



Legal Country Mapping

For the Rights to Safe Drinking Water and Sanitation and
the link with the Right to a Healthy Environment

EL Salvador

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Overview of national water governance for EL Salvador

General Legislation

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

Water Governance

Right to Water mentioned in Constitution	Yes (by interpretation)
Right to Sanitation mentioned in Constitution	Yes (by interpretation)
Right to a clean and healthy Environment 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
International institution for Transboundary Water Resources	Yes (with limited reach and mandate)
Priorities in the allocation of water for different uses?	Yes

CHAPTER 1. WATER GOVERNANCE OVERVIEW

A- Preliminary questions:

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

El Salvador is a unitary presidential republic with a central government. Administratively it is divided into 14 departments, 39 districts and 262 municipalities. (SOURCE: <https://oig.cepal.org/es/paises/13/system>)

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

The Constitution of El Salvador of 1983 (the "Constitution")¹ provides for representative government with three branches: legislative, executive, and judiciary (Art.86).

The unicameral Legislative Assembly (*Asamblea Legislativa*) exercises the legislative power with 84 members elected for a three-year term. The powers of the General Assembly are enumerated in Article 131 of the Constitution and they include among others, the power to enact legislation, ratify international treaties, and approve the annual budget.

The **executive power** is exercised by the President of the Republic and the Vice-President, both of whom are elected for a non-renewable five-year term, and the Council of the Ministers. Article 168 of the Constitution enumerates the powers and obligations of the President of the Republic, including: observing and enforcing the Constitution, treaties, laws and other legal dispositions; making international treaties and conventions, and submitting them to the Legislative Assembly for ratification; directing foreign relations; and issuing vetoes, sanctioning, and promulgation and publication of the laws enacted by the Legislative Assembly.

Pursuant to Article 172 of the Constitution, the **judicial power** is vested in the Supreme

Court of Justice, the Courts of Appeal (Second Instance Chambers), the First Instance Courts, and Peace Courts. Pursuant to the Constitution, the judicial branch has the exclusive competence to judge and execute rulings issued by its courts on subjects of constitutionality, civil, criminal, commerce, labour, agriculture, and administrative law (Chapter III).

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

Pursuant to the Constitution, the Legislative Assembly enacts legislation, which then needs to be promulgated by the President of the Republic.

Pursuant to Article 168§14 of the Constitution, the President of the Republic may issue regulations necessary for the execution of the President's powers.

At the local government level, the Municipalities can issue local ordinances and regulations as long as they are consistent with the laws of the Republic (see Article 205§5 of the Constitution)

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

Pursuant to Article 168§4 of the Constitution, the President of the Republic negotiates treaties and submits them to the Legislative Assembly for ratification.

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

Yes, some agencies are required to engage in popular consultation including the Ministry of the Environment and Natural Resources. See Environmental Law, Arts. 25 & 32 (*Ley de el Medio Ambiente*).² The Constitution requires popular consultation only with respect to, and bases of, establishing an integrated union

¹ English version of the Constitution is accessible here: https://www.constituteproject.org/constitution/El_Salvador_2014.pdf?lang=en

² Ley del Medio Ambiente dated 8 October 2019 is accessible here: [Ley del Medio Ambiente | CIDOC Virtual \(marn.gob.sv\)](http://www.marn.gob.sv).

with other Central American countries. [See the Constitution, Article 89.]

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

Since the General Law of Hydrological Resources (*Ley General de Recursos Hídricos* or the “**Water Law**”) came into force in July 2022, the Salvadorian Water Authority (*Autoridad Salvadoreña de Agua - ASA*), under the Ministry of Environment and Natural Resources, has become responsible for integrated water management and implementation of the water law. Water Law, Art.11. (refer to Section C of this Chapter for more detailed information). ASA is autonomous (Art.10, Water Law).

7. Does the country have transboundary water resources?

Yes. El Salvador shares water resources with Guatemala and Honduras as follows:

- Lempa River (*Río Lempa*) with Guatemala and Honduras;
- Choqueyapu River, also called La Paz River (*Río Paz*) with Guatemala; and
- Goascorán River (*Río Goascorán*) with Honduras.

(SOURCE: *Presentación del Informe Nacional del Indicador 6.5.2 de los ODS. El Salvador* (Diciembre 2020)).

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?

There are no specific international organisations or institutions responsible for the management of the transnational basins referred to above. However, as a part of a 1997, tripartite treaty between El Salvador, Guatemala and Honduras, the parties have

recently developed a plan aimed at Promoting Water Security in the Trifinio Region, i.e. the region covering the transnational basin of the Lempa River (*El Plan Fomentando la Seguridad Hídrica en la Región del Trifinio*). As a part of this project, the parties intend to:³

- Improve the knowledge of the various uses of transboundary water resources and environmental threats facing the Lempa River basin;
- Improve the governance of water resources management;
- Demonstrate the feasibility and cost of innovative Integrated Water Resources Management solutions; and
- Introduce water resources monitoring programs for decision-making in Integrated Water Resources Management and facilitation of information exchange.

Plan Trifinio encompasses nearly 30 different projects and programs which have been developed under the 1997 treaty which put in place an international body to. This is one of the about 30 projects developed under the overarching plan and treaty. The details of this particular program are available here: <https://www.plantrifinio.int/programas-y-proyectos/programas-y-proyectos-plan-trifinio>.

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

1. Which countries form part of this organisation?

Yes, El Salvador is member of a number of regional integration organisations together with the following other countries:

- Organisation of American States (**OAS**) has 35 independent member states: Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa

³ See website for the Plan Trifinio, for further information: <https://www.plantrifinio.int/programas-y-proyectos/programas-y-proyectos-plan-trifinio/item/53-fomentando-la-seguridad-hidrica-en-la-region-del-trifinio>

[proyectos/programas-y-proyectos-plan-trifinio/item/53-fomentando-la-seguridad-hidrica-en-la-region-del-trifinio](https://www.plantrifinio.int/programas-y-proyectos/programas-y-proyectos-plan-trifinio/item/53-fomentando-la-seguridad-hidrica-en-la-region-del-trifinio)

- Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, the United States, Uruguay, and Venezuela
- Association of Caribbean States (**ACS**) includes: Antigua and Barbuda, the Bahamas, Barbados, Belize, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Saint Kitts & Nevis, Saint Vincent & the Grenadines, Suriname, Trinidad & Tobago, and Venezuela;
 - Inter-American Development Bank (**IDB**) includes: Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad & Tobago, Uruguay, and Venezuela;
 - Community of Latin American and Caribbean States (**CELAC**) includes: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominica, Ecuador, El Salvador, Granada, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, St. Lucia, St. Kitts & Nevis, St. Vincent & the Grenadines, Trinidad & Tobago, Uruguay and Venezuela;
 - UN Economic Commission for Latin America (**ECLAC**) includes: Antigua & Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, France, Germany, Grenada, Guatemala, Guyana, Haiti, Honduras, Italy, Jamaica, Japan, Mexico, the Netherlands, Nicaragua, Norway, Panama, Paraguay, Peru, Portugal, Republic of Korea, Saint Kitts & Nevis, Saint Lucia, Saint Vincent & the Grenadines, Spain, Suriname, Trinidad & Tobago, Turkey, UK, USA, Uruguay, Venezuela;
 - Latin American and Caribbean Economic System (**SELA**) includes: Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Colombia, Cuba, Chile, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Trinidad & Tobago, Uruguay and Venezuela
 - Central American Integration System (**SICA**) includes: Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Panama.
2. **Are the decisions of the organisation legally binding for the members?**
- The decisions made by the above organisations are not mandatory.
3. **What is the mandate of the organisation?**
- The mandates of these organisations are as follows:
- Organisation of American States (**OAS**) works to strengthen peace, security and consolidate democracy, promote human rights, support social and economic development and promote sustainable growth in the Americas;
 - Association of Caribbean States (**ACS**) seeks to strengthen and integrate the countries of the Caribbean Sea zone, with the objective of creating a common economic space, preserving the sea and promoting the sustainable development of its members through trade, transport and tourism;
 - Inter-American Development Bank (**IDB**) is a multilateral development bank that provides both financial and technical cooperation services. It is part of the OAS Inter-American System. Its two main

- objectives are to reduce poverty and achieve economic growth, promoting competitiveness, modernisation, investment in social programs and the integration of regional markets;
- Community of Latin American and Caribbean States (**CELAC**) promotes integration of the subcontinent;
 - UN Economic Commission for Latin America (**ECLAC**) contributes to the economic development of Latin America, coordinates actions aimed at its promotion and strengthening its economic relations;
 - Latin American and Caribbean Economic System (**SELA**) provides a forum for consultation and coordination to agree positions and strategies on economic, cooperation and integration issues;
 - Central American Integration System (**SICA**) is an umbrella organisation striving to achieve the integration of Central American member states within a number of diverse subject matters including water resources and sanitation. To achieve its goals SICA operates through diverse and specialised institutions such as:
 - o Central American and Dominican Republic Forum on Drinking Water and Sanitation (**FOCARD-APS**) which brings together the governing bodies of the drinking water and sanitation sector in the region. FOCARD's highest body is the Central American and Dominican Republic Council for Drinking Water and Sanitation (**CONCARD-APS**), which develops FOCARD's strategy. One of the fundamental tasks of FOCARD-APS is to highlight the importance of drinking water and sanitation to health, to contribute to the works of the governing bodies, regulators, suppliers, funders and water users, in the development of capacities relating to broad health and environmental education, risk management, protection, conservation and quality of water resources in a sustainable development framework, thus enhancing efforts to achieve the Sustainable Development Goals (SDGs), with emphasis on SDG 6: Ensure water availability and sustainable water management and sanitation for all; and
 - o Regional Committee for Hydraulic Resources (**CRRH**) Coordinate and facilitate projects related to all uses of the water resource. CRRH develops actions to strengthen national policies and institutions, improve the management of the integrated demand for water and transboundary water resources, and to strengthen Central America's links with regional and global programs devoted to monitoring meteorological and hydrological cycles, climate change, and adaptation and mitigation policy design.
4. **Does the regional organisation have the authority to regulate or make decisions which affect water, sanitation and a healthy environment? Are there any mechanisms for enforcement?**
- The above organisations do not have the authority to regulate or make decisions, which affect water, sanitation and healthy environment. However, the Inter-American Court of Human Rights established under the American Convention on Human Rights, also called the Pact of San José, Costa Rica, to which El Salvador is a party, has a jurisdiction. For further details in relation to the Convention, please refer to Chapter 2.C below.
- In addition, the United Nations' International Court of Justice in The Hague ("ICJ") has jurisdiction with respect to international disputes involving El Salvador referred to it by the parties to the dispute, or in relation to matters provided for in treaties and

conventions.⁴ It is noted that El Salvador has not accepted the compulsory jurisdiction of the ICJ.⁵

C- Water governance and administration:

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

a. At national/federal level?

Salvadorian Water Authority (*Autoridad Salvadoreña de Agua - ASA*) is the principal agency responsible for integrated management of water resources in El Salvador.⁶ ASA is responsible for development of the National Integrated Water Resources Management Plan; issuing authorisations on water use and development; assigns and submits the approval of fees for water use, both public and private, and must resolve conflicts related to water resources.⁷

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

Articles 28 to 30 of the Water Law, provide for and set out responsibilities of Zone Basin Organisations (*Organismos Zonales de Cuenca*). Zone Basin Organisations are ASA's administrative technical bodies responsible for planning,

coordinating, and facilitating the integrated management of water resources in each hydrographic zone will be carried out in the assigned territorial competence, including their use, exploitation, protections, conservation and recovery.

c. At the local level?

At local level, the National Administration of Aqueducts and Sewerages (*Administración Nacional de Acueductos y Alcantarillados- ANDA*) provide potable water and sanitation.⁸

However, there are also over 2,500 Water Boards (*Juntas de Agua Potable*) providing potable water and sanitation services to municipalities that are not reached by services offered by ANDA.⁹

The Water Boards are non-profit organisations. In January 2020, the government estimates that community Water Boards serviced an estimated population of 1,261,646, representing 18.02 percent of the country's total population and 52.8 percent of the rural population.¹⁰ According to the Diagnosis of the Rural Potable Water Subsector of El Salvador, there are 2,325 potable water supply systems, which are managed by the community water boards,

⁴ Statute of the International Court of Justice, Articles 34-38, accessible here: [Statute of the Court Of Justice | INTERNATIONAL COURT OF JUSTICE \(icj-cij.org\)](https://www.icj-cij.org/INTERNATIONAL-COURT-OF-JUSTICE).

⁵ See List of states that have recognized the compulsory jurisdiction of the ICJ here: [Declarations recognizing the jurisdiction of the Court as compulsory | INTERNATIONAL COURT OF JUSTICE \(icj-cij.org\)](https://www.icj-cij.org/INTERNATIONAL-COURT-OF-JUSTICE).

⁶ Water Law, Art. 10.

⁷ Water Law, Art. 11.

⁸ Decree 341/1961, ANDA Act Art. 2. The ANDA Act is accessible here: <https://cidoc.marn.gob.sv/documentos/ley-de-la-administracion-nacional-de-acueductos-y-alcantarillados/>

⁹ Edgardo Ayala, "Rural Water Boards Play Vital Role for Salvadoran Farmers" dated 27 September 2021, Global Issues, accessible here:

<https://www.globalissues.org/news/2021/09/27/28883>.

See also, El Salvador, "Juntas Administradoras de Agua" Latinno accessed on 10 March 2023 accessible here: [Juntas Administradoras de Agua | LATINNO](https://www.latinno.com/El-Salvador/Juntas-Administradoras-de-Agua).

¹⁰ Responses by El Salvador to the Call for input by the United Nations Special Rapporteur on the human rights to safe drinking water and sanitation for the Report on "Privatisation and the human rights to water and sanitation" dated 30 January 2020, para 1c) available here: [El Salvador.docx \(live.com\)](https://www.unhcr.org/refugees/El-Salvador.docx).

representing between 95 and 98% of the existing systems.¹¹

Although the Water Boards are recognised under the Water Law, they do not participate in the decision-making by ASA.¹²

Lastly, at local level, the Associations of Communal Development (*Asociaciones de Desarrollo Comunal–ADESCOS*) work together with the municipalities to promote and implement projects improving the quality of life of the population at the local level in areas such as health, education, water or infrastructure. The ADESCOS are regulated by the Decree 425/1977 dated 20 December 1977 entitled *Ley de Desarrollo de la Comunidad* (Law on the Community Development).¹³ See in particular Chapter 2 of the Decree.

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

When water law entered into force, the ASA became the principal agency responsible for integrated management of El Salvador's water resources. However, other ministries and agencies whether acting independently within its mandate or with ASA also participate in water governance, in particular:

- The Ministry of the Environment and Natural Resources (*Ministerio de Ambiente y Recursos Naturales–MARN*);

- the Ministry of Public Health (*Ministerio de Salud Pública–MINSAL*); and
- ANDA, whose involvement in water, sanitation and healthy environment is set out in more detail below.

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

MARN is responsible for protection, conservation, rational use and restoration of natural resources.¹⁴

With respect to water, MARN works to promote the appropriate and sustainable management of water resources and improve environmental health indices through the implementation of national strategic plans for water security, governance and environmental sanitation.¹⁵

Although, independent ASA is attached to MARN.¹⁶

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

Provision and management of potable water fall within the competency of MINSAL (see Water Law, Art. 35(a)).

Pursuant to Art. 38 of the Water Law, MINSAL is required to perform its obligations with respect to the provision of potable water in compliance with the following guidelines:

- (a) respect the human right to drinking water and sanitation,

¹¹ Responses by El Salvador to the Call for input by the United Nations Special Rapporteur on the human rights to safe drinking water and sanitation for the Report on "Privatisation and the human rights to water and sanitation" dated 30 January 2020, para 1c) available here: [El_Salvador.docx](#) (live.com). See also, Gerson Vichez, "Juntas de agua: un historia de 49 anos de exclusion" dated 21 December 2021 FACTum accessible here: <https://www.revistafactum.com/juntas-historia-de-exclusion/>

¹² Gerson Vichez, "Juntas de agua: un historia de 49 anos de exclusion" dated 21 December 2021 FACTum accessible

here: <https://www.revistafactum.com/juntas-historia-de-exclusion/>

¹³ Decree 425/1977 is accessible here: <http://www.sansalvador.gob.sv/phocadownload/userupload/12a5d4978b/LEY%20DE%20DESARROLLO%20DE%20LA%20COMUNIDAD.pdf>

¹⁴ Environmental Law, Arts. 1, 3, and 6. See also MARN website accessible here: [Ministerio de Medio Ambiente y Recursos Naturales \(marn.gob.sv\)](http://www.marn.gob.sv)

¹⁵ Environmental Law, Arts. 49 and 70; and Water Law, Art. 35(a).

¹⁶ Water Law, Art. 10.

- (b) ensure optimised drinking water supply systems, sanitary sewer and basic sanitation,
- (c) design and implement risk prevention programs, reduction of risk vulnerability and protocol to deal with emergency cases;
- (d) encourage the reuse of treated wastewater;
- (e) ensure surveillance, monitoring and follow-up of treatment plants, and ensure adequate sludge management,
- (f) raise public awareness about the use and management of water for human consumption, preservation of the environment and development of a payment culture, and
- (g) promote supply of drinking water in a way continuous and safe way, of adequate quality and pressure, complying with legal or technical regulations issued for this purpose.

At the technical level ANDA created by Decree 341/1961, is responsible for provision of drinking water through “planning, financing, execution, operation, maintenance, administration, and operation of necessary or suitable works” related to water supply infrastructure. ANDA Act Art. 2.

While at the local level, non for profit Water Boards are also in charge of provision potable

water to rural and urban communities. Water Law, Definition of Water Board in Art 9 & Art. 41)

5. Which national government agency is responsible for sanitation? What are its responsibilities?

Provision and management of sanitation falls within the competency of MARN (see Water Law, Art. 35(a)).

At the technical level, ANDA, created by Decree 341/1961, is responsible for the management and provision of sanitation through “*planning, financing, execution, operation, maintenance, administration, and operation of necessary or suitable works*” related to sewers and wastewater infrastructure. ANDA Act, Art. 2.

At the local level, non-profit Water Boards are also in charge of providing sanitation services to rural and urban communities (See definition of the Water Boards in Art 9 of the Water Law). However it is noted that Article 41 of the of the Water Law, which further expands on the role of the Water Boards only refers to the provisions of the potable water, even though these boards traditionally have been making sanitation accessible to the regions not services by ANDA.¹⁷

¹⁷ El Salvador, “Juntas Administradoras de Agua” Latinno accessed on 10 March 2023 accessible here: Juntas Administradoras de Agua | LATINNO; and Gerson Vichez, “Juntas de agua: un historia de 49 anos de exclusion” dated

21 December 2021 FACTum accessible here: <https://www.revistafactum.com/juntas-historia-de-exclusion/>

CHAPTER 2: INTERNATIONAL AND REGIONAL TREATIES

1. What international or regional treaties has the country ratified? Please insert the date of the signature/ratification/accession.
2. What declaration or reservation has the country entered to these instruments?

A. Regional Multilateral/Bilateral Treaties

Table 1. Regional multilateral and bilateral treaties

Instruments	Participating States	Entry into force
Regional bilateral investment treaties		
Agreement between the Republic of El Salvador and the Republic Argentina for the promotion and reciprocal protection of investments, dated 9 May 1996	El Salvador, Argentina	8/01/1999
Agreement between the Republic of El Salvador and the Republic of Chile for the promotion and reciprocal protection of investments, dated 8 November 1996	El Salvador, Chile	18/11/1999
Agreement between the Republic of El Salvador and the Republic of Nicaragua for the promotion and reciprocal protection of investments, dated 23 January 1999	El Salvador, Nicaragua	8/07/2000
Agreement between the Republic of El Salvador and the Republic of Paraguay for the promotion and reciprocal protection of investments, dated 30 January 1998	El Salvador, Paraguay	8/11/1998
Agreement between the Government of the Republic of El Salvador and the Government of the Republic of Peru for the promotion and reciprocal protection of investments, dated 13 June 1996	El Salvador, Peru	15/12/1996
Agreement between the Government of the Republic of El Salvador and the Government of the Republic of Peru for the promotion and reciprocal protection of investments, dated 24 August 2000	El Salvador, Uruguay	23/05/2003
Acuerdo de Alcance Parcial El Salvador-Venezuela, dated 19 March 1996	Venezuela	N/A

Treaty between the Government of the United States of America and the Government of the Republic of El Salvador for the Encouragement and Reciprocal Protection of Investment, dated 10 March 1999	USA	N/A
Multilateral Regional Treaties and Agreements		
Treaty for the Execution of the Trifinio Plan dated 31 October 1997	EL Salvador, Guatemala, Honduras	31/10/1997

B. International Treaties

Table 2. International binding instruments

Instruments	signature	ratification
United Nations Treaties and Conventions		
International Covenant on Civil and Political Rights, New York, 16 December 1966	21/09/1967	30/11/1979
Optional Protocol to the International Covenant on Civil and Political Rights, New York, 16 December 1966	21/09/1967	6/06/1995
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, New York, 15 December 1989	-	8/04/2014 (accession)
International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966	21/09/1967	30/11/1979
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, New York, 10 December 2008	25/09/2009	20/09/2011
Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979 [Art. 14.2 is explicitly related to the right to water and sanitation]	14/11/1980	19/08/1981
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, New York, 6 October 1999	4/04/2001	-
Convention against Torture and other Cruel, Inhuman or Degrading	-	17/06/1996

Instruments	signature	ratification
Treatment or Punishment, New York, 10 December 1984		(accession)
Convention on the Rights of the Child, New York, 20 November 1989 [Art. 24 is explicitly related to the right to water and sanitation]	20/01/1990	10/07/1990
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, New York, 25 May 2000	18/09/2000	18/04/2002
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, New York, 25 May 2000	13/09/2002	17/05/2004
Optional Protocol to the Convention on the Rights of the Child on a communications procedure, New York, 19 December 2011	25/07/2013	9/02/2015
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, New York, 25 May 2000	18/09/2000	18/04/2002
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, New York, 18 December 1990	13/09/2002	14/03/2003
Convention on the Rights of Persons with Disabilities, New York, 13 December 2006 [Art. 28 is explicitly related to the right to water and sanitation]	30/03/2007	14/12/2007
Optional Protocol to the Convention on the Rights of Persons with Disabilities, New York, 13 December 2006	30/03/2007	14/12/2007
International Convention Against the Taking of Hostages, New York, 17 December 1979	10/06/1980	12/02/1981
Convention on the Prevention and Punishment of the Crime of Genocide, Paris, 9 December 1948	27/04/1949	28/09/1950
Convention relating to the Status of Refugees, Geneva, 28 July 1951	-	28/04/1983 (accession)
Protocol relating to the Status of Refugees, New York, 31 January 1967	-	28/04/1983 (accession)
Convention relating to the Status of Stateless Persons, New York, 28 September 1954	28/09/1954	9/02/2015
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, New York, 18 December 1990	13/12/2002	14/03/2003

Instruments	signature	ratification
Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime, New York, 15 November 2000	15/08/2002	18/03/2004
Geneva Conventions		
First Geneva Convention for Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949 [last revision]	12/08/1949	17/06/1953
Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva, 12 August 1949	12/08/1949	17/06/1953
Third Geneva Convention relative to the Treatment of Prisoners of War, Geneva, 12 August 1948 [last revision] [Articles 20, paragraph 2, 26, paragraph 3, 29 and 46, paragraph 3, are explicitly related to the right to water and sanitation]	12/08/1949	17/06/1953
Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949 [Article 85, Article 89(3) and Article 127(2) are explicitly related to the right to water and sanitation]	12/08/1949	17/06/1953
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 [Articles 54 and 55 are explicitly related to the right to water and sanitation]	12/12/1977	23/11/1973
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977 [Articles 5 and 14 are explicitly related to the right to water and sanitation]	12/12/1977	23/11/1973
Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005	08/03/2006	12/09/2007
International Labour Organisation – Fundamental Conventions		

Instruments	signature	ratification
Convention No. 29 - ILO on Forced Labour, 1930	-	15/06/1995
Convention No. 87 - ILO concerning Freedom of Association and Protection of the Right to Syndication, Geneva, 1948	-	06/09/2006
Convention No. 98 - ILO on the Application of the Principles of the Right to Organise and Collective Bargaining, Geneva, 1949	-	06/09/2006
Convention No. 100 - ILO concerning Equal Remuneration between Men and Women's Labour for Work of Equal Value, Geneva, 1951	-	12/10/2000
Convention No. 105 - ILO concerning the Abolition of Forced Labour, Geneva, 1957	-	18/11/1958
Convention No. 111 - ILO on Discrimination in Respect of Employment and Occupation, Geneva, 1958	-	15/06/1995
ILO Convention No. 138 concerning the Minimum Age for Admission to Employment, Geneva	-	23/01/1996
ILO Convention No. 138 concerning Occupational Safety and Health, Geneva, 1981	-	12/10/2000
Convention No. 182 - ILO on the Worst Forms of Child Labour and Immediate Action for its Elimination, Geneva, 1999	-	12/10/2000
Other International Treaties and Conventions		
World Trade Organisation's (WTO) Trade Facilitation Agreement, in force from 22 February 2017		4/07/2016

United Nations Declarations and Resolutions	Signature	Ratification
Universal Declaration of Human Rights, Paris, 10 December 1948 [Art. 25 is implicitly related to the right to water and sanitation]		10/12/1948
Declaration of Mar del Plata of the United Nations Conference on Water, Mar del Plata, 14-25 March 1977 [the Preamble is explicitly related to the right to water and sanitation]		25/03/1977
Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 [paragraph 18.47 of Agenda 21 is explicitly related to the right to water and sanitation]		14/06/1992
United Nations International Conference on Population and		13/09/1994

Development, Cairo, 5-13 September 1994 [Principle 2 is explicitly related to the right to water and sanitation]		
General Assembly resolution 64/292/2, <i>The human right to water and sanitation</i> , New York, 28 July 2010 [The entire resolution is explicitly related to the right to water and sanitation]		03/08/2010
Human Rights Council Resolution 15/9, Human Rights and Access to Safe Water and Sanitation, New York [The entire resolution is explicitly related to the right to water and sanitation]		06/10/2010

C. Regional

Table 3. Regional instruments

Instruments	Signature	Ratification
Organisation of American States - OAS		
<p>American Convention on Human Rights "Pact of San José", San Jose, 22 November 1969 [Art. 11 is implicitly related to the right to water and sanitation] <u>Declaration and reservations made at the time of ratification:</u></p> <p>The present Convention is ratified, its provisions being interpreted to mean that the Inter-American Court of Human Rights shall have jurisdiction to hear any case that can be submitted to it, either by the Inter-American Commission on Human Rights or by any state party, provided that the State of El Salvador, as a party to the case, recognises or has recognised such jurisdiction, by any of the means and under the arrangements indicated in the Convention.</p> <p>The American Convention on Human Rights, known as the "Pact of San José, Costa Rica", signed at San José, Costa Rica, on 22 November 1969, composed of a preamble and eighty-two articles, approved by the Executive Branch in the Field of Foreign Affairs by Agreement 405, dated June 14 of the current year, is hereby ratified, with the reservation that such ratification is understood without prejudice to those provisions of the Convention that might be in conflict with express precepts of the Political Constitution of the Republic.</p>	22/11/1969	20/06/1978

Instruments	Signature	Ratification
Additional Protocol to the American Convention on Human Rights In The Area of Economic, Social, and Cultural Rights "Protocol of San Salvador", San Salvador, 17 November 1988 [Art. 11 and Art. 12 are implicitly related to the right to water and sanitation]	17/11/1988	4/05/1995
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, Guatemala City, 8 June 1999	8/06/1999	15/01/2002
Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belem do Pará", Belem do Para, 9 June 1994	14/08/1995	13/11/1995
Inter-American Convention to Prevent and Punish Torture, Cartagena de Indias, 9 December 1985	16/10/1987	17/10/1994
Inter-American Convention on the Granting of Civil Rights to Women, Bogota, 2 May 1948	-	27/03/1951

CHAPTER 3: DOMESTIC LEGISLATION ON WATER

A. Water law

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

The Constitution does not explicitly mention the right to water.¹⁸ However, the Constitutional Chamber of the Supreme Court of Justice (*Sala de lo Constitucional de la Corte Suprema*) held in *Amparo* 513-2012 that the Constitution does protect the right to water.¹⁹ The Court reasoned that the right to the environment (Art. 117) is comprised of “(i) the right to the enjoyment of the environment, (ii) the right to have such an environment preserved, and (iii) the right to be protected from threats or injury to the two above rights.”²⁰ Taking an expansive view, the Court reasoned that “the enjoyment of the environment includes natural resources, including water” up to a level suitable for the development of the human person and necessary to the respect of his dignity.”²¹ Thus, “the right to the environment (Art. 117 Cn.), in relation to the rights to life and health (Art. 2 incision 1 and 65 incision 1 Cn.) interpretively allows the ascription of the right of every person to have sufficient, safe, acceptable, accessible and affordable water for personal and domestic use.”²²

The right to water implies “first, a duty of respect, which supposes that States must ensure that the activities of their institutions, agencies, and representatives do not interfere with the peoples access to water[.] [S]econd, a duty to protect from third parties, relative to implementation of measures that

prevent pollution and that ensure the population’s supply, security and accessibility to water[.] [A]nd third, a duty of satisfaction, according to which policies must be implemented that facilitate, promote and guarantee progressively the access of the population to safe drinking water and sanitation facilities.”²³

Accord No. 2 (27/11/2021) is a Constitutional amendment pending ratification that would explicitly include the right to water and sanitation in the constitution.²⁴

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

The Constitution does not mention the right to sanitation.²⁵ However, the Constitutional Chamber of the Supreme Court of Justice has noted that the right to water implies a duty of satisfaction, according to which policies must be implemented that facilitate, promote and guarantee progressively the access of the population to drinking water and to sanitation facilities.²⁶

3. Does the Constitution otherwise reference water and sanitation?

The Constitution directly references water in Articles 84 (territorial waters) and 106. (eminent domain).²⁷ Art. 106 allows expropriation without indemnification where the objective is, among others circumstances, to supply water.²⁸ Mentions of water in Article 84 are limited to the establishment of national boundaries.²⁹ We found no direct

¹⁸ Derecho al Agua en El Salvador, Jose Miguel Vasquez Lopez, *Revista Derecho* (No. 4 2020).

¹⁹ Amparo N. 513-2012, Sala de lo Constitucional de la Corte Suprema de Justicia (El Salvador, December 15, 2012). <https://www.jurisprudencia.gob.sv/DocumentosBoveda%2FD%2F1%2F2010-2019%2F2014%2F12%2FAC26E.PDF>

²⁰ *Id.* at pg. 7.

²¹ *Id.*

²² *Id.* at pg. 9.

²³ *Id.* at pg. 10.

²⁴ Acuerdo de Reformas Constitucionales n° 3 (25/04/2012)

²⁵ Report of the Special Rapporteur on the Human Right to

Safe Drinking Water and Sanitation on his Mission to El Salvador, A/HRC/33/49/Add.1 at pg. 6,

<https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=57cd86f44>.

²⁶ *Supra* note 19,, at 10.

²⁷ See *Constitucion de la Republica de el Salvador*, December 15, 1983, with amendment up to 2003, <https://pdba.georgetown.edu/Constitutions/ElSal/constitucion2003.pdf>.

²⁸ *Id.*

²⁹ *Id.*

mention of sanitation in the constitution.³⁰ Article 69, however provides that “the State will control the quality of food products and environmental conditions that may affect health and wellbeing.”³¹

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

On January 12, 2022 the Water Law was published and took effect on July 12, 2022 codifying the rights to water and sanitation as human rights and establishing the ASA, an agency responsible for water management and the implementation of the Water Law.³² The law mandates the formation of five-year water plans and establishes broad considerations in managing water resources along with a sanctions regime.³³ The law overrides, in part or in whole, previous water laws and policies, including the 1981 Law on the Integrated Management of Hydrological Resources (*Ley Sobre Gestión Integrada de los Recursos Hídricos*).³⁴ Additionally, Law of ANDA (*Ley de la Administración Nacional de Acueductos y Alcantarillados* or the “**ANDA Law**”) provides for the function and regulation of the country’s main water and sanitation provider.³⁵ Under the Health Code (*Código de Salud*) MINSAL is responsible for developing programs on environmental sanitation including providing drinking water,

disposal of used water, eliminating water contamination, etc.³⁶

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

Yes, in 2018 the government presented the National Plan of Water and Sanitation of El Salvador (*Plan Nacional de Agua Potable y Saneamiento - PLANAPS*) formulated by ANDA.³⁷ The plan has the goal of achieving full, sufficient, and permanent access to drinking water and sanitation for all Salvadorans.³⁸ The plan is intended to help El Salvador meet its obligations under UN Resolution 62/292 (Human Right to Water and Sanitation) and meet Objective 6 of Agenda 2030 for Sustainable Development.³⁹

Additionally, the country also has the National Plan for Integrated Management of Hydrological Resources in El Salvador, with emphasis on Priority Zones (*Plan Nacional de Gestión Integrada de Recursos Hídricos de El Salvador, con énfasis en zonas prioritarias*) with the goal of guaranteeing the sustainability of water resources and to organise its uses and conservation.⁴⁰

The country further published a conceptual framework for restoring urban rivers⁴¹ and a plan for climate change that includes a

³⁰ See *Id.*

³¹ *Id.*

³² Ley General de Recursos Hídrico, Diario Oficial Tomo. N. 434, January 12, 2022, <https://faolex.fao.org/docs/pdf/els208513.pdf>. Per Article 179, the law entered into effect six months after publication in the Official Diary (Diario Oficial).

³³ *Id.* Art. 13(c).

³⁴ *Id.* at Art. 175(e).

³⁵ See Ley de Administración Nacional de Acueductos y Alcantarillados, April 16, 2019 as updated on December 16, 2022; Respuestas de la Republica de el Salvador al Cuestionario Sobre el Derecho Humano al Agua Potable y El Saneamiento, at pg. 1–2, https://www.google.com/url?sa=i&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=0CAQQw7AJahcEwj46LvWvNz9AhUAAAAAHQAAAAAQAg&url=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2FDocuments%2FIssues%2FWater%2FServiceRegulation%2FStates%2FELSalvador.doc&psig=AOvVaw3BKKgQj_I8xC1K0BsGZ72W&ust

=1678919348673871&cshid=1678832960502468.

³⁶ See Código de Salud (1998, updated 2022).

³⁷ See Plan Nacional de Agua Potable y Saneamiento de El Salvador, Gobierno de el Salvador 2017 (Febrero 16, 2018).

³⁸ Plan Nacional de Agua Potable del Salvador, AECID, February 16, 2018, <http://www.aecid.sv/plan-nacional-de-agua-potable-de-el-salvador/>.

³⁹ El Salvador, Water for All, accessed November, 15, 2022, <https://www.sanitationandwaterforall.org/es/aliados/paise/s/el-salvador>.

⁴⁰ Plan Nacional de Gestión Integrada de Recursos Hídricos de El Salvador, con énfasis en zonas prioritarias, at pg. 21, January 16, 2021, <https://cidoc.marn.gob.sv/documentos/plan-nacional-de-gestion-integrada-del-recurso-hidrico-de-el-salvador-con-énfasis-en-zonas-prioritarias/>

⁴¹ See, Marco Conceptual: Recuperacion de Rios Urbanos, March 4, 2021, <https://cidoc.marn.gob.sv/documentos/plan-de-recuperacion-de-rios-urbanos/>

section on protecting water resources.⁴² Under the Water Law, the ASA is required to formulate 5-year plans; the agency, which recently formed, has not published any plans.⁴³

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

A number of official documents refer to water rights and sanitation. This includes official press releases that highlight the right to water, Environmental plans such as the Plan of Action for Restoring Ecosystems and Landscapes of El Salvador (*Plan de Acción de restauración de ecosistemas y paisajes de El Salvador con enfoque de mitigación basada en adaptación. Proyecto 2018-2022*),⁴⁴ and legislative documents such as Decreto No. 250, which waived amounts payable for the exploitation of water by certain water users such as communal water administrators.⁴⁵

B. Environmental law

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

Art. 117 provides that the State is responsible for ensuring natural resources and the diversity and integrity of the environment to guarantee sustainable development.⁴⁶ The Constitutional Chamber of the Supreme Court of Justice has stated that Art. 117 provides the right to an environment and

creates affirmative duties on the government to protect the environment.⁴⁷ The court has stated that the right to environment includes 1) the right to enjoy the environment, 2) the right that the environment is preserved, and 3) the right to protection against threats or harms to the first two rights.⁴⁸

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

Art. 69 of the Constitution requires that the state protect against environmental conditions that may affect the health and wellbeing of people.

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

The country has a number of environmental laws that reference water. The broadest is the Environmental Law (*Ley del Medio Ambiente*).⁴⁹ The law requires water monitoring, makes the MARN responsible for the availability and quality of water under basic criteria, as well as the use and protection of water and aquatic ecosystems.⁵⁰ Under the Health Code (*Código de Salud*) MINSAL is responsible for developing sanitation of the environment, elimination of water contamination, and may penalise those who do not meet waste water treatment standard or use contaminated wastewater, or use toxic or strange substances.⁵¹

⁴² See Plan Nacional de Cambio Climático 2022 –2026, MARN, at pg. 98–113, October 6, 2022, <https://cidoc.marn.gob.sv/documentos/plan-nacional-de-cambio-climatico-2022-2026/>. Component 5

⁴³ Veronica Crespin, Foro del Agua Exige Plan de Ejecucion de Proyectos a la ASA, El Mundo, Noviembre 25, 2022, <https://diario.elmundo.sv/politica/foro-del-agua-exige-plan-de-ejecucion-de-proyectos-a-la-asa>

⁴⁴ Plan de Acción de restauración de ecosistemas y paisajes de El Salvador con enfoque de mitigación basada en adaptación. Proyecto 2018-2022, MARN, at pg. 36 June 7, 2021, <https://cidoc.marn.gob.sv/documentos/plan-de-accion-de-restauracion-de-ecosistemas-y-paisajes-de-el-salvador-con-enfoque-de-mitigacion-basada-en->

[adaptacion-proyecto-2018-2022/](https://www.jurisprudencia.gob.sv/DocumentosBoveda/D/2/2010-2019/2019/03/D4017.PDF)

⁴⁵ Decreto No. 250, Recitals (I), (2019), <https://www.jurisprudencia.gob.sv/DocumentosBoveda/D/2/2010-2019/2019/03/D4017.PDF>

⁴⁶ Ley General de Recursos Hídrico, Art. 117.

⁴⁷ Sentencia de Inconstitucionalidad 36-2004, Sala de lo Constitucional de la Corte Suprema de Justicia (El Salvador, January 26, 2004); *Supra* note 19 (providing that the right to a healthy environment encompasses the right to water).

⁴⁸ *Supra* note 19.

⁴⁹ See Ley del Medio Ambiente (1998, updated 2012).

⁵⁰ *Id.*

⁵¹ Código de Salud (1998, updated 2022).

The newly created ASA falls under MARN and certain tasks conducted by MARN will be taken over by ASA.⁵²

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

Yes, the country has a Plan of Action for Restoring Ecosystems and Landscapes of El Salvador with a focus on mitigation based on adaptation and a National Plan for Climate Change of El Salvador.⁵³ These two plans provide the most comprehensive policy action plans on the environment we found.

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

A number of official documents relate to the right to a healthy environment. Including:

- MARN's Plan of Action to Restore Ecosystems and Landscapes in El Salvador with a Focus on Mitigation based on Adaptation, Project 2018 – 2022 (*Plan de Acción de Restauración de Ecosistemas y Paisajes de El Salvador con Enfoque de Mitigación Basada en Adaptación: Proyecto 2018-2022*), highlights the need to respect the human rights of different groups including ensuring the right to health and the right to water.⁵⁴
- Institutional Policy of Environmental Management of the Judicial Organ (Política Institucional de Gestión Ambiental del Órgano Judicial) highlights the right of inhabitants to live in a healthy environment and is based on the

principals of the National Policy on the Environment (Política Nacional del Medio Ambiente), that recognises that all inhabitants have the right to a healthy environment and the Guide to Elaborate the National Institutional Policy of the Environment (Guía para Elaborar la Política Institucional de Gestión Ambiental).⁵⁵

C. Extraction and/or use of water

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

Yes, article 69 of the Water Law requires permits for non-domestic water extraction. The scope of the law under article 4 covers groundwater, surface, and atmospheric water.⁵⁶ Article 5 makes an exception for rainwater collected and stored artificially for non-commercial reasons.⁵⁷ The ASA can renew permits.⁵⁸ The ASA has not published its internal regulations, but has issued exploratory permits.⁵⁹

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

Art. 63 of the Water Law creates a hierarchy of water use, with water for human consumption at the top.⁶⁰ Domestic water users are not required to seek authorisation for responsible domestic water use.⁶¹ Non-domestic water users must comply with the second section of the law that sets out the assignment and authorisation scheme.⁶²

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

⁵² See Ley del Medio Ambiente, Art. 10.

⁵³ See *Supra* note 42; See *Supra* note 44.

⁵⁴ See *Supra* note 44.

⁵⁵ Política Nacional de Gestión Ambiental del Organó Jurídico, Unidad de Medio Ambiente, Corte Suprema de la Justicia (March 4, 2022).

⁵⁶ Ley de Recursos Hídricos, Art. 69.

⁵⁷ Ley de Recursos Hídricos, Art. 5.

⁵⁸ *Id.*

⁵⁹ Saraf Alas, Con una Junta Directiva Incompleta, ASA emite sus Primeros Permisos, La Prensa Gráfica (Noviembre 28, 2022), <https://www.laprensagrafica.com/elsalvador/Con-una-junta-directiva-incompleta-ASA-emite-sus-primeros-permisos-20221127-0056.html>.

⁶⁰ Ley de Recursos Hídricos, Art. 63.

⁶¹ *Id.*

⁶² Ley de Recursos Hídricos, Art. 69.

Under the Water Law, water is national public good held in common with the exception of collected rainwater.⁶³ The ASA can grant water use permits.⁶⁴ Prior to the Water Law, the Constitutional Chamber of the Supreme Court had stated in its landmark water rights case that private property rights were limited by social function.⁶⁵

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

Permits are required for all non-domestic uses.⁶⁶ Under Art. 71 of the Water Law, the ASA may grant renewable permits valid for up to 15 years.⁶⁷

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

The law authorises the suspension of water authorisation, assignments, and permits based on public interest, state of emergency, failure to meet conditions, failure to pay, and failure to allow ASA to inspect, monitor, or audit.⁶⁸ Water Law, Art. 88. The suspension may last as long as the underlying cause is not addressed and may lead to the permit being cancelled according with Art. 89.⁶⁹

Additional reasons for which a permit may be cancelled include two consecutive or three non-consecutive failure to meet conditions, being sanctioned for a serious or very serious Water Law infraction, negligently contaminating water, exceeding authorised volume or flow, non-use for two consecutive years, non-authorised use or location, and for providing false information to obtain an authorisation.⁷⁰

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

Art. 73 of the Water Law prohibits the transfer, commercialisation, and transmission of any authorisation provided by the ASA.⁷¹

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

Under Art. 63 of the Water Law, the ASA is required to guarantee the use and enjoyment of water in the following order:⁷²

- Human consumption and domestic use
- Sustainability of the ecosystems
- Agriculture ensuring food security
- Electricity generation
- Industrial and commercial
- Recreational
- Other uses

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

Under the water law, the ASA is required to maintain a water inventory and to administer the System for Hydrological Information (*Sistema de Informacion Hídrica –SIHI*, also known as, *Sistema de Informacion Hidrologica*).⁷³ The water inventory must include the flow, storage, quality of water and extraction amounts, among other requirements.⁷⁴ The ASA may monitor surface water, groundwater, and precipitation as required to maintain the national inventory.⁷⁵ SIHI was formed in 2018 with the aim to design, compile, drive, and

⁶³ Ley de Recursos Hídricos, Recitals (V).

⁶⁴ Ley de Recursos Hídricos, Art. 13(g).

⁶⁵ Supra note 19.

⁶⁶ Ley de Recursos Hídricos, Art. 69.

⁶⁷ Ley de Recursos Hídricos, Art. 71.

⁶⁸ Ley de Recursos Hídricos, Art. 87.

⁶⁹ Ley de Recursos Hídricos, Arts. 88 & 89.

⁷⁰ *Id.*

⁷¹ Ley de Recursos Hídricos, Art. 73.

⁷² Ley de Recursos Hídricos, Art. 63.

⁷³ Ley de Recursos Hídricos, Arts. 13 & 53.

⁷⁴ Ley de Recursos Hídricos, Art. 9.

⁷⁵ Ley de Recursos Hídricos, Art. 128.

generate information about hydrological resources.⁷⁶ SIHI is currently functional.⁷⁷

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

There are several restrictions for releasing contaminants into water sources, including:

- ASA may approve directives and technical guidelines for water contamination controls.⁷⁸ The ASA may also established programs and projects with the aim to prevent, regulate, and control water contamination.⁷⁹ However, ASA has not issued its regulation.⁸⁰
- Current pesticide control regulation include the Law on the Control of

Pesticides, Fertilizers, and Products for use in Agriculture (*Ley Sobre Control de Pesticidas, Fertilizantes, y Productos Para Uso Agropecuario*) prohibits the use of certain chemicals and controls the disposal of specified chemicals to prevent water contamination.⁸¹ The state also adheres to the Stockholm Convention on Persistent Organic Pollutants.⁸²

- Under Article 42 of the Environmental Law, the MARN is authorised to create programs for the prevention and control of contaminations in coordination with the Ministry of Health.⁸³ Under that authority, MARN has issued regulatory guidelines for minimum quality of wastewater discharged by different water uses.⁸⁴

⁷⁶ Inicio, Sistema de información Hidrológica- SIHI, <http://srt.snet.gob.sv/sihi/public/>; MARN, El Salvador Presenta su Sistema de información Hidrica, iagua, Septiembre 21, 2018, <https://www.iagua.es/noticias/marn/salvador-presenta-sistema-informacion-hidrica>

⁷⁷ *Id.*

⁷⁸ Ley de Recursos Hídricos, Art. 21.

⁷⁹ Ley de Recursos Hídricos, Art. 130

⁸⁰ *Supra* note 43.

⁸¹ *Ley Sobre Control de Pesticidas, Fertilizantes, y Productos Para Uso Agropecuario (1979)*, Arts. 24, 32.

⁸² Status Treaties: 15. Stockholm Convention on Persistent Organic Pollutants, (accessed November 15, 2022) https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-15&chapter=27&clang=_en.

⁸³ Ley de Medio Ambiente, Art. 42.

⁸⁴ *Id.*

CHAPTER 4. THE HUMAN RIGHTS TO WATER AND SANITATION & SDG 6 TARGETS⁸⁵ including elements of the Human Right to a Healthy Environment

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

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

The Water Law guarantees the human right to water - See Chapter 3 (A)(3). Art. 1 of the Water Law codifies the human right to water and sanitation including the right of all people to have access to sufficient quantities of water.

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

The technical standards for the design of water and sanitation systems are the Technical Standards for Potable Water Supply and Sewage Water Systems (*Normas Técnicas Para Abastecimiento de Agua Potable y Alcantarillados de Aguas Negras* or the “**ANDA Technical Standards**”). The standards are established by ANDA, the country’s largest provider of water and sanitation services. The Law of ANDA governs ANDA.

The minimum amount of water for households is between 80-350 litres per day (ANDA Technical Standards, paragraph 5).

3. Does the law ensure continuous supply of water for all? In instances where water availability is not continuous, what measures are implemented?

Art. 1 of the Water Law states that human right to water and sanitation includes the right of all people to have continuous access to water.

There are no measures currently in place to address instances where water availability is not continuous, but the Water Law has established a new regulatory body responsible for ensuring such access. Water Law Art. 10. The ASA is tasked with regulating El Salvador’s water resources, including by bringing water to underserved communities. Water Law Art. 8. ASA came into existence when the Water Law came into effect in July 2021. Per Art. 151 of the Water Law, the ASA has 180 days after the effective date to issue its regulations and, as of the date of this writing, this 180-day period has not passed.

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

This is currently a challenge in El Salvador, as many regions of the country do not have access to water service from ANDA or from any other entity. ANDA is the main provider of water and sanitation services in the country, servicing approximately 40% of the country, though mostly urban areas. Households not serviced by ANDA may get their water from independent systems provided by (a) housing developers, (b) decentralised service providers that have the right to provide services but whose assets are owned by ANDA, or (c) small municipalities that did not transfer their water systems to ANDA when the water system was centralised in 1961.⁸⁶ (See question J.3 in this chapter.)

Despite the patchwork of service providers currently in existence, a large portion of the population still has limited or no in-home access to water services. The Water Forum

⁸⁵ See Table of the Targets and Indicators of SDG 6 page 9

⁸⁶ See World Bank: El Salvador – Recent Economic Developments in Infrastructure – Strategy Report No. 37689-SV. <https://documents1.worldbank.org/curated/en/919821468027571088/pdf/376891SV0Revised.pdf>

(*Foro del Agua* or the “**Water Forum**”), a non-governmental organisation that promotes equality with respect to water access, estimates that about 25% of the country, or about 1.6 million people, rely on local, community-based organisations for their water. These Water Boards are community associations that will drill wells, build water storage tanks and manage distribution of water to community members. The Water Forum estimates that there are about 2,500 such Rural Water Boards in the country. The Rural Water Boards currently receive no government support.⁸⁷

With the passage of the Water Law, it is expected that the ASA will confer with the Rural Water Boards to pass legislation to improve access to water and sanitation services in traditionally underserved areas. The Rural Water Boards are petitioning the ASA to provide them with economic and technical support for their projects. As of this writing, it remains to be seen what impact the ASA and the new Water Law will have on rural areas that have not traditionally been serviced by ANDA or other government organisations.

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

Yes. Art. 51 of the Water Law prioritises domestic water use.

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

In the event of a drought or a time of water scarcity, water for human consumption will prevail over all agricultural and other uses. Water Law, Art. 51. Additionally, water services can be suspended by ANDA for failure to pay a total of 4 months. ANDA Tariff Decree, Art. 7.

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

The ASA may suspend or terminate water use permits in the event of natural disasters, emergencies, or in the cause of public interest. Water Law, Ar. 75.

The Irrigation and Drainage Act (*Ley de Riego y Avenamiento –LRYA*) governs the granting of permits for water for agricultural uses. ANDA or any other petitioner may object to the granting of a new irrigation permit within 30 days after such irrigation permit is requested (including for environmental reasons). LYRA, Art. 13. However, the statutes and regulations do not address a procedure for interrupting irrigation water service under an existing permit in the event of a drought or water scarcity, and the statute makes clear that the irrigation permits may only be suspended in specific situations (where there are repairs being made, force majeure or sanctions).

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

The ASA is tasked with creating contingency plans to respond to national emergencies arising from an excess or deficit of water. Water Law, Art. 13.

9. Does law/policy provide guidance on:

The number of water outlets?

The ANDA Technical Standards do not contain guidance on the number of water outlets required for the population, although it does provide guidance on the consumption of water for households, commercial areas, hotels, schools, hospitals and other types of facilities. ANDA Technical Standards, paragraph 5.

⁸⁷ See [https://www.ipsnews.net/2021/09/rural-water-](https://www.ipsnews.net/2021/09/rural-water-boards-play-vital-role-salvadoran-farmers/)

[boards-play-vital-role-salvadoran-farmers/](https://www.ipsnews.net/2021/09/rural-water-boards-play-vital-role-salvadoran-farmers/)

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)?

The ANDA Technical Standards do not contain guidance on this matter.

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

The ANDA Technical Standards do contain guidance on the construction and operation of water pumping facilities (ANDA Technical Standards, paragraph 11) and potable water delivery systems (ANDA Technical Standards, paragraph 18).

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

Natural bodies of water may be used for domestic use so long as such use does not compromise the quality of the waters. Water Law, Art. 52.

11. **Do groundwater sources and aquifers have an allocation of water volume protected from extraction to ensure long term sustainability?**

The Water Law imposes on the ASA an obligation to create a plan to manage the quality and quantity of groundwater supplies (Art. 35) and to collect data on groundwater supplies (Art. 40). See also question I.2 of this chapter.

The ASA has the power to authorise an individual or entity's use of groundwater and surface water. The Water Law identifies two types of permits: Level 1, where the requested volume is greater than or equal to 473,040 cubic meters per year, and Level 2, where the requested volume is less than 473,040 cubic meters. Level 1 permits are granted for a term of not more than 15 years,

and Level 2 permits are granted for a term of not more than 5 years, and in each case such term limits may be extended. Water Law, Art. 61. Permits for the use of water on public lands may be granted for no longer than 10 years. Water Law, Art. 62. The procedure for applying for a permit is set forth in Section III of the Water Law.

The ANDA Technical Standards provides that groundwater collection must be conducted in accordance with the standards set by the American Water Works Association, and the design flow rate must be at least equal to the maximum daily demand for water during 20 hours of pumping. ANDA Technical Standards, paragraph 9(b).

12. **Is there any provision in the law/policy for the availability and accessibility of clean and healthy environmental spaces in non-domestic places such as schools, hospitals, workplaces, prisons, refugee camps, etc.?**

MINSAL regulates the environmental sanitation in all public facilities (including schools, hospitals, workplaces, etc.) through the Health Code. Health Code, Art. 56. ANDA provides water and sanitation services to public and private facilities. ANDA Law, Art. 3. The ANDA Technical Standards regulate water systems in public facilities. ANDA Technical Standards, paragraph 5.

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

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

Yes, the exact technical specifications for potable water are set forth in the *Norma Salvadoreña Obligatoria ("NSO") 13.07.01*, which was prepared by the *Consejo Nacional de Ciencia y Tecnología ("CONACYT")*.

The ANDA Technical Standards state that water quality analyses will be performed in accordance with the Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association and the American Water Works Association (the "**Standard Methods**"), and

that samples will be subject to the following tests:

- Toxicological: Test for substances such as arsenic, boron, selenium, cadmium, phenols, pesticides and detergents;
- Biological: Test for micro algae;
- Bacteriological: Test for most probable number of total and faecal coliforms per sample (NMP/100 mL);
- Physical: Physical Examination of colour, turbidity, temperature, taste, odour, and appearance; and
- Chemical: Test for PH, total solids, alkalinity, hardness, sulphates, chlorides, manganese iron, calcium, silica, carbon anhydride, fluorides, etc.

The samples must meet the requirements set by the current Standard Methods or the World Health Organisation and if they do not, ANDA will determine whether the water may be treated. ANDA Technical Standards, paragraph 8.

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

Yes. MINSAL is responsible for monitoring the quality of drinking water and for approving and monitoring the systems for the treatment of sewage.

The Health Code is the main law that regulates the quality of drinking water and the treatment of sewage. Health Code, Art. 56; Health Code, §VII. Other regulations also apply. The exact technical specifications for potable water are set forth by CONACYT in NSO 13.07.01, as described in question B.1 of this section. The ANDA Technical Standards also sets forth the parameters for testing water quality (see question B.1 above).

In terms of frequency of testing, there are no requirements for how often such monitoring should take place. According to NSO 13.07.01, full testing should occur when a new water source is put into service and after any material modification of the treatment

process. The frequency of ongoing testing will depend on local conditions, particularly with respect to agricultural and industrial activities.

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

The ASA is responsible for creating programs to protect El Salvador's waters. (Water Law, Section II)

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

Yes, the ANDA Technical Standards state that, when planning the placement of pipelines:

- the clean water supply lines and the sewer lines should be kept on the opposite sides of the street, with a horizontal clearance of at least 1.5 m from the curb (or 0.6 m from pedestrian walkways);
- rainwater collection basins should be located in the centre with a horizontal clearance at least equal to the clean water supply lines and the sewer lines;
- sewer lines should be placed at least 20 cm below water supply lines;
- where sewer lines intersect with rainwater collectors, they should have a vertical separation of at least 15 cm; and
- sewer trenches may not contain any other type of pipe.

ANDA Technical Standards, paragraph 12.

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

The Health Code regulates the disposal of black water and sewage. Health Code, Art. 56. Black water and sewage may not be discharged without a special permit from the Ministry of Health. Health Code, Art. 67.

MINSAL is also responsible for regulating the manufacture, installation and maintenance of toilets and the development of a latrine program in rural areas. Health Code, § 15)

In March 2022, MARN approved the Special Regulations on Wastewater and Sludge Management (*Reglamento Especial de Aguas Residuales y Manejo de Lodos Residuales* or “**Wastewater Regulations**”), which establish the technical criteria and requirements for the management, use, reuse and disposal of wastewater and sludge. The disposal of any wastewater or sludge must meet the ANDA Standard for Regulating Quality of Wastewater of a Special Type (*Norma para regular Calidad de Aguas Residuales de Tipo Especial Descargadas* or “**ANDA Wastewater Regulations**”). Wastewater Regulations, Art. 12. The Wastewater Regulations also permit wastewater to be treated and reused in certain circumstances and for certain activities, including for activities where there is direct contact with the public (for example, firefighting and street cleaning), provided that specific parameters are met. Wastewater Regulations, Art. 14. The ANDA Wastewater Regulations contain specific parameters of the chemical compounds permitted in wastewater before it may be discharged. ANDA Wastewater Regulations, Art. 4.

The ANDA Technical Standards contains regulations for the transportation and treatment of black water. Black water treatment plants must treat the waste in accordance with the standards set forth in the most current quality parameters established by MARN in NSO 13.49.01.

Black water pipes are required to be installed at least 0.8 m deep below any pedestrian walkways. ANDA Technical Standards paragraph 11. The use of lifting stations with respect to blackwater should be avoided, but if they must be used, ANDA lists the requirements in paragraph 19 of the ANDA Technical Standards.

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

Individuals are expressly permitted to collect and store rainwater on their properties. Water Law, Art. 55. Rainwater collected by individuals is exempted from regulation by the Water Law. Water Law, Art. 5. However, independent and community-built water services (including those provided by Rural Water Boards) are subject to the Water Law and regulation by the ASA. Water Law, Art. 32.

C. **Water pollution control (SDG 6.3, 6.6)**

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

The ASA is responsible for preventing, regulating and controlling the pollution of bodies of water. Water Law, Art. 115. In the event of accidental discharge of pollutants, the persons responsible are required to report such accidental discharge to the ASA. Water Law, Art. 116.

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

With the passage of the Water Law, the ASA is responsible for protecting the quality and quantity of El Salvador’s water resources. Water Law, Art. 106. The ASA is responsible for creating guidelines for the use of waters (Water Law, Art. 107) and may establish “protection zones” of at least 50 meters on the banks of rivers, lakes, lagoons, reservoirs, surface water sources and wells. Water Law, Art. 108. The ASA can regulate the use of any land designated as a “protection zone” under the Water Law.

The Water Law also imposes a duty on all natural and legal persons who use water

resources to prevent pollution and to maintain the balance of water ecosystems. Water Law, Art. 107.

ANDA is responsible for regulating the treatment of groundwater pursuant to the ANDA Law. ANDA Law Art. 3(k).

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

LRYA governs the use of water for agricultural purposes (including by issuing permits, see question A.8 in this chapter), although the Water Law is responsible for overseeing priorities for competing uses of water resources. LYRA Art.6; Water Law Art. 162. Ultimately, the ASA and the Water Law regulate the contamination of groundwater. Water Law, Art. 107.

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

The ASA has the power to grant permits for discharges. Water Law, Art. 58. Each permit will contain the conditions under which any discharges may be released, although a permit from MARN may also be required. Water Law, Art. 58. Permit holders are subject to audits by the ASA to ensure compliance with the conditions of the permit. Water Law, Art. 74.

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

Any permits issued by the ASA pursuant to the Water Law may be suspended or terminated if (a) it's in the public interest to do so, (b) in the event of force majeure or a state of an emergency, (c) in the event of drastic changes in the water system, (d) in the event of a change in water supply and demand and (e) other circumstances listed in the statute. Water Law, Art. 75. The ASA may also suspend or terminate the permit if the

permit holder breaches the conditions under which the permit was granted, including the failure to permit the ASA to complete inspections as part of its auditing process. Water Law, Arts. 76 & 77. Prior to the suspension, termination or modification of a permit, the ASA will notify the permit holder and will hold a hearing – the hearing will be held within 10 business days of such notice, and the ASA will have five days after such hearing to issue a final decision. Water Law, Art. 78.

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

The ASA may impose sanctions on individuals who violate the Water Law, and these violations may include infractions such as failing to pay fees, overuse of water and unauthorised discharges of pollutants. Water Law, Art. 118. Sanctions are imposed in proportion to the severity of the violation, taking into account (1) the severity of the damage caused to the water source, (2) the actions taken by the offender to repair the damage, (3) any benefit obtained by the offender, (4) the economic capacity of the offender and (5) how many times this violation has occurred. Water Law, Art. 120.

Penalties may also be imposed for pollution under Art. 89 of the Environmental Law, however the Constitutional Chamber of the Supreme Court declared this provision unconstitutional in 2015. In May 2021, MARN proposed an amendment that would make the penalties proportional to the offence and the minimum monthly wage of the offender, but this amendment has not been passed.

D. Affordability (SDG 6.1)

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

ANDA sets the rates for providing water and sanitation service to its customers. There is a subsidised water service for El Salvador's poorest families, entitling them to up to 40

cubic meters of water for a flat fee of \$2.29 per month.

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

The Law of ANDA establishes the process for tariff determinations. ANDA must submit tariffs to Ministry of the Economy for approval. The government must then determine the form and amount of the tariffs. ANDA Law, Art. 3(i). Tariffs are based on the criteria of a self-financing company and public service provider. Tariffs must sufficiently cover, with a safety margin, the operation, administration, improvement, development, and expansion cost of ANDA facilities and properties, payment of capital, interest, and other bond charges and obligations. However, the rate is not subject to additional taxes. ANDA Law, Art. 3(i).

3. Does the tariff vary depending on the regions/circumstances?

Generally, no – tariffs depend on the use (residential, commercial, etc.) and the amount of water services consumed. (*Tarifas por los Servicios de Acueductos, Alcantarillados y otros que presta*, or “**ANDA Tariff Decree**”, Section III) However, certain marginalised communities and social interest projects (including social assistance clinics, hospitals, schools, etc.) may pay a preferred (lower) rate equal to US\$0.20 per unit.

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

ANDA establishes rates, subject to approval from MARN.

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

Yes, suspension of services is permitted for non-payment. ANDA will suspend service after two consecutive months of non-payment, and will disconnect service after four consecutive months of non-payment. ANDA Tariff Decree, Art. 7.

E. Acceptability (SDG 6.1, SDG 6.2)

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

No

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

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

Yes. The constitution does impose a duty on the state to protect the country’s natural resources and the diversity and integrity of the environment. Constitution, Art. 117. The Water Law states that the management of the country’s water systems should include preventing and mitigating environmental hazards that threaten people, their property and their ecosystems. Water Law, Art. 8.

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

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

Art. 1 of the Water Law states that the State has the obligation to guarantee access to clean drinking water to all of its citizens,

without discrimination. Art. 8 of the Water Law states that equality is a key principle of the law, and that the rights therein should not be restricted on the basis of nationality, race, gender or religion.

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

There are various legal remedies available to individuals at risk of environmental harm – see question J.1 in this chapter.

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

The Law on Equality, Equity and Eradication of Discrimination against Women (*Ley de Igualdad, Equidad, y Erradicación de la Discriminación Contra las Mujeres*-“**Women’s Equality Law**”) specifically encourages the participation of women in developing environmental policies. Environmental regulators are required to take into account how their environmental policies may adversely impact women over men. Women’s Equality Law, Art. 32.

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

The Water Law directs ASA to use its resources to train people on the management of water resources, with a special emphasis on training women. Water Law, Art. 104.

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

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

Section II of the Environmental Law establishes the right of the public to participate in the management of the environment. Art. 9 of the Environmental Law states that individuals have the right to be informed, in a clear, sufficient and timely manner, of any policies that impact the environment and the health and quality of life of the public. The Ministry must notify the public at least 15 business days prior to passing any laws and policies, and must give the public time to comment and participate. Environmental Law, Art. 9 & 8. MARN is required to create programs to encourage participation by the public in its rulemaking. Environmental Law, Art. 10.

Further, prior to undertaking any Environmental Impact Studies, the Ministry is required to consult with the public. The public has 10 business days to comment. Environmental Law, Art. 25.

The ASA is required to create a maintain a National Registry of Water Resources (the “**Water Registry**”) that must be made open to the public, although access to this information may be subject to restrictions. Water Law, Art. 48.

As a general matter, El Salvador has the Law on Access to Public Information (*Ley de Acceso a la Información Pública* or “**Public Information Law**”) require all public entities (including ANDA) to make its reports, operating plans, services and other facts about its operations available to the public. Public Information Law, Art. 10.

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

The Environmental Law does not mention the payment of a fee for information, although the proponents of any Environmental Impact Studies are required to pick up the expenses associated with the ten-business day public commentary period. Environmental Law, Art. 25.

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

The Water Law does not feature exception to the disclosure requirements. Water Law, Art. 48.

4. **Which institutions are required by law/policy to make information on water public? Does it reference only the right to access information or also the obligation to make public such information on water related issues (e.g., are institutions obligated to provide information only upon demand, or are they obligated to publish or make available information at certain periodic intervals, on the occurrence of certain circumstances, etc.)?**

The ASA is required to create and maintain the Water Registry that must be made open to the public, although access to this information may be subject to restrictions. Water Law, Art. 48. As the ASA has 180 days after the effective date of the Water Law to issue its regulations (see question A.4 of this chapter), it is unclear as of the time of this writing what restrictions they may impose on access to the Registry.

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

Under the Water Law, ASA is charged with promoting and implementing educational programs regarding sustainable water practices. Water Law, Art. 13(o). It is charged with working with the Ministry of Education and other educational organisations to

implement such educational programs. Water Law, Art. 89.

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

See question G.5 of this chapter.

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

The Water Registry is required to include information on various operators, including information on allocations to public entities that use water resources and permit information. Water Law, Art. 48. The scope of the Water Registry and the extent to which the public has access to it will likely be determined by future regulation by the ASA.

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

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

Yes. Section II of the Environmental Law establishes the right of the public to participate in the management of the environment. See question G.1 of this chapter.

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

See questions G.1 and G.2 of this chapter.

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?**

See questions G.1 and G.2 of this chapter.

4. **Is the establishment of an IWRM mechanism including regional or local associations or other groupings of water users provided for**

and regulated by laws or regulations? How do they interact with or connect into other agencies or regulators?

The Water Law is expected to provide a unified, comprehensive framework for managing water use across all sectors. Prior to the passage of the Water Law in December 2021, water management was governed by ten different laws that were enacted at different times with varying objectives, and responsibility. Implementation of these various laws was split among several state actors, including ANDA (water supply and sanitation in most urban areas, groundwater resources assessment), the Ministry of Economy (tariff approval), the Ministry of Finance (approval of transfers to ANDA), the MINSAL (monitoring of drinking water quality), the Ministry of Agriculture (irrigation), MARN (environmental protection) and the Presidency.⁸⁸ With the passage of the Water Law, the ASA is expected to take a unified approach towards managing El Salvador's water resources. See Water Law, Art. 3.

Under the Water Law, the ASA is required to update, approve and publish every five years a National Integrated Water Resources Management Plan to promote the coordinated management and development of water, land and related resources, with the aim of maximizing the resulting social and economic well-being of the public while promoting the sustainability of vital ecosystems. Water Law, Art. 39.

I. Sustainability (SDG 6.4, 6.5, 6.6)

- 1. How does legislation/policy ensure that water and sanitation services are delivered in an improved and sustainable manner, considering the availability of water resources, competing demands and generally the needs of present and future generations?**

The Water Law aims to promote sustainability of El Salvador's water resources (see Water Law, Art. 1).

The ASA is responsible for protecting both the quality and the quantity of water resources in El Salvador. Water Law, Art. 106. In terms of quantity, the ASA is required to determine the appropriate ambient flow rate of water in order to maintain the stability of El Salvador's water ecosystems. Water Law, Art. 112. The ASA is also tasked with limiting the uses and exploitation of ground water in order to protect aquifers that are vulnerable. Water Law, Art. 109. The ASA may declare any aquifer an "aquifer protection zone" and restrict its use in order to restore the quantity or quality of the water source. Water Law, Art. 109.

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

The aim of the Water Law is to create a unified approach towards managing El Salvador's resources. (See question H.4 in this chapter)

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

The ASA has broad authority to regulate all of the water resources in the country. Water Law, Art. 5.

J. Accountability/ Remedies and complaint procedures

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

⁸⁸ See World Bank: El Salvador – Recent Economic Developments in Infrastructure – Strategy Report No. 37689-SV.

<https://documents1.worldbank.org/curated/en/919821468027571088/pdf/376891SV0Revised.pdf>

Who may file them? Are the decisions appealable?

The Water Law grants the ASA the power to take preventative measures to protect water resources and sanctioning authority to enforce the law. Any natural person or entity may petition the ASA to take these preventative measures in the face of an imminent threat to the country's water resources. If the ASA's ruling is breached or ignored, the petitioners may take the case to the Environmental Court, which operates under the Environmental Law. Water Law, Section III.

Natural persons and entities may take civil action against a defendant under the Environmental Law. (Environmental Law, § II) Petitioners can address their complaint to MARN (Environmental Law, Art. 42) or through the Environmental Courts (Environmental Law, Art. 102(c)). Petitioners may also bring their case before the Constitutional Chamber of the Supreme Court of Justice.

Criminal cases may be brought by filing a complaint with the Office of the Attorney General of the Republic or the Courts of Peace in accordance with the Criminal Code (see arts. 267, 268 and 269).

2. Who monitors water & sanitation service providers?

ANDA is both a regulator and the main provider of water and sanitation services in El Salvador (serving approximately 40% of the population), although there are approximately 1000 other smaller service providers, including Rural Water Boards, that provide water and sanitation services in the country. (See question A.5 in this chapter.) ANDA is

also responsible for regulating the other service providers as well.

With the passage of the Water Law, ANDA will be regulated by the new ASA. ANDA's books are also subject to audits by the Central Reserve Bank of El Salvador.

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

The Environmental Law and the Water Law both generally aim to encourage the participation of individuals in environmental preservation efforts. The Constitution, while not specifically protecting environmental activism, does grant the right to peaceably assemble, without arms, for any lawful purpose and to express themselves freely (provided they do not subvert the public order nor injure the moral, honour or private lives of others). Constitution Art. 6 & 7.

4. Is there any legislation to respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters?

There is no protection specifically for environmental matters, but the Constitution grants El Salvador's inhabitants the general rights to peaceably assemble, without arms, for any lawful purpose and to express themselves freely (provided they do not subvert the public order nor injure the moral, honour or private lives of others). Constitution Art. 6 & Art. 7.

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)?**

El Salvador is a monist country. In El Salvador, international law is not automatically enforceable. International treaties are subject to a ratification process. After the executive branch concludes negotiations, the Legislative Assembly must issue a corresponding Decree of Ratification before the instrument enters into effect. A ratified treaty constitutes a law once entered into force, subject only to itself and the Salvadorian Constitution.

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

In descending order: constitution, treaties and conventions, laws, and other legal dispositions.

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

See Chapter 2.

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 and a healthy environment? Who may file them? Are the decisions appealable?**

Salvadorians rely on ANDA and decentralised operators for their water needs. ANDA, a state operated entity, is the largest provider of drinkable water and sanitation. ANDA customers can raise complaints, including about water quality, directly to the agency via phone (915), in person, web form, or via

ANDA's WhatsApp. Individual water providers have their own complaint mechanisms.

User who are unable to obtain solutions to their complaint through the service provider have a number of different routes they can follow including:

State Consumer and Human Right Agencies

- **Attorney's Office for the Defence of Human Right (*Procuraduría para la Defensa de los Derechos Humanos-PDDH*):** Access to water and sanitation are considered human right. All people (legal or natural) in El Salvador can raise their complaint with the PDDH. Complaints can be made orally, written, in-person or via telephone, fax, or any other form communication system. The Office will provide advice, investigate the issue, and attempt to create a solution.
- **Consumer Advocate (*Defensoría del Consumidor*):** The Consumer Advocate can take complaints in person, in writing, or via its website. Only account holders, tenants, and those subleasing can make complaints to the Consumer Advocate. The Consumer Advocate can mediate the conflict and features a sanctioning tribunal with the power to rectify the negative consequences of an infraction.

Administrative options

- **ASA:** Under the Water Law the ASA features a Sanctioning Tribunal with the power to "Receive and hear complaints regarding violations, failure to comply, and lack of application" of the general water law. While details on the ASA are few, it is likely to feature provisions requiring exhaustion of provider complaint mechanism where applicable.
- **Other Agencies:** Both MARN and MINSAL have complaint mechanism under Article 42 of the Environmental Law. Complaints can be raise to MARN via Whatsapp,

phone, email, or in person. Complaints can be raised to the Ministry of Health via phone, internet, or in person. All agencies have the duty to report illegal actions to the Attorney's General office. Law of Administrative Procedure, Art. 14.

Judicial Options

- **Environmental Courts (Juzgados Ambiental):** In accordance with Article 102-C of the Environmental Law persons can file civil cases against government and nongovernmental entities and persons for human rights violations. The environmental courts have exclusive jurisdiction over civil environmental cases. The environmental courts do have jurisdiction over fines imposed by agencies or over penal matters. Decisions rendered by the environmental courts of first instance are subject to appeal before environmental courts of second review. The Civil Chamber of the Supreme Court of Justice has jurisdiction over appeals from the Environmental Courts of Second Review.
- Constitutional Chamber, Supreme Court of Justice: Any person can request a writ of *amparo* (a judicial remedy for constitutional violations). A request for an *amparo* is not a substitute for the regular judicial process; rather it runs parallel and supplements it. Additionally, the Constitutional Chamber can hear cases about constitutional violations including appeals from orders by a judge or magistrate. Any person harmed may also start a process of unconstitutionality.

Other Administrative: Under the water and environmental laws, Salvadorians have the right to participate in the consultation process of the environmental, water, and health agencies.

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

Article 3 of the Constitution includes an antidiscrimination provision covering administrative and judicial entities. Under Art. 3, "all persons are equal before the law." The constitution prohibits different treatment under the law based on nationality, race, sex, or religion.

The state has additionally enacted the Law of Equality, Equity, and Eradication of Discrimination against Women and state entities have published explicit policies against discrimination based on gender, sexual orientation, race, religion, etc. At issue here, MARN, MINSAL, PDDH, the Consumer Advocate and the Supreme Court of Justice have all published institutional policies addressing discrimination against women and other vulnerable groups. While all address women at length, and other groups to lesser extents, MINSAL address discrimination against indigenous people directly.

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

No. The state does not provide financial assistance for legal counsel in directly filed cases concerning water and sanitation or access to a healthy environment. However, it does provide free options to raise complaints including through the PDDH and the Consumer Advocate. When a complaint is filed with the PDDH, the PDDH may provide legal representation for the protection of individual rights.

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

Under the new water law, the ASA has the duty to surveil, monitor, and track treatment plants and adequate sludge management. Water Law, Art. 38. Additionally, the ASA has the duty to encourage drinking water be provided in a continuous and safe manner and adequate quality and pressure. The Ministry of Health additionally monitors

water providers to ensure that they follow the plan for water safety and comply with legal and technical regulations.

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?**

While there is no formal process for appealing a decision by service providers, any customer who does not obtain a satisfactory response can pursue one of the channels detailed in B.1. to appeal the decision or mediate a solution

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

At the administrative level, complaints can be raised to the department of health, ministry of the environment and natural resources, and, in the near future, the ASA depending on the type of violation at hand.

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

Administrative level bodies are subject to contentious administrative jurisdiction for administrative action and inactivity of public administration, among others. Procedures can be brought before administrative courts (*juzgados de lo contencioso administrativo*). The administrative courts consists, from lowest to highest, of the Administrative Courts, Administrative Litigation Chamber, and the Chamber of Administrative Litigation of the Supreme Court. Depending on the cause of the action, different courts may have original jurisdiction. For example, the Administrative Litigation Chamber will have be the court of first instance in common processes on matters where the amount in controversy exceeds five hundred thousand dollars. Decisions by a lower court are reviewable by the court above it.

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

The ASA is an official autonomous institution of public law under the authority of the Executive Branch through MARN.

MINSAL and MARN are independent in the design of their functions; however, they answer to the president of the republic and fall under the executive branch.

The PDDH is an institution of the Public Ministry, of a permanent and independent character, with judicial personhood and administrative autonomy.

The Consumer Advocate is a decentralised institution of the Government of the Republic with its own judicial personhood and budget, with autonomy in its administrative affairs and use of its budget. The Law on Consumer Protections governs it. The President names the President of the Consumer Advocate. The President of the Consumer Advocate is removable for cause by the President in accordance with Art. 70.

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?**

The courts have the jurisdiction to enforce economic, social, and cultural rights, although the Constitutional Chamber of the Supreme Court can only rule based on constitutionally recognised rights. The Constitutional Chamber has ruled against the government in a number of cases revolving around economic, social, and cultural rights. For example, the Court issued an *amparo* against a government entity in a case where the government health provider failed to provide sufficient medical care endangering the right to life and health of a patient. It is important to note the court does not provide *amparo* relief in cases where the case revolves solely around civil, commercial, or labour disputes. While the government has adopted some decisions, the Constitutional Chamber has found it difficult to enforce others. For example, the Court held that certain COVID policies violated fundamental

rights, such as freedom of movement, peaceful reunion, and the right to not be forcefully relocated. However, Amnesty International has documented open government actions in violation the Court's judgment.

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

Yes, the country features environmental courts, civil courts, and penal courts that can hear water related cases depending on the underlying cause of action.

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

Yes, depending on the underlying cause of action (environmental, civil, or criminal) different courts may have jurisdiction over cases concerning the right to a healthy environment. In general, the Environmental Courts of First and Second Review will have the jurisdiction over cases related to the environment. Because both the right to water and sanitation are embedded in the Constitution, the Constitutional chamber of the Supreme Court will have jurisdiction over such cases as well.

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

A human right violation case can proceed several ways in El Salvador depending on the cause of action. The PDDH provides one of

the most accessible points. A complaint before the PDDH will result in an investigation, or suggestion of an alternative mechanism, and a resolution or report on the investigation. The PDDH has no enforcement power and as such is unable to enforce its recommendation, but may provide representation to people with economic needs.

The Constitutional Chamber of the Supreme Court provides the most direct route to obtain relief. The court can issue an *amparo* or declare a law or action unconstitutional. Any person can request an *amparo* from the Court.

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

The Constitution established the Constitutional Chamber of the Supreme Court. The Constitutional chamber can hear cases directly. The Chamber can only hear cases of violations of constitutionally protected human rights.

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

Yes, courts have referenced and applied international human rights laws and international bodies. This includes the landmark case on the right to water and sanitation where the court referenced the Convention on the Right of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and a decision by the Inter-American Court of Human Rights.⁸⁹

⁸⁹ Amparo N. 513-2012, Sala de lo Constitucional de la Corte Suprema de Justicia (El Salvador, December 15, 2012). See Sentencia de Inconstitucionalidad 36-2004, Sala de lo Constitucional de la Corte Suprema de Justicia (El Salvador, January 26, 2004) See, *Funciones*, Unidad Asesoría Técnica Internacional, Corte Suprema de Justicia (accessed

11/15/2022), <https://www.csj.gob.sv/unidad-de-asesoria-tecnica-internacional-funciones/>. See Amparo, 665-2010, Sala de lo Constitucional de la Corte Suprema de Justicia (El Salvador, Febrero 5, 2014).

15. 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?

Court proceedings are exclusively in Spanish in El Salvador. Translators are available in criminal cases based on Art. 82 of the Penal Code.

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

Domestic courts have applied recommendations of the PDDH. Courts have adopted PDDH fact finding. However, courts, particularly the Constitutional Chamber of the Supreme Court have made it very clear that PDDH recommendations are persuasive only and are not legally enforceable.

C. National human rights institutions

1. Is there an independent national human rights institution?

Yes, the PDDH serves as an independent national human right institution.

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 PDDH extends to both national and international law, as long as the relevant convention is ratified and does not conflict with the Constitution.

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

The office has ability to receive the complaint, investigate, issue recommendation and public censures, and to monitor resolution of violations. The right to water and sanitation is implicit in the

Constitution and, as such, protected as a constitutionally recognised human right.

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

The constitution provides the legal basis for the PDDH's legal authority. Article 194 of the Salvadorian Constitution outlines the duties of the office. This is further supplement by the *Ley de la Procuraduría para la Defensa de los Derechos Humanos (Law of the PDDH)* which outlines the process that the office takes when handling human right violation.

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

The PDDH has limited remedy power, it can issue a public censure or recommendation, but it cannot issue a judgment. Law of the PDDH, Art. 30. Furthermore, it can assist in obtaining remedies through the legal system. The Constitutional Chamber of the Supreme Court has repeatedly held that the PDDH's recommendations are not legally binding, but are rather persuasive authority.

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

The PDDH can initiate and conduct investigations. The law regulating the PDDH permits the agency to freely and privately interview witnesses, victims, and alleged offenders in cases of alleged human rights violations. Law of the PDDH Art. 34. The PDDH may also visit public spaces to conduct investigations or private spaces with judicial authorisation.

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

The PDDH does have the power monitor compliance and to ensure that a resolution is obtained. However, the PDDH's resolutions are not enforceable and thus the PDDH must resort to other agencies to ensure implementation of a remedy.

D. Regulation

1. Is there a water regulator established by law?

ASA is the newly created water regulator. ASA has the broadest powers to regulate water and is entrusted with ensuring the right to water and sanitation, water sustainability, and regulatory oversight over water. Additionally, water is also regulated by MINSAL and MARN as it concerns to water

issues that may cause health concerns and pollution.

2. Is the water regulator an independent entity?

The ASA is designed as an independent entity under MARN.

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

Oversight mechanism include accounting of water resources, pollution testing, and quality testing.

