



Methodology:
Legal country mapping

COLOMBIA

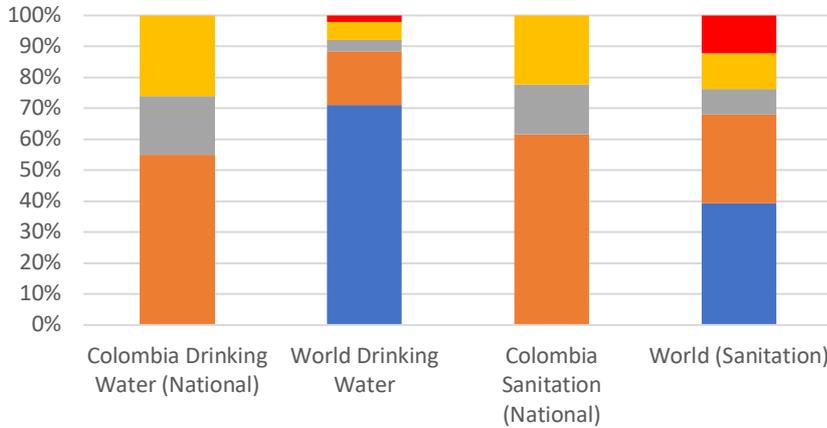
01/2021

White & Case

Colombia Country Mapping

Water and Sanitation Status

JMP Update 2017



- Surface Water/Open Defecation
- Unimproved
- Limited
- Basic
- Safely Managed

General Legislation

Member of a regional integration organisation	Yes
State organisation	Presidential Republic
Relationship between International and National Law	Monist
Supreme Law	Constitution
Independent National Human Rights Institution (NHRI)	Yes
Name of Institution possessing regulation-making authority	Yes
Popular consultation as part of governing/legislative process	Yes

Water Governance

Right to Water or Sanitation mentioned in Constitution	Yes
A water code or a law specific to water resources	Yes
National Strategy, Policy, Action Plan etc. on Water and Sanitation	Yes
Transboundary Water Resources	Yes
Priorities in the allocation of water for different uses	Yes

Legal Framework

Human Rights Criterion



Human Rights Principles



- Deficient
- Partially included
- Mostly included

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CHAPTER 1: WATER GOVERNANCE OVERVIEW

A Preliminary questions

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

Unitary.¹

2 Division of government powers exist? If yes, please elaborate on their functions.

Yes, the Government of Colombia's powers is separated into (1) the Legislature: Congress (Senate and House of Representatives) holds the responsibility for initiating, amending, interpreting, and repealing legislation; (2) the Judiciary, with the highest court being the Supreme Court; and (3) the Executive branch, led by the President.²

3 Which institutions and levels of government have legislative powers?

Legislative authority is vested in a bicameral Congress consisting of the Senate (*Senado*) and the House of Representatives (*Cámara*). Colombia has a two-tier local government structure. The upper level consists of 32 departments and the Capital District of Bogota, and the lower level is made up of 1,101 municipalities. Decentralization reforms have occurred over the past three decades, but the distribution of competencies remains complex. There is a dual system of decentralized and delegated responsibilities and the majority of competencies are shared between all levels of governments (education, health, water and sewage, housing). The departments are responsible for planning and promoting the

economic and social development of their territory. They exercise administrative functions of coordination and intermediation with the municipalities, which provide services such as electricity, urban transport, local planning, and police.³

4 Who has the power to ratify treaties?

The President.⁴

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

Not regularly, though when the method of popular consultation is used, it is supposed to be obligatory for national authorities to respect the results of such popular consultation.⁵

6 Has the country established a basin management agency? Is it autonomous?

Water resources are managed by the Environment Ministry, which is an executive ministry headed by a minister appointed by the President. But the country has entered a series of agreements for the management of its basins. Amongst which, the "*Plan de Ordenamiento y Manejo de las Cuencas de los Ríos San Miguel y Putumayo*", the "*Plan para el Desarrollo Integral de la Cuenca del Río Putumayo*", The "*Plan Modelo Colombo – brasileño*" for the full development of the bordering communities of the Tabatinga – Apaporis axis

7 Does the country have transboundary water resources?

Colombia has major transboundary water resources. Additionally from the

¹ OECD Colombia Country Profile (Oct. 2016).

² Constitution of Colombia (1991).

³ OECD Colombia Country Profile (Oct. 2016).

⁴ Constitution of Colombia (1991), Article 189(6).

⁵ Law 134 of 1994, Article 8.

Amazon River Basin and the Orinoco River Basin, the following rivers provide transboundary water resources: “Rio de Oro”, “Rio Catatumbo”, “Rio Guaramillo”, “Rio Tachira”, “Rio Oira”, “Rio Meta”, “Rio Orinoco”, “Rio Negro”, “Rio Isana”, “Rio Vaupes”, “Rio Taraira”, “Rio Caqueta”, “Rio Amazonas”, “Rio Putamayo”, “Rio San Miguel”, “Rio Pun”, “Rio San Juan”, “Rio Papuri”, “Rio Alabapo”, “Rio Mira”, “Rio Mataje”, “Rio Arauca”, “Rio Zulia”, “Rio Goajira”, “Rio Carchi”, “Rio Atabapo” “Rio Guainia”, “Rio Naquen”, “Rio Papuri”... (see Annex 2)

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?

Colombia did not vote in favor of the UN watercourse convention, which establishes a framework for the utilization, development, conservation, management, and protection of international watercourses and codifies the already existing customary international water law. However, it is a party to the Amazon Cooperation Treaty Organization. There is no explicit provision regarding drinking water in the treaty, but Article VIII of the treaty refers to the need to “*promote coordination of the present health services ... and to take other appropriate measures to improve the sanitary conditions in the region and perfect methods for preventing and combating epidemics.*”⁶ The country is also a

partner with the World Bank which supports the sector through different projects such as “*Cartagena Water Supply, Sewerage, and environmental Management project*”, “*Water Sector Reform Assistance Projects*”, as well as with the Inter-American Development bank. There is an Agreement between Colombia, Venezuela and the Organization of American States regarding the Catatumbo River Basin, signed on August 5, 1982, but it was never implemented. In fact, the working group contemplated in the Agreement has never held a meeting.⁷

B The country is member of a regional integration organisation?

1 Which countries form part of this organisation?

Colombia is part of major international and regional organizations such as; CAN/ACN: Andean Community of Nations; CariCom: Caribbean Community; IADB: Inter-American Development Bank; IHO: International Hydrographic Organization; LAES/SELA: Latin American and Caribbean Economic System;

ALADI/LAIA: Latin American Integration Association; the Organization of American States; The Pacific Alliance; PROSUR: Foro para el Progreso de América del Sur.⁸

Amongst them stand out: (i) the Organization of American States whose members are Antigua and Barbuda, Argentina, Barbados, Belize, Bolivia, Brazil,

⁶ Amazon Cooperation Treaty, Article VIII.

⁷<http://apw.cancilleria.gov.co/tratados/SitePages/VerTratados.aspx?IDT=29aaaa70-316d-4240-8f2b-53cbc609a51a>

⁸<https://imuna.org/resources/country-profiles/colombia>; see also

http://www.oas.org/en/member_states/default.asp (accessed on 11-07-2018).

Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, St. Kitts & Nevis, Suriname, Trinidad and Tobago, United States of America, Uruguay, Venezuela, and (ii) the Andean Community of Nations (CAN) which has as members Bolivia, Ecuador, Colombia and Perú.

2 Are the decisions of the organisation binding for the members?

The American Declaration on the Rights and Duties of Man signed by all Organization of American States members, has no legal binding force.

The Andean Community issues guidelines with respect to different spheres of Andean sub-regional integration, which are carried out by the system bodies and institutions determined by the Council, in keeping with the responsibilities and mechanisms established in their respective Treaties or establishing Agreements.

3 What is the mandate of the organisation?

The mandate of the main regional integration organizations to which Colombia is a member is as follows:

Andean Community of Nations (CAN): free trade bloc with the objective of creating a customs union comprising the countries of Bolivia, Colombia, Ecuador, and Peru.

Caribbean Community (CARICOM): organization of fifteen countries throughout the Caribbean having the objectives of

furthering economic integration, foreign policy coordination, human and social development and security.

Organization of American States (OAS): an organization with 35 member states established in order to achieve *“an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence”* (Article 1 of the OAS Charter).

Pacific Alliance: free trade bloc with the objective of promoting greater economic integration between Chile, Colombia, Mexico and Peru.

PROSUR: Dialogue and coordination mechanism with the objective of promoting the development of the South American countries.

4 Does the regional organisation have the authority to regulate or make decisions, which affect water and sanitation?

As for the OAS; The Inter-American Commission on Human Rights prepared a report in 2015 about the access to water in the Americas titled, *“An introduction to the human right to water in the Inter-American system”*.⁹ In addition, the Department of Sustainable Development, prepared a report in March 2019 describing the situation surrounding the human right to water and sanitation and considering the 2030 Agenda and the Sustainable Development Goals.¹⁰ However, the Inter-American system does not have the authority to regulate or make decisions, which would affect water and sanitation in the member countries.

⁹ “An introduction to the human right to water in the Inter-American system”, OAS Report, 2015.

¹⁰ OAS report on human right to water, 2019.

As for CAN; initiatives regarding access to water have been part of the Andean Community's activities.¹¹ In 2011, through decision No. 763, an Andean Strategy for the Integrated Management of Water Resources was approved.

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?

At national/federal level?

The institutional framework with water resources in Colombia can be divided into three different categories. The National Environmental System manages water allocation and pollution regulation as well as the ecosystem/watershed. It is a decentralized system directed by the Ministry of Environment, Housing and Territorial Development and is in charge of environmental management in Colombia at the national level. The water demand for sectoral uses is regulated by other ministries. Regarding water for electric generation, the energy regulation committee establishes the rules for the operation of the dispatch system. As for water for agriculture irrigation, INCODER is a specialized institute

¹¹<http://www.comunidadandina.org/Prensa.aspx?id=3898&accion=detalle&cat=NP&title=se-inicia-proyecto-ap>
<http://www.comunidadandina.org/Prensa.aspx?id=2785&accion=detalle&cat=NP&title=autoridades-de-agua-de-los-paises-de-la-can-debatiran-propuesta-de-estrategia-andina-para-gestion-integrada-del-recurso-hidrico>

of the Ministry of Agriculture, which finances and constructs an irrigation system.

At the intermediate level (state, river basin, other)

The regional environmental authorities (CARs) are in charge of implementing the national policies and regulations as well as managing the natural resources in their boundaries, included water resources.¹² As for water and sanitation services, Colombia has acknowledged that amongst infrastructural services, the sanitation services required specific knowledge that is not typically found at the municipal level. Therefore, it made it a policy to encourage regionalization of water sanitation services by implementing Departmental Water Plans, which are a set of planning and inter-institutional coordination strategies that municipalities can voluntarily opt into. This brings a better resourced and more corporate approach to water sanitation service provision and ultimately makes it easier for large private operators to expand services to small towns and rural areas (see Annex 1)

At the local level?

The Autonomous Regional Corporations and Sustainable Development (CAR) are corporate public entities, integrated with local authorities, commissioned by law to

¹² Integrated Water Resource Management in Colombia: Paralysis by Analysis? International Journal of Water Resources Development, March 2008; see *also* <http://www.minambiente.gov.co/index.php/component/content/article/885-plantilla-areas-planeacion-y-seguimiento-33>

administer, within the area of its jurisdiction, the environment and renewable natural resources, and work for sustainable development. Water use for energy; water supply and sanitation and agricultural irrigation is regulated by sectorial ministries. Municipal authorities guarantee access to potable water and sanitation to their population, the potable water regulatory committee regulates the calculation of the tariffs, CARs (within their corresponding jurisdictions) grant water permits.

2 Which government ministries/agencies are directly or indirectly involved in governance of water and sanitation?

The Ministry of Environment, Housing and Territorial Development.

The Autonomous Regional Corporations and Sustainable Development (CAR).

3 Which agency is responsible for drinking water? What are its responsibilities?

Responsibility for regulating water services is vested in two separate institutions at the national level. The Comisión de Regulación de Agua Potable y Saneamiento Básico (CRA) or Potable Water and Basic Sanitation Regulatory Commission defines criteria for efficient service provision and sets the rules for tariff revision, but is not in

charge of controlling the application of these rules. The latter is the responsibility of the Superintendencia de Servicios Públicos Domiciliarios (SSPD) or Superintendency for Residential Public Services, a multi-sector regulatory agency.) The Vice ministry of Water and Sanitation (VWS) is part of the Ministry of Housing, Cities and Territory of Colombia (MHCT). The VWS is responsible for implementing national policies, plans and programs in relation to water supply and sanitation. However, regulation, supervision and enforcement is the role of the Potable Water and Basic Sanitation Regulation Commission (PWRC) and the Superintendency of Residential Public Services (SRPS).

The PWRC, created by Law 142 of 1994 (article 69), is part of the MHCT and is primarily focused on regulating tariffs and other purely regulatory functions.

The SRPS, also created by Law 142 of 1994 (article 76) and referred to in Colombia as Superservicios is part of the Department of National Planning. The role of the SRPS is to monitor and enforce the performance of water supply and sanitation operators.¹³

4 Which agency is responsible for sanitation? What are its responsibilities?

See question 3 above.

¹³ Link to Law 142 of 1994:
[https://www.funcionpublica.gov.co/eva/gestornorm](https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=2752)

[ativo/norma.php?i=2752](https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=2752)

CHAPTER 2: INTERNATIONAL AND REGIONAL TREATIES

- 1 Has the country ratified the following international or regional treaties and declarations? Please insert the date of the signature/ratification/accession.
- 2 Has the country made any declaration or reservation to the following instruments?

A Regional Multilateral/Bilateral Treaties

Table 1.a Regional multilateral and bilateral treaties¹⁴

Instruments	Participating	Entry into force
The Amazon Cooperation Treaty ¹⁵	Colombia, Ecuador ¹⁶ , Perú ¹⁷ , Brasil ¹⁸ , Venezuela ¹⁹ , Suriname, Guyana, Bolivia	12/08/1980 ²⁰
The Amendment Protocol to the Amazon Cooperation Treaty creating the Amazon Cooperation Treaty Organization (“ACTO”)	Colombia, Ecuador, Brazil, Peru, Venezuela, Suriname, Guyana, Bolivia	2002 ²¹

¹⁴ <http://www.internationalwatersgovernance.com/amazon-basin.html>

¹⁵ Divided Water, Shared Water? An Approach to Cross-border Aquifers in South America, Carmen Maganda

¹⁶ <http://www.oas.org/dsd/publications/unit/oea08b/ch05.htm#TopOfPage> - ECUADOR: Plan de Ordenamiento y Manejo de las Cuencas de los Ríos San Miguel y Putumayo

¹⁷ PERU: Plan para el Desarrollo Integral de la Cuenca del Río Putumayo

¹⁸ BRAZIL: Plan Modelo Colombo - brasileño para el Desarrollo Integrado de las Comunidades Vecinas del Eje Tabatinga - Apaporis.

¹⁹ VENEZUELA: It is important to note that despite the water borders, the governments of Colombia and Venezuela have only participated in the signing of a single collective agreement for the multinational management of transboundary waters: the 1978 Amazon Cooperation Treaty.

²⁰ <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800eb7e6>

²¹ Final Ratification by Colombia and installation of its Permanent Secretariat in Brazil. <http://www.otca-oficial.info/library/details/155>

Table 1.b. Bilateral Agreements entered into by "ACTO"

Instruments	Participating	Signature
Memorandum of Understanding between ACTO and the Coordinating Body for the Indigenous Organizations of the Amazon Basin ("COICA") ²²	Colombia, Ecuador, Brazil, Peru, Venezuela, Suriname, Guyana, Bolivia	10/25/2004
Memorandum of Understanding between ACTO and the Andean Community	Colombia, Ecuador, Brazil, Peru, Venezuela, Suriname, Guyana, Bolivia	9/29/2004
Letter of Understanding Between the Coordinator Intergovernmental Committee of the Countries of the Basin of the Plata and the Amazonian Cooperation Treaty Organization, 30 Aug. 2004	Colombia, Ecuador, Brazil, Peru, Venezuela, Suriname, Guyana, Bolivia	8/30/2004
Standard Agreement between the ACTO and the Pan American Health Organization/World Health Organization ²³	Colombia, Ecuador, Brazil, Peru, Venezuela, Suriname, Guyana, Bolivia	26-30 September 2011 ²⁴
Agreement between ACTO and the Inter-American Development Bank — Strengthening the Joint Regional Capacity for the Sustainable Use of Amazonian Biodiversity	Colombia, Ecuador, Brasil, Perú, Venezuela, Surinam, Guyana, Bolivia	7/25/2005

²² International Waters: Review of Legal and Institutional Frameworks UNDP-GEF International Waters Project (2011)

²³ https://www.paho.org/hq/index.php?option=com_content&view=article&id=5998:2011-paho-acto-cooperate-on-health-knowledge-management-amazon-region&Itemid=135&lang=en

²⁴ https://www.paho.org/hq/index.php?option=com_content&view=article&id=5723:2010-51st-directing-council&Itemid=40507&lang=en

B International Treaties

Table 2. International binding instruments

Instruments	Signature (dd/mm/yyyy)	Ratification (dd/mm/yyyy)
International Covenant on Civil and Political Rights (1966) <u>Reservation/Declaration:</u>	21/12/1966	29/10/1969
Optional Protocol to the International Covenant on Civil and Political Rights (1966) <u>Reservation/Declaration</u>	21/12/1966	29/10/1969
International Covenant on Economic, Social and Cultural Rights (1966) <u>Reservation/Declaration:</u>	21/12/1966	29/10/1969
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008) <u>Reservation/Declaration:</u>	N/A	N/A
Convention on the Elimination of All Forms of Discrimination against Women (1979) <u>Reservation/Declaration:</u> N/A	17/07/1980	19/01/1982

Instruments	Signature (dd/mm/yyyy)	Ratification (dd/mm/yyyy)
<p>Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)</p> <p><u>Reservation/Declaration:</u></p> <p><u>Declarations:</u></p> <ol style="list-style-type: none"> 1. The Government of Colombia, exercising the discretion provided for in article 10 of the Optional Protocol, and subject to the conditions set out therein, declares that it does not recognize the competence of the Committee provided for in articles 8 and 9 of the Protocol. 2. The Government of Colombia understands article 5 of the Protocol to mean that interim measures not only preclude "a determination on admissibility or on the merits of the communication", as established in article 5, paragraph 2, but that any measures involving the enjoyment of economic, social and cultural rights shall be applied in keeping with the progressive nature of these rights. 3. The Government of Colombia declares that no provision of the Optional Protocol and no recommendation of the Committee may be interpreted as requiring Colombia to decriminalize offences against life or personal integrity. 	10/12/1999	23/01/2007

Instruments	Signature (dd/mm/yyyy)	Ratification (dd/mm/yyyy)
<p>Convention on the Rights of the Child (1989) <u>Reservation/Declaration:</u></p> <p><u>Reservation (upon signature):</u></p> <p>The Colombian Government considers that, while the minimum age of 15 years for taking part in armed conflicts, set forth in article 38 of the Convention, is the outcome of serious negotiations which reflect various legal, political and cultural systems in the world, it would have been preferable to fix that age at 18 years in accordance with the principles and norms prevailing in various regions and countries, Colombia among them, for which reason the Colombian Government, for the purpose of article 38 of the Convention, shall construe the age in question to be 18 years.</p> <p><u>Reservation (upon ratification):</u></p> <p>The Government of Colombia, pursuant to article 2, paragraph 1 (d) of the Convention, declares that for the purposes of article 38, paragraphs 2 and 3, of the Convention, the age referred to in said paragraphs shall be understood to be 18 years, given the fact that, under Colombian law, the minimum age for recruitment into the armed forces of personnel called for military service is 18 years.</p>	26/01/1990	28/01/1991
<p>The Convention on the Rights of Persons with Disabilities (2006) <u>Reservation/Declaration:</u></p>	30/03/2007	10/05/2011
<p>Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006) <u>Reservation/Declaration:</u></p>	N/A	N/A
<p>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) <u>Reservation/Declaration:</u></p>	10/04/1985	08/12/1987
<p>Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998) <u>Reservation/Declaration:</u></p>	N/A	N/A

Instruments	Signature (dd/mm/yyyy)	Ratification (dd/mm/yyyy)
Geneva Convention (III) relative to the Treatment of Prisoners of War (1949) <u>Reservation/Declaration:</u>	08/12/2005	N/A
Geneva Convention (IV) relative to the protection of Civilian Persons in Time of War (1949) <u>Reservation/Declaration:</u>	12/08/1949	08/11/1961
Protocol Additional (I) to the Geneva Conventions relating to the Protection of Victims of International Armed Conflict (1977) <u>Reservation/Declaration:</u>	01/09/1993	17/04/1996
Protocol Additional (II) to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (1977) <u>Reservation/ Declaration:</u>	N/A	14/08/1995
Convention on the Law of the Non-Navigational Uses of International Watercourses (1997) <u>Reservation/Declaration:</u> ²⁵	N/A	N/A

Table 3. ILO conventions

Instruments	Signature	Ratification
ILO Forced Labor Convention, No. 29 (1930)	N/A	04/03/1969
ILO Recruiting of Indigenous Workers Convention, No. 50 (1936) (shelved convention)	N/A	N/A
ILO Food and Catering (Ships' Crews) Convention, No. 68 (1946) (instrument to be revised)	N/A	N/A
ILO Plantations Convention, No. 110 (1958)	N/A	N/A
ILO Hygiene (Commerce and Offices) Convention, No. 120 (1964)	N/A	N/A
ILO Occupational Safety and Health (Dock Work) Convention, No. 152 (1979)	N/A	N/A
ILO Convention No. 161 concerning Occupational Health Services (1985)	N/A	25/01/2001

²⁵ Colombia did not vote in favor of the UN watercourse convention, which establishes a framework for the utilization, development, conservation, management, and protection of international watercourses and codifies the already existing customary international water law.

Instruments	Signature	Ratification
ILO Safety and Health in Construction Convention, No. 167 (1988)	N/A	06/09/1994
ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989)	N/A	07/08/1991
ILO Work in Fishing Convention, No. 188 (2007)	N/A	N/A

C Regional/Americas

Table 4. Instruments open for ratifications in the Americas

Instruments	Signature	Ratification
American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988) <u>Reservation/Declaration:</u>	N/A	10/10/1997
American Convention on Human Rights "Pact of San José, Costa Rica" (1969) <u>Reservation/Declaration:</u>	N/A	28/05/1973

D Transboundary freshwater resources agreements

1 Has the country agreed to any international convention or treaty regulating the uses of its transboundary watercourses? Please specify.

As for now, South American states do not seem to have an immediate interest in a universal framework to help them regulate the management of their transboundary water resources. Colombia is not part of either the UN Watercourse Convention or the UNECE Water Convention, which are the two global, legally binding instruments concerning the management of transboundary watercourses. Rather, they count on international organizations to help

implement their preferred management regime. Colombia signed the Amazon Cooperation Treaty in 1978, which aims to promote sustainable use of resources including water. Subsequently, in 2005, Colombia signed the integrated and sustainable management of transboundary Water Resources in the Amazon River Basin considering Climate Variability and Change Project. Additionally, Colombia is a member of the World Bank Group, which has been steadily involved in projects aiming to improve the provision of water supply and sanitation services in Colombia.

2 If so, what are the norms in those agreements, regulating access to water and/ or sanitation, if any?

The most important legal rule of the Amazon Cooperation Treaty is the principle of “*equitable and reasonable use*” as well as the no-harm rule, which encompasses both a right and a duty to use international watercourse in an equitable and reasonable manner. The most important external cooperation partners for the Colombian water and sanitation sector are the World Bank, The Inter-American Development Bank and the Andean Development Corporation. Through their joined efforts, they have developed water and sanitation projects such as the Cartagena Water supply, La Guajira Water and Sanitation Infrastructure and many more. The World Bank has provided a series of loans for water and sewage improvements, totaling more than \$700 million dollars since 1988.²⁶

3 Do those agreements adopt an integrated water resources management approach to

water governance?

Please specify which norm.

The eight-member countries of the Amazon Cooperation Treaty organization joined to run integrated management and sustainable regional project for transboundary water resources in the Amazon River Basin.²⁷ The GEF Amazon project looks to contribute to the effective protection and sustainable use of water and land resources of the Amazon Basin. Based upon principles of integrated water resource management, the goal is to achieve a shared vision for the development of the region based on the needs of the Amazonian society and aiming to strengthen the institutional framework created to protect and manage the water resources. Indeed, the sustainable development of the Amazon River basin requires a coordinated government strategy between the Amazon countries to tackle environmental and social impacts on the ecosystem caused by natural or human events.

²⁶http://www.fao.org/nr/water/aquastat/countries_regions/profile_segments/amazon-Intlss_eng.stm

²⁷ In 2010, the GEF Amazonas Project was signed, prepared by the 8 ACTO members countries to

formulate a consensual Strategic Action Program based on the needs and objectives of Amazonian stakeholders (ACTO/GEF/UNEP, 2015)

CHAPTER 3: DOMESTIC LEGISLATION ON WATER

A Water laws

1 Is the right to water or the right to sanitation mentioned in the Constitution?

Water in the Colombian legal system has a double connotation, as a fundamental right and as a public service.²⁸ Although, the right to water is not explicitly recognized under the Colombian Constitution,²⁹ it is considered as a fundamental right, and defined by the Committee on Economics, Social and Cultural Rights, as *“the right of everyone to have sufficient, safe, acceptable, accessible and affordable water for personal or domestic use.”*³⁰ In addition, Article 79 of the Constitution provides an *“implied (and justiciable) right to water... from the broader ‘right to a healthy environment.’*³¹ As a public service, Article 356 of the Constitution provides that *“the resources of the General System of Participations of the departments, districts and municipalities will be earmarked for the financing of the services under their charge, according to priority to the ... public services concerning potable water and basic sanitation in the home.”*³² Moreover, Article 357 of the Constitution establishes how the amount of the General System of Shares of the Departments, Districts and Municipalities shall be increased annually and specifically

*mentions that “when a territorial entity achieves universal coverage and meets the quality standards established by the competent authorities in the sectors of education, health, and/or public services concerning drinking water and basic sanitation in the home, according to certification by the competent national entity, it may spend the surplus resources on investment in other sectors within its competence.”*³³ Also, under the rights of Colombians to a reasonable standard of living, Article 66 of the Colombian Constitution establishes that *“the general well-being and improvement of the population’s quality of life are social purposes of the State. A basic objective of their activity shall be to address the unfulfilled public health, educational, environmental, and drinking water needs of those affected. For such an outcome, in the plans and budgets of the nation and of the territorial entities, public social expenditures shall have priority over any other allocation.”*³⁴

2 Does the Constitution otherwise reference water and sanitation?

Yes. Both in Article 357 and Article 366 of the Constitution. As mentioned above, as part of the distribution of resources, Article 357 establishes that once the territorial

²⁸ Judgement T-740/11.

²⁹ Olmos Guipponi, M. B. & Paz, M. C. (2015). The Implementation of the Human Right to Water in Argentina and Colombia. *Anuario Mexicano de Derecho Internacional*, 15, pp. 323.

³⁰ Judgement T-740/11.

³¹ Olmos Guipponi, M. B. & Paz, M. C. (2015). The

Implementation of the Human Right to Water in Argentina and Colombia. *Anuario Mexicano de Derecho Internacional*, 15, pp. 343. See also Article 79 of the CONSTITUCIÓN POLÍTICA DE COLOMBIA.

³² *Id.* at Article 356.

³³ *Id.* at Article 357.

³⁴ *Id.* at Article 366.

entities achieve the coverage required by law and meet the quality standards in different sectors, including drinking water and sanitation in the home, they may spend the additional surplus resources in other sectors within their competence. Article 366 states that water supply “*belongs to the category of public service to be provided by the State*”.³⁵

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

Law 142 of 1994, which establishes the regime of Public Housing Services Law (Ley de Servicios Públicos Domiciliarios) in Colombia, and seeks to guarantee its quality at all levels. Resolution No. 1096 of 2000 by which the Technical Regulations governing drinking water and the basic sanitation sector (Reglamento técnico del Sector de Agua Potable y Saneamiento Básico (RAS)) was adopted. This Regulation indicates the requirements that must be met by the designs, the works and procedures applicable to drinking water and the basic sanitation sector and its complementary activities, as indicated in Article 14, numerals 14.9, 14.22, 14.23 and 14.24 of Law 142 of 1994, and to be carried out by the entities that provide municipal public services regarding aqueduct, sanitation and sewage.

The Colombian Sanitary Code (Código Sanitario) was enacted by Law 9 of 1979, which among other things regulates the sanitary control of the use of water. Additionally, Title II of this Code, which regulates the water supply, provides a variety of regulations to eliminate and avoid

the contamination of water for human consumption.

Decree 2811 of 1974 by means of which the National Code of Renewable Natural Resources and Environmental Protection is enacted. Section III of this Code regulates the use of non-maritime waters and the ways to acquire the right of use of such waters.

Decree 1541 of 1978 regulates the norms related to the resource of waters in all its states. More specifically, Article 2 establishes that “the preservation and management of waters are of public utility and social interest according to the provisions of Article 1 of Decree-Law 2811 of 1974:

*“In the management and use of the water resource, both the administration and the users, whether they are public or private, will comply with the general principles and rules established by the National Code of Renewable Natural Resources and Environmental Protection, especially those enshrined in Articles 9 and 45 to 49 of the aforementioned Code.”*³⁶

Decree No. 3930 of October 25, 2010. According to Article 1, this Decree establishes the provisions related to uses of water resources, water resources management and discharges to water resources, to the ground and to the sewers. Law 1753 of 2015 by means of which the National Government is ordered to determine the differential schemes for the provision of aqueduct, sewer and toilet services in rural areas.

In addition, the National Development Plan (Plan Nacional de Desarrollo) (PND)

³⁵ *Id.* at Article 366.

³⁶ Article 2 of Decree 1541 of 1978.

establishes guiding policies for the provision of public services, including water and sanitation.³⁷ The PND for 2010-2014 recognized the delivery of such services to rural areas of Colombia as a priority and provided for contributions from the national and regional budgets.³⁸

The Water for Prosperity Program (PAP) and Department Water Plans (PDA) are two strategies designed by the national government to “increase access to water and improve the management of water and sanitation services.”³⁹ The implementation of the PAP and PDA is assigned to “municipal authorities, services providers and departmental governments.”⁴⁰

4 Is there national strategy / policy, action plan or similar document on water?

Yes. The National Council of Economic and Social Policy (Consejo Nacional de Política Económica y Social – CONPES) is the highest national planning authority and serves as an advisory body to the Government in all aspects related to the economic and social development of the country. Some of the documents of CONPES regarding water and sanitation are:

- (i) the policy for the supply of potable water and basic sanitation in the rural area. The policy aims to promote access to drinking/potable water and basic sanitation in rural areas of Colombia, through solutions that are consistent with the

characteristics of these areas and that contribute to the improvement of the conditions of life of the rural population;

- (ii) Strategic importance of the project “*Financial support for the infrastructure investment plan to strengthen the provision of aqueduct and sewage services in the municipality of Cali*” June 24, 2013.
- (iii) Policy for the supply of potable water and basic sanitation issued in July, 2014.
- (iv) Strategic importance of the projects “financial support for the development of the strategic policies of the sector of potable water and basic sanitation at a national level” and “*financial support for the regional coastal aqueduct of the department of Córdoba*” (2013).

Moreover, “in 2010, the National Policy for the Integral Management of Water Resources (Policy) was issued, which establishes the objectives, strategies, goals, indicators and lines of action for the management of the resource in the country with a horizon of twelve years.”⁴¹ The general objective of the Policy is to ensure the sustainability of water resources through the management and efficient and effective use, articulation of planning and land use, and conservation of ecosystems that regulate water supply; the policy considers

³⁷ Private Sector Provision of Water and Sanitation Services in Rural Areas and Small Towns: The Role of the Public Sector, Country Report: Colombia. *World Bank Group*, pp. 8 (2016).

³⁸ *Id.* The most recent PND covers 2014-2018.

³⁹ *Id.* at pp. 14.

⁴⁰ *Id.*

⁴¹ Water Management. *Sistema de Información Ambiental de Colombia*.

water a factor in economic development and social welfare and endeavors to implement processes that promote equitable and inclusive participation.⁴² The National Water Plan is designed to implement the National Policy for the Integrated Management of Water Resources; the plan is to integrate via programs, projects, and activities the lines of action of the Policy in order to achieve its objectives and goals.⁴³

5 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?

Article 85 of Law 142 of 1994 established a special contribution in order to recover the costs of the regulatory service provided by the Regulatory Commission of Potable Water and Basic Sanitation – (Comisión de Regulación de Agua Potable y Saneamiento Básico – CRA) to the entities which are defined as taxpayers, all persons providing public services domiciliary of the aqueduct, sewage, cleaning and complementary activities throughout the national territory, subject to the regulation of such Commission. These entities are subject to the payment of a special contribution paid each year in accordance with the provisions of Article 85 of Law 142 of 1994 and other related provisions. According to the foregoing, Resolution CRA 847 of 2018 issued by the Regulation Commission of potable water and sanitation establishes the

Special Contribution tariff for the 2018 term for the service of regulation of potable water and basic sanitation and other provisions. Also, Decree 707 of 1995 regulates the criteria for the payment of the special contribution for the Regulation of Potable Water and Basic Sanitation. Resolution 2115 of 2007 indicates characteristics, basic instruments and frequencies of the control and surveillance system for water quality for human consumption.

Decree 2811 of 1974 enacts the National Code of Renewable Natural Resources and Environmental Protection. Section III of this Code regulates the use of non-maritime waters and the ways to acquire the right of use of such waters. Decree 1076 (26/05/2015) has the aim of collecting in a single regulatory body all existing regulatory decrees which pertain to laws on environmental matters.⁴⁴

B Extraction and/or use of water

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

According to Decree 1541 (1978), concessions are required to carry out activities such as *“the supply of household water, irrigation activities, nuclear or power generation, transport of toxic materials and minerals, transport of wood logs, fishing and aquaculture, sport and recreation, medicinal use activities, and certain mining applications.”*⁴⁵ Decree 1541 also establishes

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Unique Regulatory Decree of the Environment and Sustainable Development Sector, *Ministerio de*

Ambiente y Desarrollo Sostenible.

⁴⁵ Decree 1541. See also Rincón Rubiano, D. (2011). *Environmental Law in Colombia*, pp. 64. The

special permits for “*abstraction, or the use of sands, stones and gravels from waterbeds, streams or deposits.*”⁴⁶

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

When granting concessions, the competent authority must give priority to certain uses.⁴⁷ In order of preference, the priority refers to “*water for human consumption, individual domestic needs, community agricultural uses, generation of hydropower, industrial or manufacture uses, mining activities, and recreational uses.*”⁴⁸ The relevant authority may change this hierarchy in order to “*satisfy the special economic or social needs of the region.*”⁴⁹

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

Decree 2811 (1997) establishes that water resources and water use is of public domain, “*with the sole exception of watersheds that begin and finish within the same property belonging to the owners of the banks (Decree 1541).*”⁵⁰

4 Are permits/licenses required for water use (e.g., domestic, agricultural, and

industrial)?

For the use and utilization of water resources, every user is required to apply for a concession permit before the competent environmental authority.⁵¹ The provisions for the use and utilization of water are established in Decree 1076.⁵² According to Decree 1076 (2.3.2.2), “*aside from the waters originating and remaining within the same property (real estate), all freshwater resources are public, meaning the use of water must be authorized through a water concession and a water occupancy permit issued by the competent environmental agency.*”⁵³ Waters that run through natural channels may be used by individuals without a permit if it is for “*drinking, bathing, running animals, washing clothes and other similar purposes.*”⁵⁴ Regional committees are responsible for granting water usage permits within their geographical jurisdiction.⁵⁵ At the national level, the Ministry of Environment and Sustainable Development (Minambiente) oversees environmental matters.⁵⁶ Minambiente is in charge of “*creating and implementing water resource management policies and regulations.*”⁵⁷ It also “*manages protected areas and grants licenses to infrastructure projects requiring access to water resources.*”⁵⁸ At the regional

Netherlands: Kluwer Law International BV.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Decree 2811 and 1541. See also Colombia, Water Resources Allocation: Sharing Risks and Opportunities (2015). *OECD Studies on Water*, pp. 5.

⁵¹ Use and Water Use. *Ministerio de Ambiente y Desarrollo Sostenible*. Available at: [http://www.minambiente.gov.co/index.php/gestion-integral-del-recurso-hidrico/administracion-del-recurso-hidrico/demanda/uso-y-aprovechamiento-](http://www.minambiente.gov.co/index.php/gestion-integral-del-recurso-hidrico/administracion-del-recurso-hidrico/demanda/uso-y-aprovechamiento-del-agua)

[del-agua](#)

⁵² *Id.*

⁵³ Zapata Lugo, J. V. & Solorza Cortés, M. (2017). Environment. *Getting the Deal Through*. Available at: <https://gettingthedealthrough.com/area/13/jurisdiction/8/environment-colombia/>

⁵⁴ *Supra* note 10.

⁵⁵ Water Usage (2014). *Shale Gas, an International Guide*, 2nd ed., 2.1.

⁵⁶ Water Resources Rights (2014). *Shale Gas, an International Guide*, 2nd ed., 2.6.

⁵⁷ *Id.*

⁵⁸ *Id.*

level, the Corporaciones Autónomas Regionales (CARs) are tasked with implementing policies and managing the natural resources in their region.⁵⁹ CARs are administratively and financially independent but do receive some resources from the national government.⁶⁰ In relation to water resources, “the main function of CARs is to efficiently allocate water resources to users, control water pollution and create and implement programs for the protection of the ecosystem.”⁶¹ CARs grant permits for water usage.⁶²

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

“Governmental authorities may restrict or even prohibit water use concessions in order to accomplish certain purposes, such as facilitating the provision of a public service or restoring the quality, flow or environment of the water body.”⁶³ For example, “if an area of groundwater is at risk of being depleted, or there is a danger of contamination or a substantial decrease in quantity or quality of the water resource, the competent authorities can temporarily or permanently suspend any operations that take place in the area.”⁶⁴

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

Water concessions can be assigned, given the prior written authorization of the competent environmental authority (Decree 1541, art. 50).⁶⁵ That authority may deny an assignment “when reasons of public utility or social interest deem appropriate.”⁶⁶ In the event that the facility or land where the water concession is located is sold, the new owner must request the assignment.⁶⁷

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

Waters for public use that run through natural channels and are used for domestic purposes do not provide exclusivity or priority of use to the first person to make use of the right.⁶⁸ In cases involving the use of surface waters for non-domestic purposes, or domestic purposes that require derivation, both of which require a concession, do involve an order of priority.⁶⁹ Generally, domestic use will always have priority over others; collective uses over those of an individual; and those uses of the inhabitants of a region over those outside of it.⁷⁰ The granting of water pursuant to concessions is also subject to the availability of the resource.⁷¹ In cases of scarcity, the order in which concessions were granted does not convey priority; the environmental authority would define the best procedure for distributing water.⁷²

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Rubiano, *supra* note 14, at pp. 65.

⁶⁴ *Id.*

⁶⁵ Uribe, L. & Correa Posada, L. & Bernal, A. (2017). Latin Lawyer. Environment, Colombia; see also *supra*

note 19 at pp. 5.

⁶⁶ *Supra* note 19, at pp. 5.

⁶⁷ Uribe & Correa Posada & Bernal, *supra* note 34.

⁶⁸ *Supra* note 10.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

CHAPTER 4: THE HUMAN RIGHTS TO WATER AND SANITATION:

A Availability and accessibility

1 Does the law ensure that a minimum essential level of water is available to all?

There is no law that ensure a minimum essential level of water for all the inhabitants of Colombia. However, the Constitutional Court has several times stated that access to a minimum vital amount of water is a human right.⁷³ Even though access to a minimum vital amount of water is not expressly guaranteed by Colombia's Constitution, the Constitutional Court has repeatedly stated that the protection of this right is necessary to assure other rights protected by Colombia's Constitution, for example, the right to health and right to life. Therefore, access to a minimum vital amount of water should be protected.⁷⁴

2 What are the standards on the amount of water to be made available/is there any guidance in the law in this respect?

The law does not provide a standard on the amount of water. Nonetheless, the Constitutional Court has stated, following the guidelines of the World Health Organization, that 50 liters per person are the minimum essential level of water that should be guaranteed.⁷⁵

⁷³ Opinión Jurídica, Vol. 15, N° 29, pp. 123-140 - ISSN 1692-2530 • January-June de 2016 / 266 p. Medellín, Colombia.

⁷⁴ Judgement T-578 of 1992 and Judgement T-4132 of 1995 of the Constitutional Court of Colombia.

3 Does the law ensure continuous supply of water for all?

Decree 2811 of 1974, also known as the "*Colombian Natural Resources Code*", establishes in its Article 134 that "it is a responsibility of the State to guarantee water quality for human and other uses."⁷⁶ Additionally, the supply of water, as a domestic public service, is regulated by Law 142 of 1994, which states in its Article 2.4 that the Government shall ensure the continuous supply of water, with no exceptions but for any force majeure event or other technical or economic circumstances which allow the interruption of service

4 Does the law prioritize water for domestic uses over other uses?

Article 41 of Decree 1541 of 1978 provides that when granting water concessions, the relevant authority shall accord first priority to human use over any other kind of uses in both urban and rural areas.⁷⁷

5 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

⁷⁵ Judgement 270 of 2007 of the Constitutional Court of Colombia.

⁷⁶ Decree 2811 of 1974

⁷⁷ Decree 1541 of 1978.

emergencies, in which cases are disconnections possible...)?

As per Article 2.4 of Law 142 of 1994, unless a force majeure event or other technical or financial circumstance has occurred, service providers should supply water continuously without any exception. Nonetheless, Law 1523 of 2012, which is the first Colombian regulation on the management of emergencies and natural disasters, establishes that the water providers shall prepare an Emergency and Contingency Plan, including actions to recover services as soon as possible in case of emergency.⁷⁸ In accordance with Chapter 2 of resolution number 154 of 2014 by the Ministry of Housing, a series of steps are to be taken to establish the following in cases of droughts: i. monitoring of flows from supply sources -ii. To the extent that such flows are not sufficient, routes and periodicity of vehicles to transport water are to be established -iii. Damage assessment and analysis of the mechanisms -iv. Implementation of campaigns for promoting a more efficient way to use water -v. Water rationing is carried out and the supply of schools and health entities are prioritized and -vi. Water Quality is to be controlled to ensure that it is safe for human consumption.

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

The interruption, disconnection, or alteration of water supply and sanitation

service is only allowed in case of emergency. If an emergency occurs, the relevant water provider shall follow and implement the relevant Emergency and Contingency Plan. The guidelines to building up these plans are contained in Resolution 154 of 2014 of the Housing, City, and Territory Development Ministry.⁷⁹ Constitutional jurisprudence has recognized the right to water as being fundamental, linking it to the principle of human dignity since this constitutes an element to have adequate material conditions of existence. For instance, in judgment T -761-15, the court affirmed that *“Subjects of special constitutional protection, including children, enjoy a minimum content of the right to water that is not subject to restriction under any circumstances.”*⁸⁰ Similarly, in judgment T-131 of 2013, the court found that the right to water of an elderly resident of the municipality of Alcala had been violated when he was not given access to water resources in a timely manner.⁸¹

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

Courts have stated that the amount of money gained from suspending access to water is too low to justify the suspension when compared to the harm done. The Chamber reiterated the constitutional precedent on the fundamental right to water and extracted four jurisprudential rules applicable to the case:

(i) there is a right of companies providing home public services to interrupt the

⁷⁸ Law 1523 of 2012.

⁷⁹ Resolution 154 of 2014.

⁸⁰ Judgement T -761-15, Judgement T-475-17

⁸¹ Judgement T-131 de 2013

water supply when there is a delay in the payment of more than two consecutive bills;

(ii) this power is restricted when the interruption of water flow affects subjects of special constitutional protection such as children, elderly people, pregnant or nursing women, disabled or suffering from serious illnesses;

(iii) it is presumed that the cut of the potable water service is disproportionate in the case of persons registered in level I of the Sisben;

(iv) if the cut in the water service is appropriate but they are subjects of special constitutional protection, access will be guaranteed a minimum equivalent to fifty (50) cubic meters per person per day.⁸²

An alternative may be reflected in the Emergency and Contingency Plan developed for each service provider following the guidelines provided in Resolution 154

8 Does the law provide guidance on: the number of water outlets?

No specific provisions or guidance were identified in our research

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 specific provisions or guidance were identified in our research

Technical safety of water outlets or sanitation facilities (e.g., law requiring that certain standards are applied in the constitution of those facilities or of buildings)?

The Technical Norms for the Water and Sanitation Sector (Resolution 0330, 2017) regulate the technical requirements for the planning, design, construction, operation, and maintenance of water and sanitation infrastructure.

The Technical Norms are divided into 7 Chapters:

Chapter 1: General Matters (articles 1-39)

Chapter 2: Technical Requirements (articles 40-238). Indicates the requirements, parameters, and minimal technical procedures for the planning, design, construction, supervision, commissioning, operation, and maintenance of water and sanitation infrastructure.

Chapter 3: Document Management (articles 239-241). Establishes the grounds for the management of the information of the water and sanitation infrastructure.

Chapter 4: Permits, Licenses, and Authorizations (articles 242-249). Establishes the requirements for the obtainment of permits, licenses, and authorizations for executing water and sanitation projects.

Chapter 5: Technical Advisory Committee (articles 250-252). Creates the Technical Advisory Committee of the Rules of Water and Sanitation.

Chapter 6: Sanctions (articles 253-255). Establishes that SRPS is in charge of monitor

⁸² Judgement T -761-15

and enforce the performance of water supply and sanitation operators.

Chapter 7: Definitions (articles 256-258)
See Technical Norms for the Water and Sanitation Sector RAS, Resolution 0330, 2017⁸³

9 Is there provision in the law for availability and accessibility of water and sanitation facilities in non-domestic places such as schools, hospitals, work places, prisons, refugee camps, etc.?

The Constitutional Court of Colombia has stated that a minimum vital amount of water is a human right protected by the Colombian Constitution. Therefore, this minimum vital amount should be granted to those who are not able to afford water and sanitation services⁸⁴. Additionally, Decree 1575 of 2007 established an article for the care of tanks where drinking water is stored for public places such as prisons, schools, etc. As a result, it is implied that such places must make drinking water accessible in said public places.⁸⁵ article 34 of the Penitentiary Code (Law 65 of 1993) provides that jails must ensure safe drinking water and basic sanitation to all inmates and administrative personnel, as well as a permanent water supply and daily bathing for all inmates.

⁸³ Link to Law 1709 of 2014:

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=56484>

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=56484>

⁸⁴ See 47 above

⁸⁵ Art. 10 ARTICLE 10.- RESPONSIBILITY OF THE USERS. Every user is responsible for maintaining the water distribution and storage facilities for human consumption at the domestic level in adequate sanitary conditions, for which, the following aspects will also, be taken into account: In public and private

In addition, and as also modified by Law 1709 of 2014, article 170 of the Penitentiary Code states that the Committee for the Supervision of Jail Conditions is in charge of supervising that jails have the necessary infrastructure to guarantee inmates with safe drinking water.

B Quality and safety

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

The parameters are developed by the Ministry of Health along with the Commission for Regulation of Drinking Water and Basic Sanitation (“CRA”)⁸⁶. In addition, there are technical rules which are applicable, and Resolution number 428 of 2007 is also applicable⁸⁷.

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

According to Law 142 of 1994, the Superintendent of Residential Services monitors the quality of the water, along with the Ministry of Health.⁸⁸ Additionally, Decree 1575 of 2007 establishes at the national level: the Ministries of Social Protection and

buildings, residential complexes, food factories, hospitals, hotels, schools, prisons, and other buildings that conglomerate individuals, those responsible for maintenance and local conservation, should perform the washing and disinfection of water storage tanks for consumption human, at least every six (6) months. The health authority may carry out an inspection when it deems appropriate.

⁸⁶ Law 142 of 1994

⁸⁷ See <http://www.bvsde.ops-oms.org/bvsacg/e/cd-cagua/normas/lac/05.COL/01.norma.pdf>

⁸⁸ Law 142 of 1994.

Environment, The Ministry of Housing and Territorial Development, the Superintendence of Public Home Services and the National Institute of Health, INS for carrying out control and surveillance of the companies that provide public services of aqueduct and sewage and to guarantee the quality of water for human consumption. At the departmental and local levels, the municipal health directorates are responsible for this oversight.

3 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)?

National Development Plan for 2010 and 2014 and National Development Plan for 2014-2018 (NDPs); the general objective of these NDPs is to achieve prosperity for all. Specifically, the NDP 2010-2014 defines as a key objective for the water supply and sanitation (“WSS”) sector to focus on a water, sewage and waste collection policy for the rural areas of Colombia, which shall be financed with contributions from national and regional budgets. Furthermore, the NDP 2014-2018 establishes the goal of overcoming barriers to providing water and sanitation to isolated rural areas.

The key WSS sector-specific policies are as follows:

- (i) Water for Prosperity (PAP) and Departmental Water Plans (PDA) – these two strategies were designed by the national government to increase access to

water and improve the management of water and sanitation services. The PAP and PDA are to be executed by the municipal authorities, service providers, and departmental governments;

- (ii) CONPES 3810 of July 2014 – this is the latest policy document issued by DNP which guides water sector policy. This document provides guidelines specific to rural water and sanitation policy according to the objectives set out in PND 2010-2014. The first implementation phase is the strengthening of institutions and planning for regional authorities (2014-2016). The second phase consists of the execution of necessary actions and investments (2016-2024)⁸⁹.

- (iii) CONPES 091 of 2005 – sets the objective to support the CRA and SSPD to foster the divestiture of inefficient service providers. Relatedly, the policy focuses on the fitness of the business structure and models employed by public service providers. In particular, a Program of Corporate Modernization is to be carried out and private operation and service provision encouraged. New organizational structures will be promoted for small towns and rural areas,

⁸⁹ See <https://www.wsp.org/sites/wsp.org/files/publication>

[s/WSP%20SPI%20Country%20Report%20-%20Colombia%20final.pdf](https://www.wsp.org/sites/wsp.org/files/publication/s/WSP%20SPI%20Country%20Report%20-%20Colombia%20final.pdf)

- involving community or mixed organizations.⁹⁰
- (iv) The Sector Technical Regulation (RAS 19) establishes the technical standards for design, works, and procedures in water supply, sanitation, and solid waste collection. The WSS tariff regulator is the CRA. In general, tariffs charged by operators (paid by consumers) have been designed to provide the recovery of costs of operation and investments by operators.

The current regulations are summarized as follows:

The general tariff methodology is defined by the regulator (CRA), which publishes tariff methodologies for both water and sanitation services. However, contracts may set an alternative tariff, which will be contract-specific. Nevertheless, the tariff formula provide room for supply and demand subsidies to be introduced when users cannot afford to cover the investment cost recovery component and the operational cost recovery component of the tariff due to their low income; and

- (i) Large water and sanitation providers – the tariff methodology for large operators servicing over 5,000 connections in urban areas is set out in CRA Resolution 688 of 2014.⁹¹ The new methodology is based on a “building block” approach to

defining tariffs and further defines service standards for operators. Operating and maintenance costs are set based on target levels such that operators are incentivized to improve efficiency over time. Capital costs are passed-through based on the expenditure levels, which minimizes the risk of operators but does not create incentives to improve investment levels.

- (ii) For smaller water and sanitation providers, the regulation of the tariff methodology has been recently settled in Resolution CRA 825 of 2017.⁹²

Additionally, the Technical Norms for the Water and Sanitation Sector RAS from the year 2015 establishes the standards of construction of sewerage for management of potable water and rainwater and wastewater. For instance, art. 2.7.5 establishes the distances that must exist between pipes that carry drinking water and those that carry rain or wastewater.

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

No specific provisions or guidance were identified in our research.

5 Do laws/regulations establish requirements on household water treatment and storage

⁹⁰ See <https://www.wsp.org/sites/wsp.org/files/publications/WSP%20SPI%20Country%20Report%20-%20Colombia%20final.pdf>

⁹¹ See Resolution CRA 688 of 2014

⁹² See Resolution CRA 825 of 2017

(e.g., quality requirement with respect to water containers, rainwater harvesting limitations, etc.)?

No specific provisions or guidance were identified in our research.

C Water pollution control

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?

Article 2.2.3.3.5.1 of Decree 1076 of 2015 states that all people who develop any activity which causes waste to be disposed of in surface water, seawater, or the land must request a waste disposal authorization from the relevant environmental authority.⁹³ There are several environmental authorities. According to resolution 1433 of 2004, the pertinent environmental authority will be determined based upon the special features of the project. Along with the above-mentioned authorization, the person who is generating waste must be developed a “Plan for the Management of Waste Disposal” (PMWD). This PMWD is defined by Article 1 of Resolution 1433 of 2004 as a set of programs, projects, and activities, with their respective schedules and investment provisions, which are primarily designed to improve the sanitation and treatment of waste disposal. This PMWD should be developed bearing in mind the goals determined by the pertinent environmental authority. Additionally, the relevant

environmental authority will be the entity in charge of monitoring compliance of the PMWD.⁹⁴

2 Is there legislation which regulates the contamination of groundwater?

No specific provisions or guidance were identified in our research. Therefore, the general rules of liability apply in this matter. Under Colombian law, the person responsible for any contamination event will be the individual or entity whose activity has caused damage to the environment.⁹⁵ Furthermore, pursuant to article 2.2.2.3.9.3. of Decree 1076 of 2015,⁹⁶ the holder of an environmental license must inform the competent environmental authority of any relevant environmental contingency that may relate to the performance of the project works or activities subject to the license or management plan within 24 hours of the occurrence of such event

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

A permit to discharge effluents is required under Article 2.2.3.3.5.1 of the Decree 1076 of 2015.⁹⁷ Furthermore, Article 2.2.3.3.5.2 of the same Decree states that the following information should be provided to the relevant authority in order to obtain the above-mentioned permit: (i) name and location of the property, project, work or activity; cost of the project, work or activity; (ii) water supply (indicating the

⁹³ Decree 1076 of 2015

⁹⁴ Resolution 1433 of 2004

⁹⁵ Latin Lawyer. Environment Report. Colombia

(2017).

⁹⁶ Decree 1076 of 2015

⁹⁷ Id.

watershed to which it belongs); (iii) characteristics of the activities that generate the discharge; (iv) identification of the origin, quantity and location of the discharges to the water body or to the ground; (v) the name of the receiving source of the discharge indicating the watershed to which it belongs; (vi) discharge flow expressed in liters per second; (vii) frequency of discharge expressed in days per month; (viii) discharge time expressed in hours per day; (ix) type of discharge flow indicating whether it is continuous or intermittent; and (x) current characterization of the existing discharge or final state intended for the discharge projected to be in conformity with the current dumping standard. With respect to the criteria which the relevant authority should apply when granting the permit, it has not been established by the law.

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

Pursuant to Article 2 of the Law 1333 of 2009, if a service provider commits an environmental infraction, the permit may be suspended, modified, or suspended during the permit's lifespan by the same environmental authority who granted the permit. An environmental infraction is defined by law as follows: any act or omission that constitutes a violation of the norms contained in the Renewable Natural Resources Code, Decree-Law 2811 of 1974, in Law 99 of 1993, in Law 165 of 1994, and in the other environmental regulations in force,

or a violation of any administrative regulation issued by the pertinent environmental authority. An environmental infraction will also occur if there is a commission of damage to the environment under conditions that satisfy the rules regarding non-contractual civil liability established by the Civil Code and complementary legislation. All the above-mentioned measures may be applied after due process is followed by the environmental authority, which is regulated in detail in Article 15 of the Law 1333 of 2009.⁹⁸

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

Law 1333 of 2009 regulates the types of penalties that may be imposed in case of an infraction of the environmental regulations, in case of non-compliance with the obligations established by competent environmental authorities, or on any person who has caused environmental damage. There is a broad range of penalties that may be imposed by the Ministry of Environment and Sustainable Development, the National Authority for Environmental Licenses namely: (i) daily fines up to 5,000 monthly wages; (ii) temporary or definite closing of the facilities; (iii) cancellation of licenses, permits or authorizations; (iv) demolition of buildings; and (v) community work. The competent environmental authority is able to impose one or more of the aforementioned penalties).⁹⁹

⁹⁸ Law 1333 of 2009.

⁹⁹ Latin Lawyer. Environment Report. Colombia

(2017).

D Affordability

1 How does the law address affordability of water supply and sanitation services?

According to Law 142 of 1994, the tariff regime of public services should be guided by the criteria of efficiency and financial sufficiency (the fee charged must reflect the costs of providing the service and not transfer the burden of inefficient service to the cost of users), management, solidarity and redistribution (users with greater capacity to pay should help those of lower capacity to pay the fees), neutrality (all users have equal tariff treatment); simplicity and transparency.¹⁰⁰

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

Subsidies are the mechanisms established by law to ensure the affordability of water and sanitation services in Colombia. These subsidies work as follows: in each municipality, dwellings are classified into six socioeconomic categories. Households are eligible to receive a subsidy of up to 50 percent of the average service cost if they live in dwellings classified as level 1 (low-low) and up to 40 percent if they live in dwellings classified as 2 (low). Households living in level 3 dwellings (medium-low) may also receive a subsidy of up to 15 percent of the average service cost. The decision on whether to grant a subsidy to this middle

¹⁰⁰ See

https://www.wsp.org/sites/wsp.org/files/publication_s/WSP%20SPI%20Country%20Report%20-%20Colombia%20final.pdf

¹⁰¹ Water Subsidy Policies: A comparison of the Chilean and Colombian schemes. The World

group is up to the regulatory commission in each case. Subsidies are funded through a variety of sources. First, a surcharge may be applied to clients in dwellings classified as 5 or 6 and to industrial and commercial customers.

These surcharges are capped at a maximum of 20 percent of the water and sewage bill. When these surcharges are not enough to fund the subsidies to the first three socioeconomic groups, the difference can be financed by transfers from the national and provincial budgets¹⁰¹.

3 How are tariffs established under law and what is the process for updating these tariffs?

As described earlier in this Chapter, the CRA defines the tariff regime and the costs applicable to the entities providing water and sewerage services throughout the country. Resolution CRA 688 of 2014 presents the methodology to calculate costs for larger providers, and Resolution CRA 825 of 2017 presents the methodology to calculate costs for smaller providers for the urban areas. In general, in small towns and rural areas, tariffs are set through consultation between local governments, managers, and operators of WSS systems, and communities in order to determine a fee that is suitable to the conditions of the era.¹⁰²

Bank Economic Review. Vol 17, No 3. p 396.

¹⁰² See

https://www.wsp.org/sites/wsp.org/files/publication_s/WSP%20SPI%20Country%20Report%20-%20Colombia%20final.pdf at pg. 20-21.

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

Colombia has a unique system of distributing its national budget (to help those with lower incomes) called Sistema General de Participaciones (SGP) (the General Revenue Sharing System). The SGP works by transferring resources from the central government to the regional entities, such as departments, districts, or municipalities. These transferred resources were originally only earmarked for health and education but were later expanded to potable water and basic sanitation purposes in 2005. The SGP scheme consists of many different types of subsidies. The relevant types to the WSS sector are the following: (i) Supply-side subsidies— these subsidies are meant to assist firms in covering the cost of production/service provision. This subsidy indirectly aims to reduce the price of goods/services thereby improving consumer affordability; (ii) Demand-side subsidies— these subsidies are granted to users of public services as assistance for low incomes or with the objective of increasing consumption of particular services; (iii) cross-subsidies— these subsidies are defined as those that raise the price of service for certain users while using that additional income to reduce the price of the same service to other users. Cross-subsidies are applied according to the stratification of the population within the municipality. It is each municipality's responsibility to classify each household into one of six strata according to the socio-economic characteristics of the family's residence (building). We note that WSS

service users can be further classified into Industrial or Commercial groups, which will also participate in the cross-subsidies scheme. There are thus eight categories into which a user of WSS service can be classified. Industrial and commercial users are contributors to the scheme by default. In general, in small towns and rural areas, tariffs are set through consultation between local governments, managers, and operators of WSS systems and communities in order to determine a fee that is suitable to the conditions of the area.¹⁰³

5 Which actor is responsible for and involved in setting and/or approving tariffs for water supply and sanitation services?

According to Law 142 of 1994, it is the Commission for Regulation of Water (Comisión Reguladora de Agua "CRA").¹⁰⁴

6 Does the law allow disconnection from water supply and sanitation services for non-payment? What procedures must be followed in such cases prior to disconnecting the supply and service?

Service providers of water and sanitation services are entitled to disconnect services after 2 months of non-payment by the customer. Nonetheless, if the customer has agreed to special payment arrangements, then the service provider cannot disconnect the services.¹⁰⁵

¹⁰³ Id.

¹⁰⁴ Law 142 of 1994

¹⁰⁵ Resolution 375 of 2006

E Acceptability

- 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)?**

No specific provisions or guidance were identified in our research.

- 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)?**

No specific provisions or guidance were identified in our research.

F Non-discrimination, equality and universal access

- 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?**

According to Law 1482 of 2011, racial or other kinds of discrimination are forbidden in Colombia. This law was enacted to ensure the following constitutional rights and principles granted by the Constitution of Colombia (i) principle of pluralism, granted by Article 1; (ii) ethnic diversity, granted by Article 7 and (iii) no discrimination principle established in Article 70. Nonetheless, there

are no specific legal provisions regarding the promotion and equality in accessing water and sanitation services. However, the Colombian Government, specifically the National Department of Planning, has developed a set of documents called “*CONPES documents*” with the primary objective of studying the current status in this matter and increasing the accessibility of water resources in the upcoming years, especially in rural areas.¹⁰⁶

- 2 Are there any specific provisions that address that seek to ensure (physical) access to water and sanitation services for persons with disability, children or the elderly?**

Law 1346 of 2009 in its Article 28 establishes what the adequate standard of living and social protection should be.

The States Parties recognize the right of persons with disabilities to social protection and to enjoy that right without discrimination based on disability, and shall take the appropriate measures to protect and promote the exercise of that right, including:

a) Ensure equal access of persons with disabilities to drinking water services and their access to services, devices and other assistance appropriate at affordable prices to meet the needs related to their disability;”

Also, Law 1618 of 2013 in its Article 14 gives additional information on what should be implemented to attain such a goal:

“4. Implement appropriate measures to identify and eliminate obstacles and to ensure universal accessibility of all persons

¹⁰⁶ Law 1482 of 2011 and Constitution of Colombia.

with disabilities to the built environment, transportation, information, and communication, including information and communication technologies and other services, ensuring the conditions for People with disabilities can live independently.

5. Effectively comply with the regulations on accessibility in the construction or adaptation of works that are carried out on the public and private space, which provide services to the public and must comply with the deadlines indicated.

6. Ensure that all public restroom services are accessible to people with disabilities.”

G Right to information

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?

According to Article 9.4 of Law 142 of 1994, it is the right of the users of the water supply and sanitation services to request and obtains complete, accurate, and timely information from services providers about all activities and direct or indirect operations that are undertaken for the provision of the public services, provided that the information is not classified as secret or reserved by law and complies with the requirements and conditions indicated by the Superintendent of Residential Services.¹⁰⁷

¹⁰⁷ Law 142 of 1994

¹⁰⁸ Law 1712 of 2014

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

According to Article 3 of the Transparency Law, which refers to the gratuity principle, the person obligated to disclose information is not allowed to charge a fee for the information but can charge for the costs incurred to reproduce that information.¹⁰⁸

3 Are there any exceptions about who or what type of water and environment related information held by public authorities can be accessed?

According to the principle of transparency, all the information held by public authorities must be available for public access, except for information that might be classified as “confidential information.” Pursuant to Article 18 of the Law of Transparency, “*confidential information*” is that to which access may be denied if its disclosure could violate the following rights: (i) the right of all people to privacy, limited by the conditions naturally imposed as a public person; (ii) the right of all people to health and security; and (iii) the right of commercial and industrial secrets. This general regulation may be applied to water and sanitation matters.¹⁰⁹

4 Which institutions are required by law to make information on water public? Does the law 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

¹⁰⁹ Id.

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.)?

There are several laws regulating the information that water supply and sanitation service providers are required to provide. There is no single/unique regulation on this matter. However, after a comprehensive analysis of the regulations applicable to this matter, it is possible to conclude the following: (i) the regulation regarding access to the information the Law 1712 (the “*Transparency Law*”) regulates the right to access national public information and is based on several principles like transparency, good faith, ease of access to the information, no discrimination, gratuity, efficiency and quality of the information and such law promotes proactive disclosure of information and (ii) as has been mentioned previously, in its monitoring role, the Superintendent of Residential Services receives information from the services providers and is also entitled to request certain information from the services providers.

5 What are the requirements listed in the law in relation to the language, locations, format, timing and means used for providing water related information to the public? How does the law ensure that information is made available to all including to minorities?

Article 8 of the “*Transparency Law*” states that based on the principle of

¹¹⁰ Id.

accessibility of the information, and with the aim to ensure that specific communities have access to the relevant information, the relevant information should be disclosed in several languages and in a format, which ensures easy access to the information and promotes understanding of that information.¹¹⁰

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

No specific provisions or guidance were identified in our research.

7 Are the legal requirements concerning informing the population about regulations, restrictions, prohibitions and discontinuations in water services? Does the law require that information be made available about the existence of complaint mechanisms for water supply and sanitation services to users of such services?

Pursuant to Resolution 375 of 2006, which contains the provisions of the standard supply agreement for drinking water and sanitation services, it is the right of users to have access to and obtain complete, accurate, and timely information about such services. It is also an obligation of the service providers to provide information about the available complaint mechanisms.¹¹¹

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

See question 7 above.¹¹²

¹¹¹ Resolution 375 of 2006.

¹¹² Id.

H Public participation

1 Is there a law which addresses public participation?

Municipalities have the primary responsibility for providing public services, including WSS, with support from the departmental authority. However, since Law 142, the government's policy has been to encourage provision by specialized entities, rather than the municipality providing public services directly. The option of the direct provision by the municipality is only allowed when no other alternatives exist. If providing services directly, there are strict procurement rules that municipalities must follow. However, there are several other delivery models available to municipalities that fall outside public procurement rules. Important amongst these is the public services enterprise (ESP). ESPs may be publicly owned, e.g., by the municipality, privately owned, or be a mix of the two. The Colombian Constitution defined a model of increased decentralization of the provision of public services and promoted a shift away from direct provision of services by the government by giving the responsibility for the provision of public services to the municipal government. In support of these

processes, beginning in the mid-1990s, Colombia implemented a set of institutional reforms in the sector that provided a framework for indirect service provision, including private participation in the provision of domestic public services. Specifically, there have been two major changes to the original 1991 model, one in 2001 and one in 2007, which modified the mechanisms for calculating annual growth of resources, adjusting them to the macroeconomic realities of the country, but also introduced a transfer system conditioned, in which resources are turned to territorial entities to fulfill specific functions, without giving them greater room for maneuver when executing public policy, making them managers rather than executors.¹¹³ In Colombia, in 2001 and 2007, constitutional reforms to the so-called General Participation System (GSP) were advanced. Within these modifications to the political letter, the municipalities were assigned the responsibility of guaranteeing the provision of services such as education, health, recreation and sports, and especially in 2007, basic sanitation and drinking water.¹¹⁴

¹¹³ Particularly, the 2007 reform introduced an important change in the distribution of competencies and resources that the GSP has, establishing a specific destination heading to finance public policy aimed at guaranteeing basic sanitation and drinking water, the institutional effort of the time was translated into a constitutional reform and a law that assigned powers to different territorial entities, assigning the most important, the provision of service and guarantee coverage to municipalities.

¹¹⁴ Transfers in Colombia are called General Participation System or GSP (Congress of the

Republic, 2007), which "corresponds to the resources that the Central National Government transfers to territorial entities, whether Departments, Districts or Municipalities, destined for health, education, drinking water and basic and general-purpose sanitation. Articles 356 and 357 of the Political Constitution of 1991 established new responsibilities for subnational governments, as well as the necessary resources to exercise them, deepening the process of political and administrative decentralization of Colombia

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

For the purpose of issuing or renewing water concessions for human consumption Article 28 from the Law 1975 of 2007 states that, the interested party, before going to the competent environmental authority, must obtain the corresponding favorable authorization from the sanitary authority, which will be sent by the same sanitary authority to the corresponding environmental authority, to continue with the concession procedures. To obtain the corresponding favorable sanitary authorization, the interested party must submit to the competent departmental health authority, the characterization of the water that will be used for human consumption and the proposed treatment system, in accordance with Resolution 1096 of 2000 of the Ministry of Economic Development (or the one that modifies, adds or replaces it).

Also, Article 55 of Law 1757 from 2015 imposes participatory public hearings. Participatory public hearings are an accountability mechanism, and they are also a public event convened and organized by the administration entities to evaluate the management carried out and its results with the intervention of citizens and social organizations. At these hearings, the accountability report will be announced. This obligation arises for anyone who has become a director or manager of an entity of the national order, as well as for Mayors and Governors. The directors or managers and

the Mayors or Governors must establish corrective measures that optimize the management and facilitate the fulfillment of the goals of the development plan, as well as strengthen the scenarios and information mechanisms that allow the community to participate and permanently control the society.

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?

As per Law 142, the government may contract through various types of contractual agreements which are allowed for providing public services: (i) contracts with government agencies to transfer ownership or use of the assets especially intended to provide public services; (ii) concession contracts for the use of natural resources, i.e. water (these contracts are of limited duration and are signed by the authority responsible for the administration of the water resource and such contracts may also specify the conditions under which the counterparty will return the water after use); (iii) contracts under which two or more public services operators regulate the charge or toll paid for shared access or interconnection of assets necessary for the provision of the service; (iv) contracts for the extension of the provision of a service that only benefits one person, who assumes the cost of the work and undertakes to pay the company the cost or value agreed. The contracts signed must specify the

geographical area in which the service is provided, quality standards to be provided by the contractor, and the obligations in respect of the service must also be specified. There may also be an agreement to extend new public service contributions.

4 Is the establishment of 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 are four formally recognized service delivery models in Colombia covering the full spectrum of legal form ranging from private entities to delivery by municipal organizations (public provision): (i) Municipalities— provide the services directly to their inhabitants or contract private operators to provide the services; (ii) Public Service Enterprises (ESPs, *Empresas de Servicios Públicos* in Spanish) — was established as a legal form under Law 142, requiring all existing providers of domestic public services, which used to be established as Commercial and Industrial Companies of the State (known in Spanish as EICE), to transform into an ESP. ESPs may be publicly owned, e.g. by the municipality, privately held, or be a mix of the two; (iii) Other organizations— can be authorized or non-authorized organizations. The former types are registered at the SSPD while the latter is not. This includes community-based

organizations and NGOs; and (iv) Self-supply — individual self-supply is also foreseen.

I Sustainability

1 How does legislation ensure that water and sanitation services are delivered in a sustainable manner, considering the availability of water resources, competing demands and generally the needs of present and future generations?

The National Development Plan, designed with the main objective of developing the country, contains the guidelines to develop in a sustainable manner. No other specific regulations were found.¹¹⁵

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

According to Article 90 of Law 142 of 1994, the tariffs could include (i) a charge for effective consumption; (ii) a fixed charge; and (iii) a charge for connection costs. All of those charges should be lined up with the principle of efficiency.¹¹⁶

¹¹⁵ See <http://www.procolombia.co/procolombia/transpare>

[ncia/plan-nacional-de-desarrollo](http://www.procolombia.co/procolombia/transpare)

¹¹⁶ Law 142 of 1994

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)?

Colombia has a monist system. With respect to international treaties pertaining to human rights, Article 93 of the Constitution of Colombia recognizes that the international human rights treaties prevail in the Colombian legal system. Additionally, the same Article established that the rights and obligations established by the Colombian Constitution are to be interpreted using principles inherent in those international treaties ratified by Colombia.¹¹⁷

2 What is the hierarchical structure of the legal system?

The hierarchical structure of the Colombian legal system is the following: (i) Constitution of the Colombian Republic as well as international treaties;¹¹⁸ (ii) Law: Laws are enacted by the Congress as empowered to do so by the Constitution of Colombia (iii) Decree-Law: This kind of regulation is issued by the Executive Power, based on an express delegation of functions by the Congress; (iv) Code: This is a compilation of laws in several matters; for example, the Civil Code or the Commercial

Code; (v) Decrees: These are rules issued by the Government and authorized by the President; (vi) Resolutions: There are rules issued by administrative bodies. There are other kinds of rules namely ordinances and municipal agreements, which generally have local application.¹¹⁹

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

Colombia signed the Pact of San Jose, Costa Rica on November 22nd, 1969, and ratified it on May 5, 1983. After that, on June 21st, 1985 Colombia presented an acceptance instrument by which it recognized the competence of the Inter-American Commission on Human Rights and recognized the competence of the Inter-American Court of Human Rights indefinitely. This acceptance and recognition of the Inter-American Court of Human Rights was made under the condition of reciprocity and applies only to events that occurred after the acceptance. In the aforementioned acceptance instrument, Colombia expressly declared the right to terminate its recognition of the competence of the Inter-American Court of Human Rights as and

¹¹⁷ Constitution of Colombia.

¹¹⁸ Fondo de desarrollo de la educación superior vinculado al ministerio de educación nacional – citando Rodríguez Libardo, Derecho Administrativo

General y colombiano, (2008).

¹¹⁹ See https://www.goconqr.com/p/5614056-colombia--jerarqu-a-de-las-normas-juridicas-mind_maps

when deemed appropriate by Colombia.¹²⁰

B Remedies and complaint procedures/accountability

1 Are there remedies provided by law to file complaints or other ways of accessing justice in reference to water and sanitation? Who may file them? Are the decisions appealable?

There are no specific remedies provided by the law to file complaints about water and sanitation matters. However, all actions by the administration are susceptible of being controlled, through citizen control, all the way from state contracts to administrative decisions. There are two means by which this can be achieved; through the administrative control under art 74 of the CPCA,¹²¹ or through judicial proceedings.¹²² Also, where the access to water and sanitation is affecting a fundamental right protected by the Colombian Constitution or by international treaties granting human rights, it is possible to file a claim with the Constitutional Court.¹²³

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

Article 93 of the Constitution states that the international treaties regarding human rights have a supra-legal character. Therefore, those principles must be

respected by the courts and more generally by the entire Colombian judicial system. Article 86 states that every individual may claim legal protection before the judge, at any time or place, through a preferential and summary proceeding [...] for the immediate protection of his/her fundamental constitutional Article 93 of the Constitution states that the international treaties regarding human rights have a supra-legal character. Therefore, those principles must be respected by the courts and more generally by the entire Colombian judicial system. Article 86 states that every individual may claim legal protection before the judge, at any time or place, through a preferential and summary proceeding [...] for the immediate protection of his/her fundamental constitutional rights when the individual fears [it] may be jeopardized or threatened by the action or omission of any public authority.¹²⁴

3 Does the law provide for financial assistance for legal counsel in cases concerning water and sanitation?

There are no specific provisions about legal assistance regarding water and sanitation issues. However, Colombia has developed a special regimen to provide legal assistance to people that do not have access to private legal counsel. This is called Public Defense (*Defensoria Publica* in Spanish). This entity is not limited in the matters that it can cover. As a consequence, it is possible that

¹²⁰ Herrera Robles, Aleksey “*El Estado Colombiano frente al sistema interamericano de protección de los derechos humanos*” (2001) p. 108-113.

¹²¹ Artículo 74 CPACA.

¹²² El acto administrativo en los procesos y procedimientos / Luis Germán Ortega Ruiz. — Bogotá: Universidad Católica de Colombia, 2018

¹²³ Judgement T-740 – 2011 of the Constitutional Court of Colombia

¹²⁴ Constitution of Colombia

matters pertaining to water and sanitation could be covered by lawyers designated by the Public Defender for this purpose.¹²⁵

4 Who monitors the administrative level bodies and/or service providers?

According to Article 3.9 of Law 142, all service providers are under the control, inspection, and surveillance of the Superintendent of Residential Public Services (*Superintendencia de Servicios Públicos Sanitarios* in Spanish).¹²⁶

5 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?

According to Article 70 of Law 142 of 1994 and Resolution SSDD 20161300011294 of 2016, it is possible to appeal against the decision of a service provider. Such an appeal should be filed with the Superintendent of Residential Services which is the forum of the last instance, this is to say, it is not possible to appeal the decision of the Superintendent of Residential Services. An appeal may only be filed with the Superintendent of Residential Services in the following cases: (i) if a service provider has not executed the agreement under standard conditions; (ii) if the service has been suspended; (iii) if the service has been terminated; (iv) termination of the supply agreement; (v)

disagreements in the tariff applied or (vi) disagreements with the bill.

6 What remedies are available at an administrative level?

In regards to acts taken by the administration itself, according to the Council of State,¹²⁷ the “*demise*” of the administrative act will occur when the legal or regulatory disposition on which is based its execution disappears from the judicial order because of the unenforceability or nullity of the judicial norm. This phenomenon also occurs if an administrative act is annulled, or suspended, through administrative proceedings. Once the “*decay*” occurs, the act will cease to have effects in the future. In regard to a decision taken by a service provider, The Superintendent of Residential Services is entitled to revoke the said decision.¹²⁸

7 Who monitors these administrative level bodies?

According Article 14.30 of Law 142 of 1994, the Superintendent of Residential Services is monitored by the Ministry for Development.

8 Are such administrative bodies legally independent entities according to the law

Pursuant to Article 76 of Law 142 of 1994, the Superintendent of Residential

¹²⁵ Law 24 of 1992

¹²⁶ Law 142 of 1194

¹²⁷ Consejo de Estado. Sala de lo Contencioso Administrativo. Sección Tercera. Subsección A. Auto 68001-23-33-000-2015-01276 01, 22 de febrero de 2017. C. P.: Dr. Hernán Andrade Rincón. Actores:

Eddy Ávila Figueroa y otro. Demandado: Municipio de Bucaramanga. Expediente: 58352.

¹²⁸ See <https://www.superservicios.gov.co/nuestra-entidad/funciones>; See also “The administrative act in the processes and procedures”, Luis Germán Ortega Ruiz. — Bogotá: Catholic University of Colombia, 2018

Services has administrative, technical, and financial independence.¹²⁹

9 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?

In Judgment T-740/11, the Constitutional Court enforced the right to access the minimum vital amount of water.

¹³⁰

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

The human right to water and sanitation has not been expressly protected as a fundamental right under the Colombian Constitution. However, as has been previously mentioned, as long as this right is recognized by international human rights treaties ratified by Colombia, cases can be heard by the courts and, if this involves urgent matters, the case can also be heard by the Constitutional Court under the Tutelage Proceeding (*Procedimiento de Tutela* in Spanish). There have been several cases heard by the Constitutional Court on this matter.¹³¹

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

¹²⁹ Law 142 of 1994

¹³⁰ Judgement T-740 of 2011

¹³¹ See

<http://www.corteconstitucional.gov.co/relatoria/2013/T-082-13.htm>

¹³² See

There are no special judicial proceedings applied to cases involving human rights violations. Nonetheless, the Tutelage Proceeding, which must be heard by the Constitutional Court, is meant as a short procedure to ensure the protection of human rights. Therefore, this process does not have special rules, and the Court must issue a judgement in 20 days.¹³²

12 Is there a Constitutional /Supreme Court? Cases are heard as the last appeal or may cases be referred directly?

The Constitutional Court is entitled to hear cases regarding violations of human rights directly. The Supreme Court allows for a final appeal process.¹³³

13 Have domestic courts applied international human rights law in past cases or have they referred to decisions from international human rights bodies?

The Constitutional Court has applied international human rights law set forth in International Treaties ratified by Colombia.¹³⁴

14 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?

According to Article 10 of the Colombian Constitution "*Spanish is the official language*

<http://institucionesconstitucionales.blogspot.com/2006/03/el-procedimiento-en-la-accin-de-tutela.html>

¹³³ Id.

¹³⁴ See

<http://www.corteconstitucional.gov.co/relatoria/tematico.php?sql=agua+potable&campo=%2F&pg=0>

of Colombia. The languages and dialects of ethnic groups are also official in their territories. The education provided in communities with their own linguistic traditions shall be bilingual". However, we could not locate a precedent of a proceeding conducted in the local language

15 Have domestic courts applied (or referenced) recommendations of national human rights institutions?

No specific provisions or guidance were identified in our research

C National human rights institutions

1 Is there an independent national human rights institution?

The Ombudsman (*Defensoría del Pueblo* in Spanish) is an organic part of the public ministry created by Article 281 of the Colombian Constitution.¹³⁵ The institution functions under the direction of the General prosecutor of the nation and is charged with promoting and protecting human rights. Article 282 of the constitution details what its functions are, among others obligations to (i) determine, conduct, and implement, along with the Office of the Inspector General of Colombia (*Procurador Nacional de la Nación* in Spanish), policies for the promotion of human rights in order to protect those rights; (ii) make recommendations to the relevant authorities and the public in situations where human rights are threatened or

violated and procure the protection of those human rights; and (iii) provide guidelines to analyze and assess specific economic, social and cultural situations which impact human rights. The law is to determine matters relating to the organization and functioning of the office of the Ombudsman.¹³⁶ To that extend decree 25 of the 10 of January 2014 established the organization and the mechanics of the Institution.¹³⁷

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

The mandate of the Ombudsman is quite broad and encompasses human rights in a broad sense. However, there are specific references to social and cultural rights.¹³⁸

3 Is the national human rights institution authorized to receive and adjudicate complaints of violations of human right to water and sanitation rights?

The Ombudsman does not have an express mandate in matters of water and sanitation. However, as part of its general mandate to protect against human rights violations (and since the Constitutional Court, as noted previously, has defined access to water as a basic human right)¹³⁹, the Ombudsman can receive –but not adjudicate– complaints of water and sanitation violations.¹⁴⁰

¹³⁵ Constitution of Colombia (Art 281)

¹³⁶ Constitution of Colombia (Art 282-83-284)

¹³⁷ <http://www.defensoria.gov.co/public/pdf/01/deceto-025-2014.pdf>

¹³⁸ Id.

¹³⁹ Judgment T-740/11.

¹⁴⁰ <http://www.defensoria.gov.co/public/pdf/01/deceto-025-2014.pdf>

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

The Ombudsman cannot initiate actions for specific or systemic human rights violations. It can, however, receive complaints about specific or systemic violations and mediate to try to resolve them or advise the persons whose rights have been violated of means to obtain legal remedies.¹⁴¹ The Ombudsman can also initiate legal proceedings before the Constitutional Court, but only against statutory rules that it considers violating human rights, not specific or systemic acts.¹⁴²

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

The Ombudsman is not able to impose legal remedies or adjudicate disputes, which are functions reserved to the courts.¹⁴³ What the Ombudsman can do is exercise its powers to assist persons whose rights have been violated in obtaining legal redress (e.g., by advising, assisting, mediating, obtaining information, and raising any violations with the relevant authorities). In the case of civil proceedings, the Ombudsman can exercise powers of legal representation for those persons who meet the criteria for poverty under the relevant Rules of Civil Procedure.¹⁴⁴

¹⁴¹ Id., articles 5.13, 6.6, 13.5, 15.1, 18.6 and 26 (Decree 025 of 2014).

¹⁴² Id., articles 5.9 and 16.6 (Decree 025 of 2014).

¹⁴³ Id.

¹⁴⁴ Law 24 of 1992, article 21.

<http://www.secretariasenado.gov.co/senado/based>

6 Is the institution allowed to initiate investigations/hearings?

The Ombudsman can start investigations in order to protect/defend human rights in appropriate courts if necessary.¹⁴⁵

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

The Ombudsman does not have a specific mandate in this matter.¹⁴⁶

D Regulation

1 Is there a water regulator established by law?

The water regulator is the Commission for Regulation of Water and Sanitation ("CRA" - its acronym in Spanish). This is a national entity created by Article 69 of Law 142 of 1994. This entity has administrative, technical, and financial independence. This entity was created under the Minister of Housing, City and Land (*Ministerio de Vivienda, Ciudad y Territorio* in Spanish). This entity was entitled as water regulator by means of Decree number 1524 of 1994.¹⁴⁷

2 Is the water regulator an independent entity?

oc/ley_0024_1992.html

¹⁴⁵ <http://www.defensoria.gov.co/public/pdf/01/deceto-025-2014.pdf>

¹⁴⁶ Id.

¹⁴⁷ Law 142 of 1994 and Decree 1524 of 1994

As per Article 69 of Law 142 of 1994, the CRA is an independent entity.¹⁴⁸

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

Even though CRA is the regulatory entity established by the Law 142 of 1994, this entity is not entitled to oversee services providers of drinking water and sanitation services. The entity in charge of overseeing service providers is the Superintendent of Residential Services. According to Article 79 of Law 142 of 1994, the Superintendent of Residential Services is empowered by a broad range of oversight mechanisms. These oversight mechanisms monitor compliance of contracts between public service provider companies and users and evaluate the financial, technical, and administrative management of public service provider companies. The Superintendent will review and approve the company's management programs so that they comply with the indicators that the regulation commissions have defined, and also the Superintendent may impose sanctions for non-compliance. According to Article 79 of Law 142 of 1994, the Superintendent may impose the following sanctions based on the nature and severity of the fault: (i) admonition; (ii) fines up to the equivalent of 2000 monthly minimum wages; (iii) suspension of all or some of the offender's activities, and close the property used to develop them, if applicable; (iv) removal of administrators or employees of a service provider; (v) request

authorities to decree that the offender's existing contracts are terminated; (vi) prohibit the offender from directly or indirectly providing public services for up to ten years; or (vii) taking possession of a service provider, or temporarily or permanently suspend the service provider's authorizations and licenses in cases when the penalties provided are not effective or unduly harm third parties.¹⁴⁹

4 How are the actions of those entities or institutions monitored and by whom? As much as possible, please inform on the different aspects of water and sanitation services: e.g., water quality, tariff setting, availability of water resources, service delivery, etc.?

According to Article 365 of the Colombian Constitution, public services such as water and sanitation are inherent to the duties of the State. Therefore, the State is obliged to ensure those services are provided in the most efficient manner to all inhabitants of the country. Article 370 of the Colombian Constitution states that the President of Colombia shall establish regulations regarding water and sanitation services. This responsibility may be delegated to "*Commissions for Regulations*" (*Comisiones de Regulación*). Therefore, the regulation of water and sanitation services has been delegated to the CRA. The CRA, issued Rule 825 of 2017. This rule regulates the tariffs applicable to water and sanitation services. The principles of this tariff regime are economic efficiency, neutrality, solidarity, redistribution, finance sufficiency,

¹⁴⁸ Id.

¹⁴⁹ Id.

simplicity, and transparency. Hence, based on the principle of economic efficiency, the tariffs should reflect the market value of the water and sanitation services. As per Article 90 of Law 142 of 1994, the tariffs could include (i) a charge for actual consumption; (ii) a fixed charge; and (iii) a charge for connection costs. All those charges should be lined up with the principle of efficiency. Subsidies are applicable to the tariffs according to the social percentile of the consumer. Compliance with these principles is monitored by the Superintendent of Residential Services. With respect to the equality of potable water, the relevant standards are determined by the Minister of Health who regularly issues specific rules called “Technical Standards” (*Normas Tecnicas*).¹⁵⁰

¹⁵⁰ Id.

Annex 1

