This is because the legislation establishing AMSCLAE omitted to specify a source for funding its operations.]

7. **Does the country have transboundary water resources?**

[Yes, the watersheds associated with the Tacaná volcano, which stands at an altitude of 4,093 m, cover a transboundary area of 3,170 km<sup>2</sup> right in the middle of the border area of the Department of San Marcos, Guatemala and the State of Chiapas, Mexico. This area comprises the Coatán, Suchiate, Cosalapa and Cahoacán rivers. The Coatán and Suchiate watersheds originate on the volcano, and are both shared by Guatemala and Mexico. Cahoacán and Cosalapa are subwatersheds of the Coatán River, within Mexico. Also, the Lempa River is shared by Guatemala, El Salvador and Honduras.]

8. **Where transboundary water resources exist, is there an established international institution for basin management? Does it have any responsibility in relation to drinking water?**

[With respect to the Trifinio region that is the headwaters of the Lempa and Ulúa Rivers (two of the region's most important water systems) and where three countries – El Salvador, Guatemala, and Honduras share borders, a treaty signed among the governments of El Salvador, Guatemala, and Honduras for the execution of the Trifinio Plan (which is part of the region's peace process and includes numerous rural development projects) established an institutional mechanism, a tripartite commission at the highest political level involving the Vice-Presidents of the countries. There is not enough information available as to whether this tripartite commission has any responsibility in relation to drinking water.]

B- The country is member of a regional integration organisation?

1. **Which countries form part of this organisation?**

[Guatemala is a member of the Central American Integration System (SICA). SICA member States are Belize, Costa Rica, El

Salvador, Guatemala, Honduras, Nicaragua, Panama, and the Dominican Republic. SICA was launched in 1993, and is the main body for regional integration and political cooperation in Central America. SICA and its institutions offer an essential platform for Central American countries to broaden coordination and cooperation on vitally important issues such as water rights.]

**2. Are the decisions of the organisation legally binding for the members?**

[The Central American Court of Justice, a regional court that is a part of SICA system (*Sistema de la Integración Centroamericana*)<sup>11</sup>, issues decisions binding on relevant member states.]

**3. What is the mandate of the organisation?**

[SICA has a fundamental objective of bringing Central America together as a region of peace, freedom, democracy, and development.]

**4. Does the regional organisation have the authority to regulate or make decisions which affect water, sanitation and a healthy environment? Are there any mechanisms for enforcement?**

[Yes, SICA has the authority to regulate or make decisions that affect water, sanitation and a healthy environment, but there is not enough information available regarding enforcement mechanisms.]

**C- Water governance and administration:**

**1. What is the structure of the government water administration (provide relevant organizational charts whenever available) and what power, role and responsibilities does the Government have at each level?**

**a. At national/federal level?**

[National government agencies set national standards for water management and monitor water quality at a national level. See C.3 through 5 below.]

**b. At the intermediate level (state, river basin, other)** [There are certain government agencies responsible for specific basins such as AMSCLAE for the Atitlán Basin. See A.6 above.]

**c. At the local level?** [Guatemala does not have a national water law and no authority controls the water resources; instead, each of Guatemala's 334 municipalities is responsible for the maintenance and provision of water management services. Municipalities are the main developers of water and sanitation projects, with 68% of total investments in the sector.]

**2. Which government ministries/agencies are directly or indirectly involved in governance of water and sanitation and a healthy environment?**

[National government agencies such as MARN, MSPAS, basin-level government agencies such as AMSCLAE, and 334 municipalities are involved in governance of water and sanitation and a healthy environment.]

**3. Which national government agency is responsible for the environment? What are its responsibilities with respect to water?**

[The Ministry of Environment and Natural Resources (MARN) is officially responsible for environmental regulation in the water and sanitation sector. MARN manages water basins at the national level and sets national standards.]

**4. Which national government agency is responsible for drinking water? What are its responsibilities?**

[The Ministry of Public Health and Social Assistance (MSPAS) is legally responsible for monitoring drinking water quality at a national level. They provide water quality testing services for private and public operators.]

<sup>11</sup> The purpose of SICA is: (i) to promote a broad regime of freedom to ensure the full and harmonious development of the human person and of society as a whole; (ii) to achieve a regional system of welfare

and economic and social justice for the peoples of Central America; and (iii) to attain economic union and strengthen the Central American financial system.

5. Which national government agency is responsible for sanitation? What are its responsibilities? [See C.3 above.]

## CHAPTER 2: INTERNATIONAL AND REGIONAL TREATIES

1. What international or regional treaties has the country ratified? Please insert the date of the signature/ratification/accession. Treaties inserted with relevant article(s) included in brackets.
2. What declaration or reservation has the country entered to these instruments? Please see below.

### A. Regional Multilateral/Bilateral Treaties

Table 1. Regional multilateral and bilateral treaties

Instruments	Participating States	Entry into force
Charter of the Organization of American States (Art. 45(b))	Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, US, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Uruguay, Venezuela, Antigua and Barbuda, Barbados, Trinidad and Tobago, Jamaica, Grenada, Suriname, Dominica, Saint Lucia, Saint Vincent and the Grenadines, Bahamas, Saint Kitts and Nevis, Canada, Belize, Guyana	30 April 1948 (Guatemala: 1948)
American Convention on Human Rights (Art. 26)	Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, Venezuela	18 July 1978 (Guatemala: 27 April 1978)



## B. International Treaties

Table 2. International binding instruments

Instruments	signature	ratification
Convention on the Elimination of All Forms of Discrimination against Women (art. 14 (2))	1981	1982
Convention on the Rights of the Child (arts. 24 and 27 (3))  Guatemala's declaration upon signature: "The State of Guatemala is signing this Convention out of a humanitarian desire to strengthen the ideals on which the Convention is based, and because it is an instrument which seeks to institutionalize, at the global level, specific norms for the protection of children, who, not being legally of age, must be under the guardianship of the family, society and the State. "With reference to article 1 of the Convention, and with the aim of giving legal definition to its signing of the Convention, the Government of Guatemala declares that article 3 of its Political Constitution establishes that: "The State guarantees and protects human life from the time of its conception, as well as the integrity and security of the individual."	1990	1990
International Covenant on Economic, Social and Cultural Rights	N/A	1988
Convention on the Rights of Persons with Disabilities (art.28)	2007	2009
International Labour Organization (ILO) Occupational Health Services Convention, 1985 (No. 161) (art.5)	1989	1989

## C. Regional

Table 3. Regional instruments

Instruments	Signature	Ratification
No relevant regional instruments could be located.		

## CHAPTER 3: DOMESTIC LEGISLATION ON WATER

### A. Water law

1. **Is the right to water mentioned in the Constitution?**

[Not expressly as a right on its own.]

2. **Is the right to sanitation mentioned in the Constitution?**

Not expressly as a right on its own.

3. **Does the Constitution otherwise reference water and sanitation?**

[Yes. Art. 97 provides: “*Environment and eco-friendly balance. The State, the municipalities and inhabitants of the national territory are obliged to promote social, economic and technological development that prevents pollution of the environment and maintains the ecological balance. All the necessary rules shall be issued to ensure that the use and exploitation of fauna, flora, land and water are carried out rationally, avoiding their depredation.*”

Likewise, Art. 93 does not expressly mention water and sanitation, but recognizes the right to health, which would imply tacit recognition of rights to water and sanitation.

Furthermore, Art. 122 provides that the State reserves the control of a land strip of “*two hundred meters around the shores of lakes; one hundred meters on either side of the banks of navigable rivers; of fifty meters around the sources and springs where the waters that flow to the populations are born.*”

Moreover, Art. 126 provides that “*forests and vegetation on the banks of rivers and lakes, and in the vicinity of water sources, shall enjoy special protection.*”

Finally, Art. 127 of the Constitution governs the water regime, providing that “[a]ll waters are goods in the public domain, inalienable and imprescriptible. Their utilization, use and enjoyment are granted in the manner established by law, in accordance with the social interest. A specific law will regulate this matter.”]

4. **Is there a water code or a law specific to water resources? Please specify.**

[The development and enactment of a law specific to water resources is explicitly written into art. 127 of the Constitution. Despite this mandate, at least 13 bills have stalled Congress since 1985, to no avail. The most recent one, *Iniciativa 5253*, is still under review.]

5. **Is there national strategy / policy, action plan or similar document on water? Does it include the management of wastewater and sanitation?**

[Yes. The following are applicable plans and policies on these matters:

- National Policy for Integrated Water Resources Management (PNGIRH) and the National Strategy for integrated management of water resources (ENGIRH). SEGEPLAN (2006)
- National Plan for Public Drinking Water and Sanitation Services for Human Development 2008-2011. Government of Guatemala / SEGEPLAN / GEA
- Strategy for the integrated management of water resources in Guatemala: Diagnosis. SEGEPLAN (2006)
- Government Agreement 418-2013 on the National Policy of the Drinking Water Supply and Sanitation Sector explicitly recognizes the human rights to water and sanitation in its recitals]

6. **Are there any other major regulations, decrees, orders, circulars, or similar official documents (such as pricing, water policing, utility easements, public domain occupation...etc.) related to the rights to water and sanitation?**

[Yes. With regard to water for human consumption, the following standards are applicable:

- Specifications Manual for Monitoring and Control of Water Quality for Human Consumption Ministerial Agreement 523-2013.
- Government Agreement 113-2009. Health Standards for Supply Services;
- Government Agreement 83-2013. Water

for human consumption. COGUANOR standard;

- Ministerial Agreement 1148-09. Water for human consumption;
- Government Agreement 178-2009. Water quality certification;
- Ministerial Agreement 572-2011. Design standards for rural water systems;
- WHO Water Quality Guidelines, 4a edition;
- “National Program for Monitoring Water Quality for Human Consumption”, Ministerial Agreement SP-M-278-2004.
- Guatemalan technical standard NTG 29001 drinking water specifications;
- Design standards for rural water systems.
- Government Agreement Number 75-2006, Regulation of the Law on the National System of Food and Nutrition Security.
- Regulation of the discharges and reuse of wastewater and the disposal of sludge. Government 236-2006

With regard to sanitation, the following rules apply:

- Regulation for the regulation of services, regulation for the discharge of wastewater.
- DRPSA Technical Standard 001-2018. Wastewater treatment plants,
- DRPSA Technical Standard 002-2018. Sanitary sewer systems;
- DRPSA Technical Standard 003-2018. Letrinization Projects
- Ministerial Agreement 105-2008. Wastewater Discharge and Reuse and Sludge Disposal
- Ministerial Agreement 573-2011. Design standards for rural disposal systems
- Design standards for rural disposal systems
- DRPSA Technical Standard 015-2018. Storm sewer systems.

Apparently, there are no regulations related to water management at the national level. The institutions that are dedicated to this task are the municipalities that are governed by the Municipal Code and its regulations.]

## B. Environmental law

### 1. Is the right to a healthy environment mentioned in the Constitution? [

Yes. Art. 64 of the Constitution provides that “[t]he conservation, protection and improvement of the natural heritage of the Nation [,] is declared [to be] of national interest. The State will promote the creation of national parks, reservations, and natural sanctuaries [*refugios*], which are inalienable. A law will guarantee their protection and that of the fauna and the flora that exists within them.” Also, Art. 93 of the Constitution provides that “The enjoyment of health is a fundamental right of the human being, without any discrimination.” Moreover, Art. 97 provides that “*The State, the municipalities and the inhabitants of the national territory are obligated to promote the social, economic, and technological development that prevents the pollution of the environment and maintains the ecological balance. All the necessary regulations will be dictated to guarantee that the use*”.]

### 2. Does the Constitution otherwise reference a safe, clean and healthy environment? [

As previously established, Arts. 93 and 97 contain an indirect reference to human rights to water and sanitation through the protection of the rights to health and a healthy environment, as well as Arts. 94-96.

Articles 122, 125-127 also deal indirectly with the subject through the idea of water as the public domain and its special environmental protection.]

### 3. Is there an environmental code or law that references water? [

Yes. The following are the main regulations applicable to the matter:

- Environmental Protection and Improvement Act (“EPIA”);
- Protected Water Act (Decree 4-89);
- Forestry Law (Decree 10-96);
- Health Code;
- Constitutional Judgment of February 1, 2011, Number 2810-2010;
- Judgment of June 10, 2003;
- File 326-2003 in which the interpretation of constitutional Article 127 is made, and

social interest is established as a priority of use;

- Municipal Codes;
- Municipal regulations;
- The Civil Code regulates waters in private domain, since waters in public domain are regulated by the Civil Code Legislative Decree 1932, dated 13 May 1933, in its Book II, Chapters II, III, IV and V of Title II, And Chapters II and III of Title VI, which to date is in force for the absence of a water law in the public domain.]

4. **Is there a national strategy, policy, action plan or similar document on the environment?**

[Yes. There is a:

- Policy of Conservation, Protection and Improvement of the Environment and the Resources, Governmental Agreement No. 63-2007.
- Also, the National Policy for the Integral Management of Residues and Solid Waste (Government Agreement 281-2015).
- Finally, the Energy Policy 2019 to 2050.

5. **Are there any other major regulations, decrees, orders, circulation or similar documents related to the right to a healthy environment (such as resource consents, public domain occupation etc)?**

Yes. Please see a list of the main regulatory sources on healthy environment matters:

- Protected Areas Act (*Ley de Áreas Protegidas, Decree 4-89*).
- Regulation for Environmental Evaluation, Control and Monitoring (*Reglamento de Evaluación, Control y Seguimiento Ambiental*) No. 137-2016
- Regulation for Protected Areas Act (*Reglamento de la Ley de Áreas Protegidas*), Government Agreement 759-90.
- Regulation for the Discharge and Reuse of Sewage and Disposal of Sludge (*Reglamento de las Descargas y Reuso de Aguas Residuales y de la Disposición de Lodos*) (Government Agreement 236-2006)

- Framework Act for Reducing Vulnerability, Obligatory Adaptation Before the Effects of Climate Change and the Mitigation of Greenhouse Gas Emissions (*Ley Marco para regular la reducción de la vulnerabilidad, la adaptación obligatoria ante los efectos del cambio climático y la mitigación de gases de efecto invernadero*) (Decree 7-2013)
- Decree 52-2003, the Incentives for the Development of Renewable Energy Projects Act]

C. Extraction and/or use of water

1. **Does the legislation regulate the right to abstract water? (Surface, groundwater etc.)?**

[Subsoil water is state water. Municipal licenses are required to do so. The civil code considers it to be an immovable property: Water on the surface or within the earth (Article 445 cc) as well as water pipes. Civil code art 579 ss.: Groundwater can be exploited by the owner of the farm. ]

2. **Does the legislation distinguish between the extraction of drinking water and water for other uses?**

[No.]

3. **Is the right to use water connected to land ownership?**

[If it is underground, it belongs to the owner of the farm.]

4. **Are permits/licenses required for water use (e.g. domestic, agricultural, industrial)?**

[Yes, they are called municipal licenses.]

5. **Can permits/licenses be suspended? Under what circumstances?**

[Yes. The motives are various and regulated specifically by the various municipalities. For example, with reference to Guatemala City, a license may be suspended for guaranteeing the water supply when the decrease in the quantity of water threatens the public supply (article 9, Municipal Decree of February 1973).]

6. **Can water abstraction licenses be transferred? Is transferability subject to restrictions?**

[It seems that they cannot be passed on.]

**7. Are there priorities in the allocation of water for different uses?**

[Not by law. However, the Constitutional Court's Ruling 326-2003 establishes the public interest as a priority in the use of water.

Also, according to the Constitutional Chamber's ruling of April 1, 1988, Case 1491-220, Article 98 of the Constitution establishes the priority of the communal interest over the individual. ]

**8. Are there any regulations for monitoring the volume of water extracted from groundwater?**

[There is no specific national regulation that regulates or limits the volume of water extracted from groundwater. However, the Regulation for the Discharge and Reuse of Sewage and Disposal of Sludge (Reglamento de las Descargas y Reuso de Aguas Residuales y de la Disposición de Lodos) (Government Agreement 236-2006), provides some rules for the reuse of such waters. ]

**9. Are there any restrictions for releasing contaminants/pesticides/fertilisers/farm animal effluent/industrial waste or other pollutants to rivers, lakes, seas, or groundwater?**

[Yes. In general, Art. 15 and 29 of the EPIA provides for a principle of liability for environmental damage, which includes releasing

contaminants/pesticides/fertilizers/farm animal effluent/industrial waste or other pollutants to sources of hydric resources, and says the government will protect water sources from pollution. Therefore, this is one of the MARN's functions. Specific limitations to this release of substances into water is regulated by the Regulation for the Discharge and Reuse of Sewage and Disposal of Sludge (Reglamento de las Descargas y Reuso de Aguas Residuales y de la Disposición de Lodos) (Government Agreement 236-2006), specifically art. 20. ]

## CHAPTER 4. THE HUMAN RIGHTS TO WATER AND SANITATION & SDG 6 TARGETS <sup>12</sup> including elements of the Human Right to a Healthy Environment

A. Availability and accessibility (SDG 6.1, 6.2, 6.4)

**1. What laws or regulations ensure that a minimum essential level of water is available to all?**

[No laws specifically ensure the minimum essential level of water available to all. However, the Health Code, Decree Number 90-97, prescribes in the Health and Environment chapter, a section related to Potable Water, establishing that the State, through the Ministry of Health, in coordination with the Municipal Development Institute, and other institutions in the sector, will promote a priority and necessary policy that guarantees access to universal coverage of the population to the drinking water services, with emphasis on the management of the communities themselves, to guarantee the sustainable management of the resource.]

**10. What are the standards/policies on the amount of water to be made available?**

[Please note the Specifications Manual for Monitoring and Control of Water Quality for Human Consumption Ministerial Agreement 523-2013, and the Government Agreement 113-2009, regulating health standards for supply services.]

**2. In cases where water is not available on premises, what mechanisms are in place to ensure collection times do not exceed 30 minutes including wait times and queuing? There are no specific regulations on this.**

**3. Does the law ensure continuous supply of water for all?** [In general, the Health Code regulates matters relating to the obligation of the Municipalities regarding the supply of drinking water to the communities within the municipal jurisdiction, as well as the protection, conservation, development and rational use of drinking water sources.

Therefore, the municipal code establishes the responsibility for the service.] **In instances where water availability is not continuous, what measures are implemented?**

[Government Agreement 113 of 2009, provides that whenever the water supply must be interrupted due to maintenance or repair of any component of the service; the providers of the service must inform the population that will be affected by delivering a notice at least forty-eight hours prior to the interruption. In case the interruption due to causes of force majeure, they must inform immediately after the event that motivates it has happened.]

**4. How is water supply availability ensured for marginalized and vulnerable groups, e.g., economically challenged or less developed rural areas?**

Art. 4 of the Constitution provides for equality and non-discrimination in general, when it provides: *"In Guatemala all human beings are free and equal in dignity and rights. Men and women, whatever their marital status, have equal opportunities and responsibilities. No person may be subjected to servitude or any other condition that impairs his dignity. Human beings must observe fraternal conduct among themselves."*

Also, with regard to the indigenous population, the Urban and Rural Development Councils Act, Decree No. 11-2002, indicates that the Development Councils System is the main means of participation of the Maya, Xinka and Garifuna and non-indigenous peoples, in public management to carry out the process of democratic development planning, taking into account the principles of national, multi-ethnic, multicultural and multilingual unity of the Guatemalan nation.

<sup>12</sup> See Table of the Targets and Indicators of SDG 6 page 9

5. **Does the law/policy prioritize water for domestic uses over other uses?**

[Please note that Constitutional Court's Ruling 326-2003 establishes the public interest as a priority in the use of water.

Also, according to the Constitutional Chamber's ruling of April 1, 1988, Case 1491-220, Article 98 of the Constitution establishes the priority of the communal interest over the individual.]

6. **What are the grounds for disconnecting, interrupting or altering water supply and sanitation services (e.g., authorities may alter water supply in case of droughts or emergencies, in which cases are disconnections possible...)?**

Each municipality establishes in particular the causes of disconnection, and reconnection. In the case of the OCSAs (*Organizaciones Comunes de Saneamiento de Agua*),<sup>13</sup> the custom establishes non-payment as a cause of disconnection.

7. **What are the procedural standards/criteria for permitting interruption, disconnection or alteration of water supply and sanitation services?**

Please refer to our response above.

8. **Are alternative ways of water supply and sanitation services provided for in case of alteration of supply and/or service?**

No alternatives are established in the municipal regulations, the user would have to repair what caused the disconnection or suspension.

9. **Does law/policy provide guidance on:**

**The number of water outlets?** [No]

**The safety, distance and time from a dwelling or structure to reach water outlet or sanitation facilities (e.g., laws that specify water outlets must be available within a certain distance from a school or household)?** [No]

**Technical safety of water outlets or sanitation facilities (e.g., law requiring that certain standards are applied in the**

**construction of those facilities or of buildings)?** [No, this type of information is

not found in the decrees of the municipalities that regulate water management, but with reference to the technical requirements for water intakes, for which there is Governmental Agreement No. 113-2009, which issued the Health Regulations for the Administration, Construction, Operation and Maintenance of Water Supply Services for Human Consumption.]

10. **Are there any standards that protect healthy natural water bodies to guarantee sustainable sources of water for drinking or other household uses?**

Articles 86 and 87 of the Health Code provide:

*"The Ministry of Health will establish the rules linked to administration, Construction and maintenance of drinking water services for human consumption, monitoring, in coordination with the municipalities and the organized community, the quality of the service and water of all supplies for human use. These are public or private"* (Article 86).  
*"Water purification. The municipalities and other public or private institutions responsible for the management and supply of drinking water have the obligation to purify it, based on the methods established by the Ministry of Health. The Ministry should provide technical assistance to the municipalities in an efficient manner for their implementation. The violation of this provision shall entail penalties which shall be established in this law, without prejudice to the criminal sanctions which may be incurred"* (Article 87).

In turn, Article 68 of the municipal code

<sup>13</sup> In Guatemala, due to the lack of water and sanitation systems in rural areas, the neighbors of many communities created the OCSAs, community organizations of drinking water and sanitation

services, also known as drinking water committees. OCSAs act as rural managers providing drinking water to households and are sometimes in charge of wastewater and sewage systems as well.

establishes the obligation of the municipality to deliver duly chlorinated water.

The Ministry of Health created the “*Manual of Specifications for Monitoring And Control of Water Quality for Human Consumption*”, which is Ministerial Agreement 523-2013.

For its part, the COGUANOR NTG 29001 standard “*Water for human consumption (drinking water)*” contains specifications of a technical nature. Also, Ministerial Agreement No. 1148-09 governs the quality of water for human consumption. Finally, Government Agreement 178-2009 deals with the certification of water quality for human consumption.[ ]

11. **Do groundwater sources and aquifers have an allocation of water volume protected from extraction to ensure long term sustainability? There are no specific regulations.**
12. **Is there any provision in the law/policy for the availability and accessibility of clean and healthy environmental spaces in non-domestic places such as schools, hospitals, workplaces, prisons, refugee camps, etc.?**
13. **Is there any provision in the law/policy for availability and accessibility of water and sanitation facilities in non-domestic places such as schools, hospitals, workplaces, prisons, refugee camps, etc.?**

[In general, the municipal code establishes the responsibility of the service.]

#### B. Quality and safety (SDG 6.1, 6.2, 6.3)

**Are there parameters of quality and safety for drinking water established under law?**

[Articles 86 and 87 of the Health Code provide:

*“The Ministry of Health will establish the rules linked to administration, Construction and maintenance of drinking water services for human consumption, monitoring, in coordination with the municipalities and the organized community, the quality of the*

*service and water of all supplies for human use. These are public or private” (Article 86). “Water purification. The municipalities and other public or private institutions responsible for the management and supply of drinking water have the obligation to purify it, based on the methods established by the Ministry of Health. The Ministry should provide technical assistance to the municipalities in an efficient manner for their implementation. The violation of this provision shall entail penalties which shall be established in this law, without prejudice to the criminal sanctions which may be incurred” (Article 87).*

In turn, Article 68 of the municipal code establishes the obligation of the municipality to deliver duly chlorinated water.

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For its part, the COGUANOR NTG 29001 standard “*Water for human consumption (drinking water)*” contains specifications of a technical nature. Also, Ministerial Agreement No. 1148-09 governs the quality of water for human consumption. Finally, Government Agreement 178-2009 deals with the certification of water quality for human consumption.[ ]

1. **Is monitoring of drinking water quality or wastewater required by law/policy? If so, which actor is required to monitor it and how often (according to the law/policy)?**

[The authority for the control of drinking water is the Ministry of Health, but it is not established how often such analysis is to be carried out.]

**Are there any regulations to control or monitor the quality of groundwater aquifers so that they do not become contaminated?**

[Yes.]



- Ministerial Agreement 8-2016. Wastewater treatment plants.
- Ministerial Agreement 7-2016. Sanitary Drains. Ministerial Agreement 11-2016. Letrinization.
- Ministerial Agreement 105-2008. Wastewater Discharge and Reuse and Sludge Disposal.
- Ministerial Agreement 573-2011. Design standards for rural disposal systems.

2. **Do laws/regulations include guidance on the safe construction of water and sanitation Infrastructure (e.g. to ensure no contact with excreta, ventilation, respect construction guidelines)?**

[Yes. Government Agreement No. 113-2009, issued the Health Standards Regulations for the Administration, Construction, Operation and Maintenance of Water Supply Services for Human Consumption.

Plans for these services should always be presented in horizontal property constructions.]

3. **Do laws/regulations include requirements or guidance on safe emptying of latrines as well as safe treatment and disposal of treated sludge?**

[Yes. This matter is regulated by the Ministerial Agreement 7-2016, the Sanitary Drains, Ministerial Agreement 11-2016. Letrinization, Ministerial Agreement 105-2008. Wastewater Discharge and Reuse and Sludge Disposal, and Ministerial Agreement 573-2011 regarding the design standards for rural disposal systems.]

4. **Do laws/regulations establish requirements on household water treatment and storage (e.g. quality requirement with respect to water containers, rainwater harvesting limitations, etc.)?**

[For urban and rural systems, differences in the periodicity of storage are established for monitoring.]

C. Water pollution control (SDG 6.3, 6.6)

1. **Are there legislative provisions concerning waste disposal activities? Which authorities are responsible for monitoring to determine if waste has caused pollution of bodies of**

**water?**

The MARN is the governmental authority in charge of monitoring these matters. The following is the regulation regarding the discharge of waste water disposal activities:

- DRPSA Technical Standard 001-2018. Wastewater treatment plants,
- DRPSA Technical Standard 002-2018. Sanitary sewer systems;
- DRPSA Technical Standard 003-2018. Letrinization Projects
- Ministerial Agreement 105-2008. Wastewater Discharge and Reuse and Sludge Disposal
- Ministerial Agreement 573-2011. Design standards for rural disposal systems
- Design standards for rural disposal systems
- DRPSA Technical Standard 015-2018. Storm sewer systems.

2. **Is there legislation which regulates the contamination of groundwater? How is it addressed in practice?**

[ Ministerial Agreement 8-2016. Wastewater treatment plants.

- Ministerial Agreement 7-2016. Sanitary Drains.
- Ministerial Agreement 11-2016. Letrinization.
- Ministerial Agreement 105-2008. Wastewater Discharge and Reuse and Sludge Disposal.
- Ministerial Agreement 573-2011. Design standards for rural disposal systems.]

3. **Do laws/regulations provide constraints on the levels of nitrates and phosphates that are released into groundwater through agricultural land use?**

[No. The Rules to Certify the Quality of Water in Supply Projects for Human Consumption (Reglamento para la Certificacion de la Calidad del Agua para Consumo Humano en Proyectos de Abastecimiento) only requires that when filing to obtain the certification nitrates and phosphates values should be included, although there is no limitation as to the levels. In addition, governmental agreement No. 254/2019 (*Acuerdo Gubernativo No. 254/2009*) issued on November 27, 2019, establishes certain

limits for specific parameters but no limit was included for nitrates and phosphates. ]

1. **Is permission required to discharge effluents? What are the criteria used for considering applications and granting permits?**

Ministerial Agreement 105-2008. Wastewater Discharge and Reuse and Sludge Disposal establishes the requirements that need to be fulfilled to obtain a discharge permit. The entity responsible of analyzing and granting authorizations is within the Ministry of Health.

2. **Can waste discharge permits be lost/suspended/modified during their lifespan? Under what circumstances? Is compensation payable?**

This is not expressly regulated. The MARN estimates that 90% of the water sources in Guatemala are contaminated.

3. **Are instances of pollution of water sources subject to penalties / fines? Which institution is in in charge of the administration of the penalties?**

Article 347 A of the Criminal Code sets forth from one to two years in prison and fines from three hundred to five thousand quetzals to whom pollutes the waters with toxic discharges, excessive noise or discharging dangerous substances or products that may harm the population, animals, forests or plantations.

#### D. Affordability (SDG 6.1)

1. **How does law/policy address affordability of water supply and sanitation services?**

Affordability is addressed in the National Water Policy. In condominiums, water service shall be contemplated in the plans, in accordance with section 1196 of the Civil Code.

2. **What mechanisms must be established by law/policy to ensure affordability of water and sanitation services?**

There are no mechanisms established by law or in the National Water Policy.

3. **How are tariffs established and what is the process for updating these tariffs?**

Municipalities are in charge of establishing the applicable tariffs in each Municipal code. Tariffs shall depend on operation costs.

4. **Does the tariff vary depending on the regions/circumstances?**

Yes, depend on the regions and poverty levels.

5. **Which actors are responsible for and involved in setting and/or approving tariffs for water supply and sanitation services?**

The municipalities or the OCSAS when are these the service providers.

6. **Is disconnection from water supply and sanitation services for non-payment allowed? What procedures must be followed in such cases prior to disconnecting the supply and service? Are there any further consequences (other than shutoffs) for bill non-payment?**

The municipal entity that provides the service is in charge of shutting off the service when there are unpaid two bills. Since there is no legal procedure established on this regard, users can file an appeal to have the service restored and to have the Supreme Court to determine the legality of such action.

#### E. Acceptability (SDG 6.1, SDG 6.2)

1. **Is there provision in the law or contracts with service providers that relate to the need to take into account cultural and social dimensions of acceptability (e.g. colour or odour of water, or the positioning of a facility)?**

Ministerial Agreement 573-2011 considers the social history, the hygiene habits and cultural patterns to design the systems.

2. **Is there provision in the law or contracts with service providers that relate to the need to ensure dignity and privacy (e.g., in workplaces, but also in the design of shared sanitation facilities for certain communities)?**

There are no express provisions on this regard.

3. **Is there provision in the law or contracts with service providers that relate to the need to ensure that people affected by the service do not suffer from a reduction in the**

**health of their environment?**

There is no express provision on this regard.

#### F. Non-discrimination, equality, and universal access (SDG 6.1, 6.2)

**1. Is there any legislation about the prohibition of direct and indirect discrimination (on all grounds) and promotion of equality in accessing water and sanitation services?**

There is no express provision on this regard, however section 4 of the Constitution establishes in general the principle of equality and no discrimination (i.e. *“all human beings are free and equal in dignity and rights (...)”*)

**2. Is there provision in the law or contracts with service providers that relate to the need to ensure that people affected by the service do not suffer from a reduction in the health of their environment?**

There is no express provision on this regard, however Article 347 A of the Criminal Code sets forth sets forth penalties and fines to whom pollutes the waters with toxic discharges, excessive noise or discharging dangerous substances or products that may harm the population, animals, forests or plantations.

**3. Are there any legal measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities?**

There is no specific legal measure or recourse available designed to specifically protect environmental harm considering the needs, risks and capacities of the harmed person.

**4. Is there any legal recognition for women in the empowerment, leadership, decision-making and full, equal and meaningful participation of women and girls, and the role that women play as managers, leaders and defenders of natural resources and agents of change in safeguarding the environment and water resources?**

There is no legal recognition granted by the government to women on this.

#### G. Right to information, Transparency (SDG 6.b)

**1. Is there any specific legislation about the right to seek, receive and impart information held by public authorities? Does the law expressly set out the right to seek, receive and impart information on water related issues?**

[There is an access to public information law. It guarantees all citizens, without any discrimination, access to information or acts of the public administration found in the archives, or any form of data storage. Reference is made to public services subject to concession or administration. All subjects referred to in section 6 of the Act, which refers to any entity, or institution that manages or administers public resources, or State property, are subject to this Act.

Art. 24 of the said Act states that in no case may information relating to investigations of violations of fundamental HRDs be classified as confidential.

Likewise, Art. 47 of the Law refers to articles 13 and 14 and s. of the Law on the commission of the Human Rights of the Congress of the republic: decree 54-86 of the Congress of the Republic.]

**2. Does the right to information require the payment of a fee? Is there a provision on the affordability of such fee?**

[No. There is no fee to obtain public information.]

**3. Are there any exceptions with regard to who or what type of water and environment related information held by public authorities can be accessed?**

[No, the right to information on this specific respect has no limitations, but refers to all acts of the public administration. Although it does not refer specifically to water or sanitation, it refers to public services in general.]

**4. Which institutions are required by law/policy to make information on water public? Does it reference only the right to access information or also the obligation to make public such information on water**

related issues (e.g., are institutions obligated to provide information only upon demand, or are they obligated to publish or make available information at certain periodic intervals, on the occurrence of certain circumstances, etc.)?

[In interpretation of the law that governs the matter, since it is the municipalities that are in charge of providing the public service, they are also those that have the obligation to give the information that the users request.]

5. **Are there requirements in relation to the language, locations, format, timing and means used for providing water and environment related information to the public? What mechanisms are in place to ensure information is made available to all including to minorities?**

There is no reference to the language and there are no specific requirements as to how should the information be provided.

6. **Are there any mechanisms to ensure that education on the importance of a healthy environment is included in school curricula, and that the link is made with sustainable drinking water supplies?**

There are no specific mechanisms to ensure that education includes the importance of a healthy environment in school curricula.

7. **Are there any legal provisions requiring certain authorities to educate the population on water related issues?**

There are no specific legal provisions requiring certain authorities to educate the population on water related issues.

8. **Are there any requirements in relation to access to information in contracts with water and sanitation operators?**

There are no specific requirements in relation to access to information in contracts with water and sanitation operators.

#### H. Public participation (SDG 6.5.1, 6.b)

1. **Is there a law/policy which addresses public participation?**

How does legislation/policy ensure that water and sanitation services are delivered in an improved and sustainable manner, considering the availability of water

[In the OCSAS, citizen participation is what gives life to him, since it is the community that forms it, but there is no regulation that supports it.]

2. **What are the criteria listed in the law/policy in relation to participation in water-related issues (e.g. allocated time to provide comments, invitation to public hearings, etc.)?**

[In OCSAS, the fundamental requirements are to be part of a community, and to be a member to have been elected by the users to the management position. These decision-making positions involve the most prominent members of the community.]

3. **Do the contracts between governmental authorities and operators of water and sanitation services impose upon the operators an obligation to ensure or provide for public participation at any levels at which the applicable services are delivered?**

Contracts between governmental authorities and operators of water and sanitation services are not publicly available.

4. **Is the establishment of an IWRM mechanism including regional or local associations or other groupings of water users provided for and regulated by laws or regulations? How do they interact with or connect into other agencies or regulators?**

There is no Integrated Water Resources Management (IWRM) mechanism in force. However, the community takes a fundamental role given that they are a key part of the OCSAS. The Law of Development Board (*Ley de Consejo de Desarrollo*) requires that communities shall have a Communal Development Board (*Consejo Comunitario de Desarrollo*) responsible for local projects, and these boards are registered with the municipality, although these boards are in charge of infrastructure projects rather than services.

- I. Sustainability (SDG 6.4, 6.5, 6.6)

resources, competing demands and generally the needs of present and future generations? This depends on each municipality. The National Water Policy

establishes as one of its main goals to contribute in health conditions, life quality and individual wellbeing by adjusting the costs of water.

For the OCSAS sustainability is ensured with the a tariff that covers all operating and maintenance expenses. In addition, there is a fund that is established to cover contingencies. The purpose is that users pay as low as possible while receiving the correct quality and quantity of the service.

1. **How does legislation/policy ensure that water and sanitation services are delivered in a sustainable manner to rural and deprived urban areas?**

[In the case of the OCSAS, sustainability is ensured with the establishment of a tariff that covers all expenses of operation and maintenance. In addition, there is a contingency reserve that is kept so that users can pay the lowest price possible while providing a service with the minimum sanitary security.]

2. **How does the legislation/policy ensure that delivery of water and sanitation services are economically sustainable, with sufficient expenditure for operation and maintenance and the protection of the environment?**

The OCSAS ensure sustainability with the establishment of a tariff that covers

operating and maintenance costs. there is a fund that is established to cover contingencies. The purpose is that users pay as low as possible while receiving the correct quality and quantity of the service.

3. **How does the legislation/policy reduce the number of people suffering from water scarcity by optimising water use efficiency across all sectors, and ensuring sustainable withdrawals?**

By adjusting the tariffs based on the regions and poverty.

4. **Is there any legislation/policy to protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes?**

Guatemala's Constitution, which is the basis of all legislation, provides for the preservation of the environment and natural resources through the establishment of national parks and reserves, and the regulated exploitation of plant and animal life, land and water (Articles 64 and 97). In addition, the two main laws that implement what the Constitution mandates are the Environmental Protection and Improvement Act (*Ley de Protección y Mejoramiento del Medio Ambiente*) and the Protected Areas Act (*Ley de Areas Protegidas*).

## J. Accountability/ Remedies and complaint procedures

1. **Are there remedies provided by law/regulations to file complaints or other ways of accessing justice in reference to water, sanitation and a healthy environment? Who may file them? Are the decisions appealable?**

All claims shall be filed in the municipality, that is the service provider. The claim must be filed with the user affected by the service or the owner of the property. There is no appellation system specifically for water claim, but all administrative decisions are appealable.

2. **Are there possibilities for financial assistance for legal counsel in cases concerning water, sanitation and a healthy environment?**

There is no specific provision that provides for financial assistance for legal counsel in cases concerning water. Please note that according to the National Constitution, all citizens are granted access to justice. All legal claims must be filed with counsel, even in case of injunctions.

3. **Who monitors water & sanitation service providers?**

The Ministry of Health and the Ministry of Environment.

4. **Is there a possibility to appeal against the decisions of service providers? With whom would such an appeal be lodged, and under which conditions is such an appeal possible?**

[When the service provider is an OCSA, the claim should be filed with the administration

committee. There are no clear regulations as to what the process should be when the service provider is the municipality. In any event, under both scenarios, the claim would be of administrative nature. ]

5. **Are there any protective mechanisms to ensure that there is a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence?**

There are no specific provisions on this regard, other than the general regulations as a result of the various conventions to which the country is a party.

6. **Is there any legislation to respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters?** There are no specific national regulations applicable to environmental matters on this regard.

## CHAPTER 5. JUDICIARY SYSTEM

### A. Preliminary questions

1. **What is the relationship between international law and national law (i.e. is the state a monist or dualist system--how is international law interpreted in relation with domestic law)?**

[Human rights law, treaties and conventions accepted and ratified by Guatemala have precedence over domestic law (Art. 46 Constitution). ]

2. **What is the hierarchical structure of the legal system?**

Article 114 of the *Amparo* Act provides that the courts of justice shall always observe the principle that the Constitution prevails over any international law or treaty, without prejudice to the fact that international treaties and conventions accepted and ratified by Guatemala prevail in the area of HRIs.

However, under article 27 of the Vienna Convention on the Law of Treaties, a State cannot invoke its domestic law to justify non-compliance with a treaty. This rule is applicable either as a conventional rule if the State ratified the Convention, or as a rule of international custom. Guatemala ratified this Convention on 21 July 1997, making article 27 *above* applicable to Guatemala.

3. **Has the State ratified the relevant international conventions establishing regional or international complaint mechanisms?**

Yes. Please see treaties section.

### B. Remedies and complaint procedures/accountability

4. **Are there remedies provided by law to file complaints or other ways of accessing justice in reference to water and sanitation and a healthy environment? Who may file them? Are the decisions appealable?**

[Complaints must be filed in the municipality, which is the service provider, and presented by the affected user or the property owner.

There is always the possibility of filing an appeal for *amparo*.

When the service is provided by an OCSA, complaints are filed with the committee. And presented by users. ]

5. **Are such complaint procedures required to be provided in conformity with human rights principles (such as non-discrimination, equity)?**

[There is no specific information in this regard, but in a general way it can be said that the administrative procedure in Guatemala respects the human rights principles.]

6. **Does the law provide for financial assistance for legal counsel in cases concerning water and sanitation or access to a healthy environment?**

[No. Even *amparo* must be legally sponsored. Art. 21 of the *Amparo* Law, except for the case of article 26, which provides for the possibility of presenting the *amparo* orally and without legal sponsorship, in which case a copy will be sent to the Human Rights Ombudsman for advice or sponsorship.]

7. **Who monitors the administrative level bodies and/or service providers?**

The Ministry of Health, and the Ministry of Environment.

8. **Is there a possibility to appeal against the decisions of service providers? With whom would such an appeal be lodged, and under which conditions is such an appeal possible?**

[There is no specific procedure against water and sanitation decisions, but normally all administrative decisions in Guatemala are appealable (Law 27584/2001). Community managers do not have any formal rules governing them.]

9. **What remedies are available at an administrative level?**

When the service provider is an OCSA, it should be referred to the management committee. If it is the municipality, there is a lack of information in this regard. However, by way of example, the model of contracts between consumers and the company

providing the service (Empagua) in Guatemala City provides that all disputes are submitted to the administrative authority. The parties may decide in the contract what to do if they disagree with the decision made by the administrative authority.]

**10. Who monitors these administrative level bodies?**

The Ministry of Health, and the Ministry of Environment.

**11. Are such administrative bodies legally independent entities according to the law?**

[No. Please refer above.]

**12. Is there any evidence (e.g., case law) that courts in the country have (or may have) jurisdiction to enforce any economic, social or cultural rights?**

[Yes. The Guatemalan judiciary sometimes tries to fill legislative gaps (for example, see Constitutional Court judgment 2810-2010 on DHAS).]

**13. Do courts in the country have jurisdiction to hear cases regarding the obligations to respect, protect and fulfil the human rights to water, sanitation and a healthy environment? Is there any existing case law?**

[It has jurisdiction to hear cases of this type through *amparo* actions, and for the protection of such rights as fundamental rights judicially and constitutionally recognized.]

**14. Do courts in the country have jurisdiction to hear cases regarding the obligations to respect, protect and fulfil the human rights to a healthy environment? Is there any existing case law?**

[It has jurisdiction to hear cases of this type through *amparo* actions, and for the protection of such rights as fundamental rights judicially and constitutionally recognized.]

**15. Provide a brief overview of the judicial procedure involving a human rights violation case.**

[An *Amparo* writ is open to the public to challenge any acts of authorities that violate any of the fundamental rights provided in the Constitution. It can be filed even before a violation has occurred. However, in order

to file an *amparo* writ, the claimant must have the support of a lawyer. In addition, citizens can submit separate writs of *Amparo* in response to a single rights violation, in which case the court will study them in a consolidated matter, and will issue a single legal judgment. Moreover, there is a right to a public hearing for the parties to present their arguments. Constitutional Court hears the *amparo* only under review as second or third instance. Finally, The Court of Constitutionality recognizes remedies of *amparo* against judicial rulings, except the decisions issued by the Supreme Court.]

**16. Is there a Constitutional /Supreme Court? Are cases heard as the last appeal or may cases be referred directly?**

[Yes. There is a Constitutional Court. According to article 19 of the *Amparo* Act, except for some cases expressly mentioned in that Act, the ordinary judicial and administrative remedies must be exhausted beforehand in order to seek *amparo*, through which cases are adequately ventilated in accordance with the principle of due process.

According to Art. 25 Under the same law, the Human Rights Procurator has active legitimacy to bring protection for the purpose of protecting the interests entrusted to him.]

**17. Have domestic courts applied international human rights law in past cases or have they referred to decisions from international human rights bodies (with reference to water, sanitation and the environment)?**

[Yes. Although there are not many cases in which the Constitutional Court applied international human rights law in specific connection with the environment, there is a tendency to protect it, and to act in accordance with the national and international law that regulates it. For instance, in case 941-2005 "*Monumento Natural Semuc Champey*", the Court found that the collective interest is prevalent to the private interest with respect to the sustainable development of the national natural resources., and declared an area of property a protected natural area. Also, in



case 1491 of 2007, the Court applied international law and principles to declared the lack of constitutionality of several provisions of the Mining Code. This, based on (i) the prevalence of the collective good over the interest of the individual; (ii) the rights to a healthy, adequate and balanced environment as a priority for life and health; and (iii) Guatemala's compliance with the international obligations adopted regarding the protection of the environment, the natural and cultural resources.]

18. **Are court proceedings conducted in only one principal language, or are they also conducted in local languages, including minority and indigenous languages? Does the law require that information is made available in local languages?**

[In Spanish. However, the use of a translator is explicitly contemplated in criminal proceedings. In 2013 the judicial agency, through the Indigenous Affairs Unit, created the Interpretation Centre, which advises and facilitates translation in judicial proceedings.]

19. **Have domestic courts applied (or referenced) recommendations of national human rights institutions?**

Environmental NGOs are active in Guatemala promoting their environmental agendas, not only before legislative and regulatory authorities, but also on the judicial front. There have been collaborations between government, industry and NGOs that have resulted in the advancement of issues related to protected areas.

### C. National human rights institutions

1. **Is there an independent national human rights institution?**

[The Human Rights Ombudsman Office has competence in water and sanitation matters. The Congress appoints a human rights commission to appoint the Ombudsman, who is a commissioner of the Congress for the defense of human rights and will hold office for 5 years (Art. 273 et seq. of the Constitution) and can only be removed by impeachment. The Ombudsman shall enjoy

the same immunity as the deputies of the Congress of the Republic.

The Ombudsman shall act with absolute independence, and not be subordinated to any organization, institution or official.]

2. **Does the mandate of the national human rights institution cover the entire human rights framework, including economic, social and cultural rights?**

[Yes. The Constitution gives the Ombudsman the authority to supervise government administration, promote respect for human rights by the administration; investigate and denounce administrative actions that are damaging to the interest of persons; investigate complaints of human rights violations; make private or public recommendations and censor administrative actions; and promote judicial or administrative remedies or actions when appropriate.]

3. **Is the national human rights institution authorized to receive and adjudicate complaints of violations of human rights to water, sanitation and a healthy environment?**

Yes, this institution receives complaints of violations of all human rights, including water, sanitation and a healthy environment.

4. **Does the national human rights institution have a legal basis or authority to initiate an action to address systemic human rights violations?**

Article 275 of the Constitution, which provides – among the powers of such an institution – in a general way in paragraph (f): *“To promote judicial or administrative actions or remedies, where appropriate.”*

5. **What type of remedies does the national human rights institution have the authority to impose?**

The Attorney General may issue a public censure resolution against the material and/or intellectual persons responsible for the violation of human rights (it is not binding).

6. **Is the institution allowed to initiate investigations/hearings?**

[The institution would be entitled to file

*amparo* claims before the judiciary under Article 275, which provides – among the powers of such an institution – in a general way in paragraph (f): “*To promote judicial or administrative actions or remedies, where appropriate.*”]

7. **Does the national human rights institution have the authority to monitor how remedies for violations of rights to water, sanitation and a healthy environment are implemented by governmental authorities, service providers or other agencies/entities?**

[Yes. For example, in February 2018, the PDH began monitoring hospitals of the Guatemalan Social Security Institute in compliance with *Amparo* 064-2016]

#### D. Regulation

1. **Is there a water regulator established by law?**

[These are the municipalities and the State through the Ministry of Health, INFOM (Municipal Development Institute) in coordination with the Ministry of Health, the Ministry of Environment and Natural Resources and SEGEPLAN, which is responsible for government planning of public services.]

2. **Is the water regulator an independent entity?**

[All these institutions belong to the State Executive, except INFOM, which is an autonomous organization.]

3. **What are the oversight mechanisms and responsibilities related to drinking water supply and sanitation services of the regulator?**

[Normally, each municipality establishes its own monitoring and oversight procedures.]

## ANNEX 1: TARGETS AND INDICATORS OF SDG 6

TARGET	INDICATOR (CUSTODIAN AGENCIES)
6.1 By 2030, achieve universal and equitable access to safe and affordable drinking water for all	6.1.1 Proportion of population using safely managed drinking water services (World Health Organization (WHO)/United Nations Children's Fund (UNICEF))
6.2 By 2030, achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations	6.2.1a Proportion of population using safely managed sanitation services (WHO/UNICEF) 6.2.1b Proportion of population using a handwashing facility with soap and water available (WHO/UNICEF)
6.3 By 2030, improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally	6.3.1 Proportion of wastewater safely treated (WHO/United Nations Human Settlements Programme (UN-Habitat)/United Nations Statistics Division (UNSD)) 6.3.2 Proportion of bodies of water with good ambient water quality (United Nations Environment Programme/UNSD)
6.4 By 2030, substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity and substantially reduce the number of people suffering from water scarcity	6.4.1 Change in water-use efficiency over time (Food and Agriculture Organization of the United Nations (FAO)) 6.4.2 Level of water stress: freshwater withdrawal as a proportion of available freshwater resources (FAO)
6.5 By 2030, implement integrated water resources management at all levels, including through transboundary cooperation as appropriate	6.5.1 Degree of integrated water resources management implementation (0–100) (United Nations Environment Programme) 6.5.2 Proportion of transboundary basin area with an operational arrangement for water cooperation (United Nations Educational, Scientific and Cultural Organization (UNESCO)/United Nations Economic Commission for Europe (UNECE))
6.6 By 2020, protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes	6.6.1 Change in the extent of water-related ecosystems over time (United Nations Environment Programme/Ramsar Convention)
6.a By 2030, expand international cooperation and capacity-building support to developing countries in water- and sanitation-related activities and programmes, including water harvesting, desalination, water efficiency, wastewater treatment, recycling and reuse technologies	6.a.1 Amount of water- and sanitation-related official development assistance that is part of a government-coordinated spending plan (WHO/United Nations Environment Programme/Organization for Economic Cooperation and Development (OECD))
6.b Support and strengthen the participation of local communities in improving water and sanitation management	6.b.1 Proportion of local administrative units with established and operational policies and procedures for participation of local communities in water and sanitation management (WHO/United Nations Environment Programme/OECD)

Source: Sustainable Development Goal 6 - Synthesis Report on Water and Sanitation (2018), Table 1

## ANNEX 2: The human rights to water and sanitation and the right to a healthy environment compared

Table 1: Comparison of the human rights principles

Principles of the Human Right to a Healthy Environment (from Framework Principles)	Principles of the Human Rights to Water and Sanitation (from General Comment No.15)
<b>Human Rights</b>	
<p>Principle 1. States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights.</p>	<p>GC 1. Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.</p> <p>GC 20. The right to water, like any human right, imposes three types of obligations on States parties: obligations to respect, obligations to protect and obligations to fulfil.</p>
<b>Sustainable environment</b>	
<p>Principle 2. States should respect, protect and fulfil human rights in order to ensure <u>a safe, clean, healthy and sustainable environment</u></p>	<p><i>Respect:</i> GC 21: The obligation to <i>respect</i> requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to water. The obligation includes, inter alia, refraining from engaging in any practice or activity that denies or limits equal access to adequate water; arbitrarily interfering with customary or traditional arrangements for water allocation; <u>unlawfully diminishing or polluting water</u>, for example through waste from State-owned facilities or through use and testing of weapons; and limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law.</p> <p><i>Protect:</i> GC 23. The obligation to <i>protect</i> requires States parties to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority. The obligation includes, inter alia, adopting the</p>

	<p>necessary and effective legislative and other measures to restrain, <u>for example, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.</u></p> <p><i>Fulfill:</i> GC26. The obligation to fulfil requires States parties to adopt the necessary measures directed towards the full realization of the right to water. ... and facilitating improved and <u>sustainable access to water, particularly in rural and deprived urban areas.</u></p> <p>GC.11. The manner of the realization of the right to water must also be <u>sustainable, ensuring that the right can be realized for present and future generations.</u></p>
<p><b>Non-Discrimination</b></p>	
<p>Principle 3. States should <u>prohibit discrimination</u> and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment.</p>	<p>GC. 15. With respect to the right to water, States parties have a special obligation to provide those who do not have sufficient means with the necessary water and water facilities and to <u>prevent any discrimination</u> on internationally prohibited grounds in the provision of water and water services.</p>
<p><b>Safety and freedom of expression</b></p>	
<p>Principle 4. States should provide <u>a safe and enabling environment</u> in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence</p>	<p>GC, 44,b Violations of the obligation to protect follow from the failure of a State to <u>take all necessary measures to safeguard persons</u> within their jurisdiction from infringements of the right to water by third parties.</p>
<p>Principle 5. States should respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters.</p>	

Public Awareness and education	
<p>Principle 6. States should provide for <u>education and public awareness on environmental matters.</u></p>	<p>GC, 25. The obligation to fulfil can be disaggregated into the obligations to facilitate, promote and provide. The obligation to promote obliges the State party to take steps to ensure that there is <u>appropriate education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage.</u></p> <p>Article 24, para. 2, of the Convention on the Rights of the Child requires States parties to “To ensure that <u>all segments of society [...] have access to education and are supported in the use of basic knowledge of [...] the advantages of [...] hygiene and environmental sanitation.</u>”</p>
Access to Information	
<p>Principle 7. States should provide <u>public access to environmental information</u> by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request.</p>	<p>GC 48. The formulation and implementation of national water strategies and plans of action should respect, inter alia, the principles of non-discrimination and people's participation. The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water. <u>Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.</u></p>
Accountability	
<p>Principle 8. To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.</p>	<p>56. Before any action that interferes with an individual's right to water is carried out by the State party, or by any other third party, the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and that comprises: (a) opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed</p>

	<p>actions; (d) legal recourse and remedies for those affected; and (e) legal assistance for obtaining legal remedies</p> <p>GC 24. Where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water. To prevent such abuses an effective regulatory system must be established, in conformity with the Covenant and this General Comment.</p>
<p><b>Public Participation</b></p>	
<p>Principle 9. States should provide for and facilitate <u>public participation in decision-making related to the environment</u> and take the views of the public into account in the decision-making process.</p>	<p>GC 48. The formulation and implementation of national water strategies and plans of action should respect, inter alia, the principles of non-discrimination and people's participation. <u>The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water.</u> Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.</p>
<p><b>Remedies</b></p>	
<p>Principle 10. States should provide for <u>access to effective remedies for violations of human rights and domestic laws relating to the environment</u></p>	<p>55. Any persons or groups who have been denied their right to water should have <u>access to effective judicial or other appropriate remedies</u> at both national and international levels</p>
<p><b>Standards and Indicators</b></p>	
<p>Principle 11. States should establish and maintain <u>substantive environmental standards</u> that are non-discriminatory,</p>	<p>53. To assist the monitoring process, <u>right to water indicators should be identified in the national water strategies or plans of action.</u> The</p>

<p>non-retrogressive and otherwise respect, protect and fulfil human rights.</p>	<p>indicators should be designed to monitor, at the national and international levels, the State party's obligations under articles 11, paragraph 1, and 12. Indicators should address the different components of adequate water (such as sufficiency, safety and acceptability, affordability and physical accessibility), be disaggregated by the prohibited grounds of discrimination, and cover all persons residing in the State party's territorial jurisdiction or under their control.</p>
<p><b>Violations</b></p>	
<p>Principle 12. States should ensure the effective enforcement of their environmental standards against public and private actors.</p>	<p>GC 55. All victims of violations of the right to water should be <u>entitled to adequate reparation</u>, including restitution, compensation, satisfaction or guarantees of non-repetition. National ombudsmen, human rights commissions, and similar institutions should be permitted to address violations of the right.</p>
<p><b>International Cooperation</b></p>	
<p>Principle 13. States should cooperate with each other to establish, maintain and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights.</p>	<p>GC 30. Article 2, paragraph 1, and articles 11, paragraph 1, and 23 of the Covenant require that States parties recognize the essential role of international cooperation and assistance and take joint and separate action to achieve the full realization of the right to water.</p> <p>GC 38. For the avoidance of any doubt, the Committee wishes to emphasize that it is particularly incumbent on States parties, and other actors in a position to assist, to provide international assistance and cooperation, especially economic and technical which enables developing countries to fulfil their core obligations indicated in paragraph 37 above.</p>
<p><b>Non-Discrimination</b></p>	
<p>Principle 14. States should take additional measures to <u>protect the rights of those who are most vulnerable to, or at particular risk from, environmental</u></p>	<p>16. Whereas the right to water applies to everyone, States parties should give <u>special attention to those individuals and groups who have traditionally faced difficulties in exercising</u></p>



<p><u>harm</u>, taking into account their needs, risks and capacities.</p>	<p><u>this right</u>, including women, children, minority groups, indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees.</p>
<p>Principle 15. States should ensure that they <u>comply with their obligations to indigenous peoples</u> and members of traditional communities, including by:</p> <ul style="list-style-type: none"> <li>a. Recognizing and protecting their rights to the lands, territories and resources that they have traditionally owned, occupied or used.</li> <li>b. Consulting with them and obtaining their free, prior and informed consent before relocating them or taking or approving any other measures that may affect their lands, territories or resources.</li> <li>c. Respecting and protecting their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories, and resources.</li> <li>d. (d) Ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories, or resources.</li> </ul>	<p>GC 7. The Committee notes the importance of ensuring sustainable access to water resources for agriculture to realize the right to adequate food (see General Comment No.12 (1999)). Attention should be given to <u>ensuring that disadvantaged and marginalized farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology</u>. Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not “be deprived of its means of subsistence”, States parties should ensure that there is <u>adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples</u>.</p> <p>GC 16 (d) 16... In particular, States parties should take steps to ensure that:</p> <p>...(c) Rural and deprived urban areas have access to properly maintained water facilities. Access to traditional water sources in rural areas should be protected from unlawful encroachment and pollution. Deprived urban areas, including informal human settlements, and homeless persons, should have access to properly maintained water facilities. No household should be denied the right to water on the grounds of their housing or land status; (d) <u>Indigenous peoples’ access to water resources on their ancestral lands is protected from encroachment and unlawful pollution. States should provide resources for indigenous peoples to design, deliver and control their access to water;</u> (e) Nomadic and traveler communities have access to adequate water at traditional and designated halting sites; (f) Refugees, asylum-seekers, internally displaced persons and returnees have access to adequate water whether they stay in</p>

	<p>camps or in urban and rural areas. Refugees and asylum-seekers should be granted the right to water on the same conditions as granted to nationals;</p>
<p><b>Sustainability</b></p>	
<p>Principle 16. States should respect, protect and fulfil human rights in the actions they take to <u>address environmental challenges and pursue sustainable development.</u></p>	<p>11. The elements of the right to water must be adequate for human dignity, life and health, in accordance with articles 11, paragraph 1, and 12. The adequacy of water should not be interpreted narrowly, by mere reference to volumetric quantities and technologies. Water should be treated as a social and cultural good, and not primarily as an economic good. The manner of the realization of <u>the right to water must also be sustainable, ensuring that the right can be realized for present and future generations.</u></p> <p>26. The obligation to fulfil requires States parties to adopt the necessary measures directed towards the full realization of the right to water. The obligation includes, inter alia, according sufficient recognition of this right within the national political and legal systems, preferably by way of legislative implementation; adopting a national water strategy and plan of action to realize this right; ensuring that water is affordable for everyone; <u>and facilitating improved and sustainable access to water,</u> particularly in rural and deprived urban areas.</p>

