



Legal Country Mapping

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

Guatemala

03/20/2023

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Overview of national water governance for Guatemala

General Legislation

Supreme Law	Constitution
State Organization	Unitary
Relationship between International and National Law	Dualist
Name of Institution possessing regulation-making authority	The Congress of the Republic
Popular consultation as part of governing/legislative process	Yes
Member of a regional integration organization	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	No
National Strategy, Policy, Action Plan etc. on Water and Sanitation	Yes
International institution for Transboundary Water Resources	Yes
Priorities in the allocation of water for different uses?	Yes (through jurisprudence)

CHAPTER 1. WATER GOVERNANCE OVERVIEW

A- Preliminary questions:

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

[Guatemala has a unitary system of government that is “republican, democratic and representative”¹ with a President and Vice-President. The territory of the Republic of Guatemala is divided into departments, which are divided into municipalities².]

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

[Yes, powers are vested in three government branches – executive, judicial, and legislative branches³. The executive branch is the head of government and state and in charge of executive tasks⁴. The judicial branch is entrusted with the duty and the authority to render justice independently⁵. The constitutional court (“Corte de Constitucionalidad”) emits opinions on the constitutionality of laws⁶, and the supreme court has the highest judicial authority⁷. The judiciary is independent from the executive and the legislature. The Congress of the Republic has the legislative power⁸.]

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

[The Congress of the Republic has the sole legislative power, but the executive power, the Supreme Court of Justice, the University of San Carlos de Guatemala (La Universidad de San Carlos de Guatemala), and the Supreme Electoral Tribunal, can formulate legislative proposals⁹.]

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

[The Congress and the President of the

Republic have the power to ratify treaties. Expressly, the Congress has the power to (i) approve or disapprove peace treaties (*tratados de paz*); and (ii) approve, **prior to ratification**, treaties, agreements or any international settlement in the following events: (1) affect existing laws of the Constitution requiring the same majority of votes; (2) affect the domain of the nation, transfer competencies; (3) obligate the State to the payment of more than 1% of the Ordinary Revenue Budget (*Presupuesto de Ingresos Ordinarios*); (4) commit to submit any matter to judicial resolution or international arbitration; and (5) contain general clause of arbitration or submission to international jurisdiction¹⁰. On the other hand, the President has the power to conclude, ratify, and denounce treaties and conventions in accordance with the Constitution¹¹.]

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

[The Constitution establishes a popular consultation process for political decisions of special significance that shall be submitted to a consultation procedure involving all citizens. The consultation will be called by the Supreme Electoral Tribunal at the initiative of the President of the Republic or of the Congress of the Republic, which will determine precisely the question(s) to be submitted to the citizens¹².

Moreover, the Constitution provides that (i) people, by means of a petition addressed to the Congress of the Republic, by no less than 5,000 citizens duly registered by the Registry

¹ Article 140 of the Political Constitution of the Republic of Guatemala.

² Article 224 of the Political Constitution of the Republic of Guatemala.

³ Article 141 of the Political Constitution of the Republic of Guatemala.

⁴ Article 182 of the Political Constitution of the Republic of Guatemala.

⁵ Article 203 of the Political Constitution of the Republic of Guatemala.

⁶ Article 175 of the Political Constitution of the Republic of Guatemala

⁷ Article 203 of the Political Constitution of the Republic of Guatemala.

⁸ Article 157 of the Political Constitution of the Republic of Guatemala.

⁹ Article 174 of the Political Constitution of the Republic of Guatemala

¹⁰ Article 171, subsection (f) and (i) of the Political Constitution of the Republic of Guatemala.

¹¹ Article 183 of the Political Constitution of the Republic of Guatemala.

¹² Article 173 of the Political Constitution of the Republic of Guatemala.

of Citizens (*Registro de Ciudadanos*), have the possibility of promoting reforms to the Constitution¹³, and (ii) any other constitutional reform will require that the Congress of the Republic approves it with an affirmative vote of two-thirds part of the total number of deputies, and it will not be enter into effect unless they are ratified through the popular consultation referred above (Article 173 of this Constitution)¹⁴.

Finally, also the Constitution determines that any definitive agreement to resolve the situation of Guatemala's rights with respect to Belize must be submitted by the Congress of the Republic to the procedure of popular consultation referred in first paragraph above (Article 173 of this Constitution)¹⁵.

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

[In 1996, the Authority for the Sustainable Management of the Atitlán Basin (AMSCLAE) was established to plan, co-ordinate and implement measures and actions of the public and private sector that are deemed necessary to conserve the ecosystem of Lake Atitlán and its Basin. This entity produces Strategic Institutional Plans. The last one was issued for the period 2020-2028¹⁶. The AMSCLAE is not autonomous, as it is a high-level governmental institution, acting as one of the Secretariats of the Vice Presidency of the Republic of Guatemala. That said, it is an agency with a technical-scientific nature, and with specific jurisdiction over the Lake Atitlán basin and its environment¹⁷.]

7. Does the country have transboundary water resources?

[Yes, the watersheds associated with the

Tacaná volcano, which stands at an altitude of 4,093 m, cover a transboundary area of 3,170 km² right in the middle of the border area of the Department of San Marcos, Guatemala and the State of Chiapas, Mexico. This area comprises the Coatán, and Suchiate rivers. The Coatán and Suchiate watersheds originate on the volcano, and are both shared by Guatemala and Mexico. Also, the Lempa River is shared by Guatemala, El Salvador and Honduras. A complete list of the countries' transboundary water resources can be found in the Public Policy for Transboundary Waters of the Central American Region, published on 2019.¹⁸]

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

[With respect to the Trifinio region, that is, the headwaters of the Lempa and Ulúa Rivers (two of the region's most important water systems) and where three countries – El Salvador, Guatemala, and Honduras share borders, a treaty was signed during 1997 and 1998, among the governments of El Salvador, Guatemala, and Honduras for the execution of the Trifinio Plan (which is part of the region's peace process and includes numerous rural development projects)¹⁹. It established an institutional mechanism, a tripartite commission at the highest political level involving the Vice-Presidents of the countries. Moreover, the so called "Trinational Commission" has created a "Trinational Executive Secretariat" and a "Consultative Committee" as well as the "Trinational Technical Units" that may deem convenient for the development of each

¹³ Article 277 of the Political Constitution of the Republic of Guatemala

¹⁴ Article 280 of the Political Constitution of the Republic of Guatemala.

¹⁵ Transitory Article 19 (Title VIII) of the Political Constitution of the Republic of Guatemala.

¹⁶ See <https://www.amsclae.gob.gt/descargas/pei20202028res.pdf>. Last visited on March 14, 2023.

¹⁷ See <https://www.amsclae.gob.gt/quienes-somos/>. Last visit dated March 14, 2023.

¹⁸ Global Water Partnership, Central America, "Public Policy for Transboundary Waters of the Central American Region", Cuadro 6, p. 18 (2019). Available at: https://www.gwp.org/globalassets/global/gwp-cam_files/ppaguastranf_29jul.pdf. Last visited on March 14, 2023.

¹⁹ See Treaty for the Execution of the Plan Trifinio in <file:///C:/Users/gutieli/Downloads/Tratado%20entre%20as%20Republicas%20de%20El%20Salvador%20%20Guatemala%20y%20Honduras%20para%20la%20Ejecucion%20del%20Plan%20Trifinio.pdf>. Last visited on March 14, 2023.

components of the Plan. Under Article 7 of the Treaty, the Trinational Commission is the institution in charge of supervising the execution of the Trifinio Plan and its periodical updates; and grants financial and technical autonomy, and legal status²⁰. Even though there is not enough information available in the Treaty as to whether this tripartite commission has any responsibility in relation to drinking water, in general, the Trifinio Plan, under the execution of the Trinational Commission, has several projects for the drinking water supply and sanitation²¹.]

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

1. Which countries form part of this organisation?

[Guatemala is a founding member of the Organization of American States (OAS) since 1948²², being part of the Interamerican System since 1889²³.

Guatemala is a member of the Central American Integration System (SICA). SICA member States are Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, and the Dominican Republic. SICA was launched in 1993, and is the main body for regional integration and political cooperation in Central America. SICA and its institutions offer an essential platform for Central American countries to broaden coordination and cooperation on vitally important issues such as water rights.

Moreover, Guatemala is a member of the Latin American and Caribbean Economic System (SELA), the Community of Latin American & Caribbean States (CELAC), the Ibero-American General Secretariat, and Proyecto Mesoamerica.]

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

[The Central American Court of Justice, a regional court that is a part of SICA system (*Sistema de la Integración Centroamericana*), issues decisions binding on relevant member states. The Court has various competencies, including, but not limited to, hearing application for annulment to act regarding the agreements of the Central American Integration System bodies and examine disputes among member states.²⁴]

3. What is the mandate of the organisation?

[SICA has a fundamental objective of bringing Central America together as a region of peace, freedom, democracy, and development. The purpose of SICA is: (i) to promote a broad regime of freedom to ensure the full and harmonious development of the human person and of society as a whole; (ii) to achieve a regional system of welfare and economic and social justice for the peoples of Central America; and (iii) to attain economic union and strengthen the Central American financial system. Similarly, OAS has supported Guatemala through various peacebuilding initiatives, particularly in relation to conflict management.²⁵ SELA is an intergovernmental regional organization that groups twenty-five Latin American and Caribbean countries. SELA seeks to promote

²⁰ See specific functions in Article 7, Treaty for the Execution of the Plan Trifinio in https://www.sica.int/busqueda/busqueda_archivo.aspx?Archivo=trat_1302_4_02052011.htm. Last visited on March 14, 2023.

²¹ See, for instance, <https://www.oas.org/dsd/publications/unit/oea29s/oea29s.pdf>, pp. 130, Section 5.9.

²² Ver https://www.oas.org/es/sla/ddi/tratados_multilaterales_interamericanos_A-41_carta_OEA_firmas.asp. Last visited on March 14, 2023.

²³ See

https://www.oas.org/es/estados_miembros/estado_miembro.asp?sCode=gua. Last visited on March 14, 2023.

²⁴ Papageorgiou, I. F. (2008, June 2). Central American Integration System. Retrieved from International Democracy Watch : https://www.internationaldemocracywatch.org/images/pdf_volume_online/central_american_integration_system_papageorgiou.pdf

²⁵ Shamsie, Y. (2007). Moving Beyond Mediation: The OAS Transforming Conflict in Guatemala. *Global Governance*, 409-425. Retrieved from <https://www.jstor.org/stable/27800669>

a system of consultation and coordination for the Latin American and Caribbean region to adopt common positions and strategies on economic issues before countries, groups of countries, forums and international organizations, and to foster cooperation and integration among Latin American and Caribbean nations. CELAC brings together all of Latin America and Caribbean countries to advance the gradual process of regional integration. The Ibero-American General Secretariat is responsible for driving the decisions and mandates of the Ibero-American Summit of Heads of State and Government in the areas of social, cultural, and knowledge cohesion and innovation for the benefit of the Ibero-American community. Proyecto Mesoamerica seeks to strengthen the integration and development of Mesoamerica by enhancing complementarity and cooperation between the countries of the region, in order to expand and improve their capacities and make effective the implementation of projects that result in concrete benefits for their societies in terms of infrastructure, interconnectivity, and social development.]

4. **Does the regional organisation have the authority to regulate or make decisions which affect water, sanitation and a healthy environment? Are there any mechanisms for enforcement?** [SICA has the authority to affect the decision making process of its member states according to the organization's charter, but it is not clear if it has any mechanisms for enforcement.²⁶ Through its Department of Sustainable Development (DSD), OAS

supports its member states in the design and implementation of environmental policies, programs and projects. However, the mechanism for enforcement is unclear.²⁷ The Ibero-American General Secretariat mainly supports the promotion of decisions rather than making decisions, and the organization mainly focuses on economic/cultural policies and environment issues are not its principal areas of activity.²⁸ It seems like the member states of Proyecto Mesoamerica need to make a certain level of commitment and the organization also runs an environment related project.²⁹ We were unable to find sufficient information to answer the questions with respect to SELA and CELAC.]

C- Water governance and administration:

1. **What is the structure of the government water administration (provide relevant organizational charts whenever available) and what power, role and responsibilities does the Government have at each level?**
 - a. **At national/federal level?** [National government agencies such as MARN, MSPAS, basin-level government agencies such as AMSCLAE, and 334 municipalities are involved in governance of water and sanitation and a healthy environment. Additionally, they set national standards for water management and monitor water quality at a national level. See C.3 through 5 below.³⁰]
 - b. **At the intermediate level (state, river basin, other)** [There are

²⁶ See Tegucigalpa Protocol to the Charter of the Organization of Central American States (ODECA), available at https://www.sica.int/documentos/tegucigalpa-protocol-to-the-charter-of-the-organization-of-central-american-states-odeca_2_320.html

²⁷ See <https://www.oas.org/en/topics/environment.asp>. Last visited on March 15, 2023. See also <https://www.oas.org/en/sedi/dsd/ELPG/aboutELPG/mandates.asp> for a list of mandates.

²⁸ See https://segib.org/wp-content/uploads/ingles_web_hojas.pdf, p.4.

²⁹ See <http://www.proyectomesoamerica.org/index.php/acercadelpm/proyecto-mesoamerica/antecedentes/2->

<uncategorised/40-proceso-de-fortalecimiento-del-ppp-cumbre-de-campeche-2007>. Last visited on March 15, 2023. See also

<http://www.proyectomesoamerica.org/index.php/acercadelpm/proyecto-mesoamerica/antecedentes>.

³⁰ Briz, R., Volpicella, K., & Gramajo, J. P. (2021, July 01). Environmental Law and Practice in Guatemala: Overview. Retrieved from Practical Law : https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewiXq57159r9AhW4U6QEHQhkC6oQFnoECA4QAQ&url=https%3A%2F%2Fuk.practicallaw.thomsonreuters.com%2Fw-013-2794%3FtransitionType%3DDefault%26contextData%3D%3D_Default%3D%3D&usq=AOvVaw1D5u_eEYO0Gx.

- certain government agencies responsible for specific basins such as AMSCLAE for the Atitlán Basin. See A.6 above.]
- c. **At the local level?** [Guatemala does not seem to have a national water law and based on our conducted research, no authority controls the water resources; instead, each of Guatemala's 334 municipalities is responsible for the maintenance and provision of water management services³¹. Municipalities are the main developers of water and sanitation projects, with 68% of total investments in the sector.³²]
 2. **Which government ministries/agencies are directly or indirectly involved in governance of water and sanitation and a healthy environment?**
[Please see C1a.]
 3. **Which national government agency is responsible for the environment? What are its responsibilities with respect to water?**
- [The Ministry of Environment and Natural Resources (MARN) is a public entity specialized in the environment and natural goods sector. Its main aim is to protect the natural systems by preserving and using natural resources in a sustainable way. MARN is officially responsible for environmental regulation in the water and sanitation sector. MARN manages water basins at the national level and sets national standards³³.]
4. **Which national government agency is responsible for drinking water? What are its responsibilities?**
[The Ministry of Public Health and Social Assistance (MSPAS) is legally responsible for monitoring drinking water quality at a national level. They provide water quality testing services for private and public operators³⁴.]
 5. **Which national government agency is responsible for sanitation? What are its responsibilities?**
[See C.3 above.]

³¹ OECD. (2016, October). GUATEMALA. Retrieved from OECD: <https://www.oecd.org/regional/regional-policy/profile-Guatemala.pdf>

³² International Trade Administration. (2021, April 16). GUATEMALA WATER TREATMENT INFRASTRUCTURE. Retrieved from International Trade Administration : <https://www.trade.gov/market-intelligence/guatemala-water-treatment-infrastructure>

³³ United Nations. (n.d.). Guatemalan Ministry of Environment and Natural Resources (MARN). Retrieved from United Nations : <https://www.un-spider.org/guatemalan-ministry-environment-and-natural-resources-marn>

See also: Cheatham, S., Fernandez, R., & Ruiz, C. (2022, May 30). Securing a National Water Policy in Guatemala: Understanding Barriers and Potential Implementation Strategies through Comparison with the Establishment of Regional Mining Laws. Retrieved from <https://www.mdpi.com/2673-4931/15/1/64#B2->

[environsciproc-15-00064](https://www.mdpi.com/2673-4931/15/1/64#B2-)

See also: Briz, R., Volpicella, K., & Gramajo, J. P. (2021, July 01). Environmental Law and Practice in Guatemala: Overview. Retrieved from Practical Law : [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiXq57159r9AhW4U6QEHQhC6oQFnoECA4QAQ&url=https%3A%2F%2Fuk.practicallaw.thomsonreuters.com%2Fw-013-2794%3FtransitionType%3DDefault%26contextData%3D\(sc.Default\)&usq=AOvVaw1D5u_eE0Y0Gx](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiXq57159r9AhW4U6QEHQhC6oQFnoECA4QAQ&url=https%3A%2F%2Fuk.practicallaw.thomsonreuters.com%2Fw-013-2794%3FtransitionType%3DDefault%26contextData%3D(sc.Default)&usq=AOvVaw1D5u_eE0Y0Gx)

³⁴ US Army Corps of Engineers. (2000, June). Water Resources Assessment of Guatemala. Retrieved from [www.sam.usace.army.mil: https://www.sam.usace.army.mil/Portals/46/docs/military/engineering/docs/WRA/Guatemala/Guatemala%20WRA%20English.pdf](https://www.sam.usace.army.mil/Portals/46/docs/military/engineering/docs/WRA/Guatemala/Guatemala%20WRA%20English.pdf)

CHAPTER 2: INTERNATIONAL AND REGIONAL TREATIES

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

A. Regional Multilateral/Bilateral Treaties³⁵

Table 1. Regional multilateral and bilateral treaties

Instruments	Participating States	Signature	Entry into force (Ratification / Accession)
Charter of the Organization of American States (Art. 45(b))	Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, US, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Uruguay, Venezuela, Antigua and Barbuda, Barbados, Trinidad and Tobago, Jamaica, Grenada, Suriname, Dominica, Saint Lucia, Saint Vincent and the Grenadines, Bahamas, Saint Kitts and Nevis, Canada, Belize, Guyana	30/04/1948	18/03/1951
American Convention on Human Rights (Art. 26)	Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, Venezuela	22/11/1969	27/04/1978
Guatemala – Türkiye BIT (2015)	Guatemala and Türkiye	21/12/2015	19/10/2017
Guatemala - Trinidad and Tobago BIT (2013)	Guatemala and Trinidad and Tobago	13/08/2013	23/06/2016

³⁵ See UNCTAD Investment Policy Hub (<https://investmentpolicy.unctad.org/international-investment-agreements/countries/86/guatemala>)

Guatemala - Israel BIT (2006)	Guatemala and Israel	07/11/2006	15/01/2009
Austria - Guatemala BIT (2006)	Guatemala and Austria	16/01/2006	01/12/2012
Finland - Guatemala BIT (2005)	Guatemala and Finland	14/04/2005	06/01/2007
BLEU (Belgium-Luxembourg Economic Union) - Guatemala BIT (2005)	Guatemala and BLEU	14/04/2005	01/09/2007
Guatemala - Sweden BIT (2004)	Guatemala and Sweden	12/02/2004	01/07/2005
Germany - Guatemala BIT (2003)	Guatemala and Germany	17/10/2003	29/10/2006
Guatemala - Italy BIT (2003)	Guatemala and Italy	08/09/2003	03/03/2008
Czech Republic - Guatemala BIT (2003)	Guatemala and Czech Republic	08/07/2003	29/04/2005
Guatemala - Spain BIT (2002)	Guatemala and Spain	09/12/2002	21/05/2004
Guatemala - Switzerland BIT (2002)	Guatemala and Switzerland	09/09/2002	03/05/2005
Guatemala - Netherlands BIT (2001)	Guatemala and the Netherlands	18/05/2001	01/09/2002
Guatemala – Republic of Korea BIT (2000)	Guatemala and the Republic of Korea	01/08/2000	17/08/2002
Guatemala - Taiwan Province of China BIT (1999)	Guatemala and Taiwan	02/11/1999	01/12/2001
Cuba - Guatemala BIT (1999)	Guatemala and Cuba	20/08/1999	10/08/2002

France - Guatemala BIT (1998)	Guatemala and France	27/05/1998	28/10/2001
Argentina - Guatemala BIT	Guatemala and Argentina	21/04/1998	07/12/2002
Chile - Guatemala BIT (1996)	Guatemala and Chile	08/11/1996	10/12/2001

B. International Treaties³⁶

Table 2. International binding instruments

³⁶ See UN Treaty Body Database (https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=70&Lang=EN).

Instruments	signature	ratification
Convention on the Elimination of All Forms of Discrimination against Women (art. 14 (2))	June 8, 1981	August 12, 1982
Convention on the Rights of the Child (arts. 24 and 27 (3)) Guatemala's declaration upon signature: "The State of Guatemala is signing this Convention out of a humanitarian desire to strengthen the ideals on which the Convention is based, and because it is an instrument which seeks to institutionalize, at the global level, specific norms for the protection of children, who, not being legally of age, must be under the guardianship of the family, society and the State. "With reference to article 1 of the Convention, and with the aim of giving legal definition to its signing of the Convention, the Government of Guatemala declares that article 3 of its Political Constitution establishes that: "The State guarantees and protects human life from the time of its conception, as well as the integrity and security of the individual."	January 26, 1990	June 6, 1990
Convention on the Elimination of All Forms of Racial Discrimination	September 8, 1967	January 18, 1983
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	September 7, 2000	March 14, 2003
International Covenant on Economic, Social and Cultural Rights	N/A	May 19, 1988
Convention on the Rights of Persons with Disabilities (art.28)	March 30, 2007	April 7, 2009
International Labour Organization (ILO) Occupational Health Services Convention, 1985 (No. 161) (art.5)	1989	1989
Vienna Convention for the Protection of the Ozone Layer	N/A	September 11, 1987
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	March 22, 1989	May 15, 1989
United Nations Framework Convention on Climate Change	June 13, 1992	December 15, 1995
Convention on Biological Diversity	June 13, 1992	July 10, 1995
United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa	N/A	September 10, 1998
Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	N/A	April 19, 2010

Instruments	signature	ratification
Stockholm Convention on Persistent Organic Pollutants	January 29, 2002	July 30, 2008
Minamata Convention on Mercury	October 10, 2013	N/A

C. Regional

Table 3. Regional instruments

Instruments	Signature	Ratification
The American Convention on Human Rights	November 22, 1969	April 27, 1978
The Inter-American Convention Against Corruption (IACAC)	June 04, 1996	June 12, 2001
The Inter-American Convention Against Terrorism	March 6, 2002	November 14, 2005
The Inter-American Convention on Forced Disappearance of Persons	June 24, 1994	July 27, 1999
The Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities	June 8, 1999	August 8, 2002
The Inter-American Convention to Prevent and Punish Torture (IACPPT)	October 27, 1986	December 10, 1986
The General Treaty of Peace and Amity, 1923	February 7, 1923	N/A
The Inter-American Treaty of Reciprocal Assistance	September 02, 1947	April 6, 1955
The Central America-4 Free Mobility Agreement	June 2006	N/A
Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean	September 27, 2018	N/A
Agreement establishing the Inter-American Institute for Global Change Research	December 14, 1992	January 07, 1999

CHAPTER 3: DOMESTIC LEGISLATION ON WATER

A. Water law

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

[Even though the Constitution does not explicitly recognise the right to water, there are several other provisions that implicate the right to safe and clean water. For instance, Article 3 of the Constitution (right to life); Article 93 (Right to Health); Article 94 (Obligations of the State, Health and Welfare); Article 97 (Environment and Ecological Balance); and Article 127, 128 (Water Regime)³⁷.

Also, the Constitutional Court has interpreted these dispositions to provide case law on this issue. For example, in Case 3102-2009³⁸, the Constitutional Court highlighted the scope of the human right to an adequate and safe environment, including the obligation of the State to protect people from any form of pollution of the water resources. In this same way, Cases 3095-2006 and 2007³⁹, provided that the State has the obligation to assure the possibility to breath clean air, and drink non-polluted water.

Finally, the Constitutional Court provided in Cases 4617-2013, 2015⁴⁰ that any use of the water resources must be consistent with the human right to water, based on international treaties that actually regulate the human right to water and Article 128 of the Constitution, even if the latter does not specifically include this right.]

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

Not expressly as a distinct right. However, as with the right to water, there are Constitutional provisions on the Right to Life (Article 3) and the Right to Health (Article 94) that have been interpreted by the Constitutional Court. For instance, in Case 308-2017, the Court found that there is a

right of everyone to have access to sufficient, safe, acceptable, accessible, and affordable water for personal, and domestic use. This would include sanitation, as it is inextricably related to the right to live a life with dignity⁴¹.

3. Does the Constitution otherwise reference water and sanitation?

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

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

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

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

Finally, Art. 127 of the Constitution governs the water regime, providing that *“[a]ll waters are goods in the public domain, inalienable and imprescriptible. Their*

³⁷ Article 3, 97, 127 and 128 of the Political Constitution of the Republic of Guatemala.

³⁸ Guatemalan Constitutional Court, Case 3102-2009, Decision of August 11 of 2010.

³⁹ Guatemalan Constitutional Court, Case 3095-2006, Decision of April 17, 2007.

⁴⁰ Guatemalan Constitutional Court, Case 4617-2013, 2015, Decision of September 28, 2015.

⁴¹ Guatemalan Constitutional Court, Case 308-2017, Decision of May 16, 2017.

utilization, use and enjoyment are granted in the manner established by law, in accordance with the social interest. A specific law will regulate this matter.”]

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

[No. The development and enactment of a law specific to water resources is explicitly addressed by art. 127 of the Constitution. Despite this mandate, at least 13 bills have stalled Congress since 1985, to no avail. The most recent one, *Iniciativa 5253*, is still under review⁴².]

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

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

- National Policy for Integrated Water Resources Management (PNGIRH, abbreviation for *‘Política Nacional de Gestión Integrada de los Recursos Hídricos’*) and the National Strategy for integrated management of water resources (ENGIRH, abbreviation for *‘Estrategia Nacional de Gestión Integrada de los Recursos Hídricos’*). SEGEPLAN (2006)⁴³
- National Plan for Public Drinking Water and Sanitation Services for Human Development 2008-2011 (*‘Política Nacional del Sector de Agua Potable y Saneamiento’*). Government of Guatemala / SEGEPLAN / GEA⁴⁴
- Strategy for the integrated management of water resources in Guatemala: Diagnosis. SEGEPLAN (2006) (*‘Política Marco para la Gestión Integrada de los Recursos Hídricos en Guatemala’*)
- Government Agreement 418-2013 on the National Policy of the Drinking Water Supply and Sanitation Sector (*‘Política Nacional del Sector de Agua Potable y Saneamiento’*) explicitly recognises the

human rights to water and sanitation in its recitals.]

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

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

- Specifications Manual for Monitoring and Control of Water Quality for Human Consumption Ministerial Agreement 523-2013 (*‘Manual de Especificaciones para la vigilancia y el control de la calidad del agua para consumo humano, Acuerdo Ministerial No. 523-2013’*).
- Government Agreement 113-2009. Health Standards for Supply Services (*‘Acuerdo Gubernativo Nº 113-2009: Reglamento de Normas Sanitarias para la Administración, Construcción, Operación y Mantenimiento de los Servicios de Abastecimiento de Agua para Consumo Humano.’*);
- Government Agreement 83-2013. Water for human consumption. COGUANOR standard (*‘Acuerdo gubernativo 83-2013 que aprueba las normas coguanor en Guatemala’*);
- Ministerial Agreement 1148-2009. Water for human consumption (*‘Acuerdo Ministerial 1148-2009, Manual que establece los procesos y métodos de purificación de agua para consumo humano necesarios para que ésta sea suministrada, en sistemas de abastecimiento, en calidad de potable.’*);
- Government Agreement 178-2009. Water quality certification (*‘Acuerdo Gubernativo 178-2009, Reglamento para la Certificación de la Calidad del Agua para Consumo Humano en Proyectos de Abastecimiento’*);

⁴² Ley del Sistema Nacional del Agua en Guatemala, Iniciativa 5253, Congreso de la República de Guatemala Cong. 2017. Available online: https://www.congreso.gob.gt/detalle_pdf/iniciativas/426
5. Last visited on March 15, 2023.

⁴³ Abbreviation for *‘Secretaría de Planeación y Programación’*.

⁴⁴ Abbreviation for *‘Gabinete Específico del Agua’*.

- Ministerial Agreement 572-2011. Design standards for rural water systems (*'Acuerdo Ministerial 572-2011, Guía Técnica para el diseño de sistemas rurales de abastecimiento de agua para consumo humano'*);
 - WHO Water Quality Guidelines, 4a edition (*'OMS, Guías para la calidad del agua de consumo humano: Cuarta edición'*);
 - "National Program for Monitoring Water Quality for Human Consumption", Ministerial Agreement SP-M-278-2004 (*'Acuerdo Ministerial SP-M-278-2004, Programa nacional de vigilancia de la calidad de agua para el consumo humano'*).
 - Guatemalan technical standard NTG 29001 drinking water specifications (*'Norma Técnica Guatemalteca NTG 29001, Agua para consumo humano (agua potable). Especificaciones'*);
 - Design standards for rural water supply systems for human consumption (*'Guía de normas sanitarias para el diseño de sistemas rurales de abastecimiento de agua para consumo humano'*).
 - Government Agreement Number 75-2006, Regulation of the Law on the National System of Food and Nutrition Security (*'Acuerdo Gubernativo 75-2006, Ley del Sistema Nacional de Seguridad Alimentaria y Nutricional'*).
 - Regulation of the discharges and reuse of wastewater and the disposal of sludge. Government Agreement 236-2006 (*'Acuerdo Gubernativo 236-2006, Reglamento de descargas y reúso de aguas residuales'*)
- Sanitary sewer systems (*'Norma Técnica DRPSA 002-2018, Sistemas de Alcantarillado Sanitario'*);
- DRPSA Technical Standard 003-2018. Letrinization Projects (*'Norma Técnica 003-2018, Proyectos de Latinización'*)
 - Ministerial Agreement 105-2008. Wastewater Discharge and Reuse and Sludge Disposal (*'Acuerdo Ministerial N° 105-2008: Manual General del Reglamento de las descargas y reusos de aguas residuales y de la disposición de lodos'*)
 - Ministerial Agreement 573-2011. Design standards for rural disposal systems (*'Acuerdo Ministerial 573-2011. Normas de Diseño para Sistemas Rurales de Disposición'*).
 - DRPSA Technical Standard 015-2018. Storm sewer systems (*'Norma técnica DRPSA 015-2018. Sistemas de Alcantarillado Pluvial.'*).

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

B. Environmental law

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

Yes. Art. 97 (Environment and Ecological Balance) provides that *"The State, the municipalities and the inhabitants of the national territory are obligated to promote the social, economic, and technological development that prevents the pollution of the environment and maintains the ecological balance. All the necessary regulations will be dictated to guarantee that the use"*. Also, such a right can be implicated via the interpretation of several Constitutional provisions, such as: (i) Art. 64 of the Constitution provides that *"[t]he conservation, protection and improvement of the natural heritage of the Nation [,] is declared [to be] of national interest. The State will promote the creation of national parks, reservations, and natural sanctuaries [refugios], which are inalienable. A law will*

With regard to sanitation, the following rules apply:

- Regulation for the regulation of services, regulation for the discharge of wastewater.
- DRPSA Technical Standard 001-2018. Wastewater treatment plants (*'Norma Técnica DRPSA 001-2008. Plantas de Tratamiento de Aguas Residuales'*),
- DRPSA Technical Standard 002-2018.

guarantee their protection and that of the fauna and the flora that exists within them”; and (ii) also, Art. 93 of the Constitution provides that “The enjoyment of health is a fundamental right of the human being, without any discrimination.”]

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

[As previously established, Art. 97 contain an indirect reference to the human right to a healthy environment, as well as Arts. 64, and 93-96.]

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

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

- Environmental Protection and Improvement Act (“EPIA”)⁴⁵ (Decree 68-86), Articles 1, 6, 12(h), 13, and 15;
- Protected Water Act⁴⁶ (Decree 4-89), Article 7, and 13;
- Forestry Law⁴⁷ (Decree 101-96), Articles 4, 47, and 67;
- Health Code⁴⁸, Articles 38, 78-101, 105, and 226;
- Constitutional Judgment of February 1, 2011, Number 2810-2010, pp. 5, 6⁴⁹;
- Judgment of June 10, 2003⁵⁰;
- File 326-2003 in which the interpretation of constitutional Article 127 is made, and social interest is established as a priority of use, pp. 6-8⁵¹;
- Municipal Codes⁵², Articles 23 Bis, 68, 142, 147;

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

[Yes. There is a:

- Policy of Conservation, Protection and Improvement of the Environment and the

Resources, Governmental Agreement No. 63-2007⁵³.

- Also, the National Policy for the Integral Management of Residues and Solid Waste, Government Agreement 281-2015⁵⁴.
- Finally, the Energy Policy 2019 to 2050⁵⁵.

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

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

- Protected Areas Act (*‘Ley de Áreas Protegidas’*) (Decree 4-89).
- Regulation for Environmental Evaluation, Control and Monitoring (*‘Reglamento de Evaluación, Control y Seguimiento Ambiental’*) No. 137-2016
- Regulation for Protected Areas Act (*‘Reglamento de la Ley de Áreas Protegidas’*), Government Agreement 759-90.
- Regulation for the Discharge and Reuse of Sewage and Disposal of Sludge (*‘Reglamento de las Descargas y Reuso de Aguas Residuales y de la Disposición de Lodos’*) (Government Agreement 236-2006)
- Framework Act for Reducing Vulnerability, Obligatory Adaptation Before the Effects of Climate Change and the Mitigation of Greenhouse Gas Emissions (*‘Ley Marco para regular la reducción de la vulnerabilidad, la adaptación obligatoria ante los efectos del cambio climático y la mitigación de gases de efecto invernadero’*) (Decree 7-2013)
- Decree 52-2003, the Incentives for the Development of Renewable Energy

⁴⁵ *‘Ley de protección y mejoramiento al medio Ambiente’*.

⁴⁶ *‘Ley de aguas protegidas’*.

⁴⁷ *‘Ley forestal’*.

⁴⁸ *‘Código de Salud’*.

⁴⁹ *‘Sentencia de constitucionalidad del 1 de febrero de 2011 número 2810-2010’*.

⁵⁰ *‘Sentencia del 10 de junio del 2003’*.

⁵¹ Constitutional Court, Case 326-2003, Decision June 10,

2006, pp. 6-8.

⁵² *‘Código Municipal’*.

⁵³ *‘Acuerdo Gubernativo No. 63-2007, Política de Conservación, Protección y Mejoramiento del Ambiente y los Recursos Naturales.’*

⁵⁴ *‘Acuerdo Gubernativo No. 281-2015, Política Nacional para la Gestión Integral de Residuos y Desechos Sólidos.’*

⁵⁵ *‘Política Energética de Guatemala 2019-2050.’*

Projects Act (*'Ley de Incentivos para el Desarrollo de Proyectos de Energía Renovable'*)

C. Extraction and/or use of water

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

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

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

[According to our research, no.]

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

[Pursuant to Article 579 of the Civil Code, if it is underground, it belongs to the owner of the farm.]

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

[Yes, they are called municipal licenses⁵⁶.]

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

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

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

[It seems that they cannot be passed on.]

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

[Not by law. However, the Constitutional

Court's Ruling 326-2003 establishes the public interest as a priority in the use of water.

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

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

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

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

[Yes. In general, Art. 15 and 29 of the EPIA provides for a principle of liability for environmental damage, which includes releasing contaminants, pesticides, fertilizers, farm animal effluent, industrial waste or other pollutants to sources of hydric resources, and says the government will protect water sources from pollution. Therefore, this is one of the MARN's functions. Specific limitations to this release of substances into water is regulated by the Regulation for the Discharge and Reuse of Sewage and Disposal of Sludge (Reglamento de las Descargas y Reuso de Aguas Residuales y de la Disposición de Lodos) (Government Agreement 236-2006), specifically art. 20.]

⁵⁶ Municipal Code (*'Código Municipal'*), Art. 147.

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

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

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

[No laws specifically ensure the minimum essential level of water available to all. However, the Health Code, Decree Number 90-97, prescribes in the Health and Environment chapter, a section related to Potable Water, establishing that the State, through the Ministry of Health, in coordination with the Municipal Development Institute, and other institutions in the sector, will promote a priority and necessary policy that guarantees access to universal coverage of the population to the drinking water services, with emphasis on the management of the communities themselves, to guarantee the sustainable management of the resource. On the other hand Acuerdo Ministerial No. 572-2011 Normas de diseño de los sistemas rurales de abastecimiento de agua para consumo humano suggests, in its Article 10, minimums essential levels of water without providing a way to exercise this right.]

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

[Please note that health standards and policies for supply services are regulated in the provisions included throughout the Specifications Manual for Monitoring and Control of Water Quality for Human Consumption Ministerial Agreement 523-2013, and the Government Agreement 113-2009.

3. **In cases where water is not available on premises, what mechanisms are in place to ensure collection times do not exceed 30 minutes including wait times and queuing?**

No specific regulation was found on this.

4. **Does the law ensure continuous supply of water for all?** [In general, the Health Code regulates matters relating to the obligation of the Municipalities regarding the supply of drinking water to the communities within the municipal jurisdiction, as well as the protection, conservation, development and rational use of drinking water sources. Therefore, the municipal code establishes the responsibility for the service. However, no information was found in connection with a law ensuring continuous supply of water for all.]

5. **In instances where water availability is not continuous, what measures are implemented?**

[Government Agreement 113 of 2009, provides that whenever the water supply must be interrupted due to maintenance or repair of any component of the service; the providers of the service must inform the population that will be affected by delivering a notice at least forty-eight hours prior to the interruption. In case the interruption due to causes of force majeure, they must inform immediately after the event that motivates it has happened. However, no information was found in connection with a law ensuring that alternative sources are provided in case of water cuts caused for reasons other than non-payment.]

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

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

observe fraternal conduct among themselves.”

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

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

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

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

8. 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...)?

Section 91 of the Health Code (*Codigo de Salud, Decree No. 90-97*) sets forth that water service shall not be suspended except in case of force majeure or non-payment as determined by sanitary authorities and the municipalities.

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

Please refer to our response above. We have not identified any specific procedure.

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

No information was found in connection with alternatives of water supply and sanitation services in case of alteration of supply and/or service. The user would have

to repair what caused the disconnection or suspension.

11. Does law/policy provide guidance on:

The number of water outlets? [No

information was found in connection with the number of water outlets.]

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

found in connection with the safety, distance and time from a dwelling or structure to reach water outlet or sanitation facilities.]

Technical safety of water outlets or sanitation facilities (e.g., law requiring that certain standards are applied in the construction of those facilities or of buildings)? [No information was found in

connection standards to be applied in the construction of power outlets or sanitation facilities. With respect to technical safety of sanitation facilities, section 5 of the Governmental Agreement No. 113-2009 sets forth sanitary regulations that should be met in sanitation facilities with respect to water for human consumption.]

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

Articles 86 and 87 of the Health Code provide:

“The Ministry of Health will establish the rules linked to administration, Construction and maintenance of drinking water services for human consumption, monitoring, in coordination with the municipalities and the organized community, the quality of the service and water of all supplies for human use. These are public or private” (Article 86).

“Water purification. The municipalities and other public or private institutions responsible for the management and supply of drinking water have the obligation to purify it, based on the methods established

by the Ministry of Health. The Ministry should provide technical assistance to the municipalities in an efficient manner for their implementation. The violation of this provision shall entail penalties which shall be established in this law, without prejudice to the criminal sanctions which may be incurred” (Article 87).

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

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

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

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

No specific regulation was found on this.

14. 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.?

Section 86 of the Health Code (*Codigo de Salud, Decree No. 90-97*) sets forth that the Ministry of Health, the municipalities and the community will establish the quality of the service and of the water.

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

[We have not identified specific regulations for accessibility of water and sanitation in

non-domestic places; however, Section 89 of the Health Code (*Codigo de Salud, Decree No. 90-97*) sets forth that each property owner shall connect their services in accordance with the regulations issued by the applicable municipality.]

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?

[Articles 86 and 87 of the Health Code provide:

“The Ministry of Health will establish the rules linked to administration, Construction and maintenance of drinking water services for human consumption, monitoring, in coordination with the municipalities and the organized community, the quality of the service and water of all supplies for human use. These are public or private” (Article 86).

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

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

The Ministry of Health created the “*Manual of Specifications for Monitoring And Control of Water Quality for Human Consumption*”, which is Ministerial Agreement 523-2013. Chapter 2 of such Manual provides parameters of quality and safety.

For its part, the COGUANOR NTG 29001 standard “*Water for human consumption*

(drinking water)” contains specifications of a technical nature. Also, sections 6 to 23 of Ministerial Agreement No. 1148-09 sets forth purification processes and methods. Finally, sections 4 to 9 of the Government Agreement 178-2009 deals with the certification of water quality for human consumption.]

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)?**

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

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

[Yes.

- Ministerial Agreement No. 105-2008. Wastewater Discharge and Reuse and Sludge Disposal (*Acuerdo Ministerial 105-2008, Reglamento de las Descargas y Reuso de Aguas Residuales y de la Disposición de Lodos*).
- Ministerial Agreement No. 573-2011. Design standards for rural disposal systems. (*Acuerdo Ministerial 573-2011. Normas de Diseño para Sistemas Rurales de Disposición*.)

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. Government Agreement No. 113-2009, issued the Health Standards Regulations for the Administration, Construction, Operation and Maintenance of Water Supply Services for Human Consumption which contain broad guidance on construction of water and sanitation infrastructure. Although we have not found detailed provisions on this regard but rather general statements, section 5(o) states that water pollution as a consequence

of construction of existing works should be avoided.

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

[Yes. This matter is regulated by the Letrinization, Ministerial Agreement 105-2008 which sets forth the requirements that companies providing services shall comply with, which includes (i) making a technical study to characterize effluents, discharges and water to be used (sections 5 to 15). Also, it sets the parameters for discharge of effluents (sections 16 to 22). Chapter VIII of such regulation also determines parameters applicable for sludge. Ministerial Agreement 573-2011 regarding wastewater discharge and reuse and sludge disposal, establishes that prior to the design of any disposition system, communities should be identified as well as their participation and possible technologies, financings and monitoring (section 4).]

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.)?**

[Ministerial Agreement 573-2011 which sets forth design standards for rural disposal systems (*Acuerdo Ministerial 573-2011. Normas de Diseño para Sistemas Rurales de Disposición*) lists some parameters to take into consideration when designing rural systems. We have not identified any specific provision dealing with water contained, rainwater or harvesting limitations.]

- 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?**

Decree No. 90-2000 (*Ley de Creacion del Ministerio de Ambiente y Recursos Naturales*) created the MARN (*Ministerio de Ambiente y Recursos Naturales*), which is the

governmental authority in charge of monitoring these matters, as determined in section 29 bis of the Decree 114-97 (as amended by Decree No. 90-2000). The following is the regulation regarding the discharge of waste water disposal activities:

- DRPSA Technical Standard 001-2018. Wastewater treatment plants (*'Norma Técnica DRPSA 001-2008. Plantas de Tratamiento de Aguas Residuales'*),
- DRPSA Technical Standard 002-2018. Sanitary sewer systems (*'Norma Técnica DRPSA 002-2018, Sistemas de Alcantarillado Sanitario'*);
- DRPSA Technical Standard 003-2018. Letrinization Projects (*'Norma Técnica 003-2018, Proyectos de Latinización'*);
- Ministerial Agreement 105-2008. Wastewater Discharge and Reuse and Sludge Disposal (*'Acuerdo Ministerial Nº 105-2008: Manual General del Reglamento de las descargas y reusos de aguas residuales y de la disposición de lodos'*);
- Ministerial Agreement 573-2011. Design standards for rural disposal systems (*'Acuerdo Ministerial 573-2011. Normas de Diseño para Sistemas Rurales de Disposición'*);
- DRPSA Technical Standard 015-2018. Storm sewer systems (*'Norma técnica DRPSA 015-2018. Sistemas de Alcantarillado Pluvial'*).
- **Is there legislation which regulates the contamination of groundwater? How is it addressed in practice?**
[No information was found on how it is addressed in practice.]

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

[No. Section 5 of the Rules to Certify the Quality of Water in Supply Projects for Human Consumption (*Acuerdo Gubernativo 178-2009 Reglamento para la Certificación de la Calidad del Agua para Consumo Humano en Proyectos de Abastecimiento*) only requires that when filing to obtain the certification nitrates and phosphates values should be included, although there is no

limitation as to the levels. In addition, governmental agreement No. 254/2019 (*Acuerdo Gubernativo No. 254/2019*) issued on November 27, 2019, which amends section 24 bis of governmental agreement No. 236-2006, establishes in section 1 certain limits for specific parameters but no limit was included for nitrates and phosphates.]

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

Although no permission or registration is required, Ministerial Agreement No. 236-2006 establishes that all entities and persons that discharge effluents shall file a technical study. Ministerial Agreement No. 105-2008 of Wastewater Discharge and Reuse and Sludge Disposal provides in further detail what should the technical study contain, i.e. must characterize effluents, discharges and water to be used (sections 5 to 15). In addition, it sets the parameters to discharge effluents (sections 16 to 22). Specific parameters are included in chapter VIII with respect to discharge of sludge. .

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

This is not expressly regulated.

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

Article 347 A of the Criminal Code sets forth from one to two years in prison and fines from three hundred to five thousand quetzals to whom pollutes the waters with toxic discharges, excessive noise or discharging dangerous substances or products that may harm the population, animals, forests or plantations. Section 26 of Ministerial Agreement 523-2013 establishes that water service providers that breach the obligations included in the manual in connection with water surveillance and control will be subject to the sanctions in Chapter III of Decree No. 90-97 (i.e. administrative procedure conducted by the

Ministry of Health) notwithstanding any other civil or criminal sanctions that may also be determined by the applicable judge.

D. Affordability (SDG 6.1)

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

Affordability is addressed in the National Water Policy. Section 1.3 of the policy states that the basic principles are the following: social equality, economic efficiency, sustainability, integral administration and solidarity. Also, sections 68 and 147 of the Municipal Code establish that the municipality shall be responsible of providing water for human consumption in homes.

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

It does not seem to be any mechanisms established by law or in the National Water Policy.

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

Municipalities are in charge of establishing the applicable tariffs. Section 72 of the Municipal Code establishes that each Municipality shall regulate public services in its territory and determine prices, which shall be determined based on operation and maintenance costs.

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

Yes. Section 72 of the Municipal Code sets forth that tariff will be determined based on the specific territory and should also be fair and equal and should also cover operation costs. According to the Section 1.1.6(c) of the National Water Policy indicates that price levels set by municipalities are extremely low and do not cover real costs.

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

Section 72 of the Municipal Code sets forth that the municipalities or the OCSAS, as applicable, are responsible for and involved in setting and approving tariffs.

6. Is disconnection from water supply and sanitation services for non-payment

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

Yes, section 91 of the Health Code (*Codigo de Salud, Decree No. 90-97*) sets forth that water service shall not be suspended except in case of force majeure or non-payment as determined by sanitary authorities and the municipalities. We have not been able to find additional regulations in connection with further consequences other than shutoff.

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)?

We have not been able to find contracts with service providers. Section 2.2 of the guidance attached to the Ministerial Agreement No. 573-2011 considers social history, hygiene habits and cultural patterns as the basic factors to be considered when designing rural systems for water disposal.

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

There are no express provisions on this regard.

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

There is no express provision on this regard.

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

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

There is no express provision on this regard, however section 4 of the Constitution establishes in general the principle of equality and no discrimination (i.e. “*all human beings are free and equal in dignity and rights (...)*”). Also, section 176 of the Municipal Code incorporates the non-discrimination concept included in the Constitution.

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

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

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

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

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

We have not identified any regulation including a legal recognition by the government to women on this. However, section 15 of Decree No. 7-99 (*Ley de Dignificación y Promoción Integral de la Mujer*) establishes that the government shall develop policies to educate their employees of the minimum necessary knowledge about the situation of women and their life problems, and shall establish specific

mechanisms with the participation of women as active subjects in the definition of policies in this sector in order to achieve their access to different health services.

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?**

[Decree No. 57-2008 (*Ley de Acceso a la Información Pública*) refers to the access to public information law. It guarantees all citizens, without any discrimination, access to information or acts of the public administration found in the archives, or any form of data storage. Reference is made to public services subject to concession or administration. All bodies referred to in section 6 of the Decree, which refers to any entity, or institution that manages or administers public resources, or State property, are subject to this Decree.

Art. 24 of the Decree states that in no case may information relating to investigations of violations of fundamental human rights be classified as confidential.]

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

[No. Section 18 of Decree No. 57-2008 (*Ley de Acceso a la Información Pública*) states that access to public information shall be free.]

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

[No, the right to information under Decree No. 57-2008 (*Ley de Acceso a la Información Pública*) refers to all acts of the public administration. Although it does not refer specifically to water or sanitation, it refers to public services in general. Section 21 to 28

specifies the type of information that is considered to be confidential and reserved. Section 22 states what type of information shall be considered confidential (i) correspondence (as set forth in Section 24 of the Constitution), (ii) information expressly defined as confidential under the Bank and Financing Groups Law, (iii) information related to professional secret, (iv) information determined to be confidential under law, (v) sensible information or (vi) information received by individuals subject to confidentiality provisions. Also, military, classified and diplomatic, intellectual property, criminal and related information as detailed in Section 23 shall be considered reserved information.]

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.)?**

[Sections 60 to 66 of the Municipal Code sets forth that municipalities shall provide broad information about their activities to all the community. In particular, section 62 provides the right to all neighbors to be informed, hence the municipalities have the obligation to give the information that the users request. Also, those entities that are awarded concession of the service shall provide to municipalities all information these may request (section 75 of the Municipal Code).]

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

We have not found provisions containing specific requirements as to how should the information be provided. Decree No. 57-

2008 (*Ley de Acceso a la Informacion Publica*) sets forth the minimum rights to grant access to public information. We have not identified specific provisions granting additional rights to minorities.

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

There does not seem to be any specific mechanisms to ensure that education includes the importance of a healthy environment in school curricula.

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

There does not seem to be any specific legal provisions requiring certain authorities to educate the population on water related issues. Section 2.2.7 of the National Water Policy refers to the importance of providing education on this, but it does not adopt any specific measure to ensure that education is granted.

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

There does not seem to be any specific requirements in relation to access to information in contracts with water and sanitation operators.

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

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

[Section 2.2.7 of the National Water Policy refers to public participation as a way to protect and improve the quality of the water, but it does not adopt any specific measure to ensure such public participation is effectively coordinated.]

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.)?**

[Section 2.2.7 of the National Water Policy does not adopt any specific criteria in

relation to participation in water-related issues.]

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

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

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

We have not identified any Integrated Water Resources Management (IWRM) mechanism in force. However, the community takes a fundamental role given that they are a key part of the OCSAS. The Decree No. 11-2002 of Development Board (*Ley de los Consejos de Desarrollo Urbano y Rural*) requires that communities shall have a Communal Development Board (*Consejo de Desarrollo*) responsible for local projects, and these boards are registered with the municipality, although these boards are in charge of infrastructure projects rather than services. Section 31 states that the boards shall be conformed as established in the Budget Law (*Ley Organica de Presupuesto*).

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?**

This depends on each municipality. The National Water Policy establishes as one of its main goals to contribute in health conditions, life quality and individual wellbeing by adjusting the costs of water.

For the OCSAS sustainability is ensured with tariffs that covers all operating and maintenance expenses. Section 72 of the Municipal Code establishes that each Municipality shall regulate public services in its territory and determine prices, which shall be determined based on operation and maintenance costs. The purpose is that users pay as low as possible while receiving the correct quality and quantity of the service.

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

[Please refer to answer to question 1. above.]

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

Please refer to answer to question 1. Above.

4. **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?**

Please refer to answer to question 1. above. Section 1.1.4 of the National Water Policy mentions the importance of consolidating systems to reduce the impact this has to human life and the economy. No additional legislation/policies were identified.

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

aquifers and lakes?

Guatemala's Constitution, which is the basis of all legislation, provides for the preservation of the environment and natural resources through the establishment of national parks and reserves, and the regulated exploitation of plant and animal life, land and water (Articles 64 and 97). In addition, the two main laws that implement what the Constitution mandates are (i) the Decree No. 68-1986 of Environmental Protection and Improvement Act (Ley de Protección y Mejoramiento del Medio Ambiente), which section 15 regulates the duties of the government to protect water and its quality and (ii) the Decree No. 4-1989 of Protected Areas Act (Ley de Areas Protegidas), which sets forth that its main purpose is to grant environmental processes, preserve biological diversity, defend and maintain the natural assets of the country and determine the protected areas.

J. Accountability/ Remedies and complaint procedures

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

Section 28 of the Constitution grants the right make filings and requests to the administration. Similarly, section 29 provides access to tribunals to enforce their rights. All claims related to the provision of services should be filed with the applicable municipality, given that according to the Health Code (*Codigo de Salud, Decreto 90-97*) municipalities are in charge of granting the service. There is no appellation system specifically for water claim, but all administrative decisions are appealable. Notwithstanding the foregoing, any breach of civil and criminal codes would permit to make the applicable filing with the competent tribunals.

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

There is no specific provision that provides for financial assistance for legal counsel in cases concerning water. Please note that Section 29 of the National Constitution, all citizens are granted access to justice. All legal claims must be filed with counsel, even in case of injunctions.

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

At a national level, Decree No. 90-2000 (*Ley de Creacion del Ministerio de Ambiente y Recursos Naturales*) created the MARN (*Ministerio de Ambiente y Recursos*

Naturales), which is the governmental authority in charge of monitoring these matters, as determined in section 29 bis of the Decree 114-97 (as amended by Decree No. 90-2000). At a municipal level, section 68 and sections 73 to 77 of the Municipal Code state that each municipality is in charge of monitoring providers and concessionaires.

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

[There is no appellation system specifically designed for water claims, but all administrative decisions are appealable as set.]

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

We have not identified any specific provision on this regard specifically addressed to the environment. However, section 5 of the Constitution grants the right to all persons to do what is not prohibited by law and section 35 of the Constitution grants the right of freedom of speech in addition to general regulations as a result of the various conventions to which the country is a party.

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

Please refer to answer to question 5. above.

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)?**

[Guatemala is a dualist State. Human rights law, treaties and conventions accepted and ratified by Guatemala have precedence over domestic law (Art. 46 Constitution), but they do have to be ratified and integrated into the national legal regime first.]

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

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

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

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

Yes. For example, Guatemala ratified the American Convention on Human Rights, which provides for an Inter-American justice system, granting jurisdiction to the Inter-American Court of Human rights. Also, within the Universal system for the protection of human rights, Guatemala has ratified human rights treaties containing provisions to allow for State parties to complain to the relevant treaty body (i.e., a committee) about alleged

violations of the treaty by another State party, such as the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, International Covenant on Economic, Social and Cultural Rights, and Convention on the Rights of Persons with Disabilities, among others. For details about the signature and ratification of these instruments, please see above Section I.B.

B. Remedies and complaint procedures/accountability

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

[Complaints must be filed in the municipality, which is the service provider and responsible for the adequate supply of water under the Health Code (Articles 78-111) and the Municipal Code (Article 72), and the Environmental Protection and Improvement Act (Art. 8, 15), and presented by the affected user or the property owner. There is always the possibility of filing an appeal for *amparo*, under the proceeding provided by the *Amparo* Act.

When the service is provided by the Communitarian Organization for the supply of Water and Sanitation (OCSA), especially in rural areas, complaints are filed by users and before the local committee.]

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

[There is no specific information in this regard, but in a general way it can be said that the administrative procedure in Guatemala respects the human rights principles, as it is bound by the Constitution of the Republic, which is prevalent with respect to any other law. In addition to that, the Contentious Administrative Act, Decree 119-96, provides in its Article 2 that any administrative proceeding must observe the

right to defense, and ensure the speed, simplicity and efficiency of the procedure.]

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

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

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

The Ministry of Health, and the Ministry of Environment, under Article 194 f) of the Constitution, the Executive Organ Act, Decree 114-97, Article 29 bis and 39, Governmental Agreement 137-2016, Art. 91 and ss, and Government Agreement 73-2021.

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

[There is no specific procedure against water and sanitation decisions, but normally all final administrative decisions in Guatemala can be objected via all “*recursos*” provided by the civil procedure under the conditions imposed in Decree 119-96, Art. 27. Community managers do not have any formal rules governing them.]

9. What remedies are available at an administrative level?

When the service provider is an OCSA, it should be referred to the management committee. If it is the municipality, there is a lack of information in this regard, based on the Health Code (Articles 78-111) the Municipal Code (Article 72), and the Environmental Protection and Improvement Act (Art. 8, 15). However, by way of example, the model of contracts between consumers and the company providing the service (Empagua) in Guatemala City provides that all disputes are submitted to the administrative authority. The parties

may decide in the contract what to do if they disagree with the decision made by the administrative authority.

10. Who monitors these administrative level bodies?

The Ministry of Health, and the Ministry of Environment, under Article 194 f) of the Constitution, the Executive Organ Act, Decree 114-97, Article 29 bis and 39, Governmental Agreement 137-2016, Art. 91 and ss, and Government Agreement 73-2021.

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

[No. Please refer above.]

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

[Yes. The Guatemalan judiciary sometimes tries to fill legislative gaps (for example, see Constitutional Court judgment 2810-2010 on DHAS), in which the Court provided regarding the right to water that it is a public domain good, unalterable and imprescriptible, and its use must be carried out “efficiently, observing in its use the social interest of in accordance with article 127 of the Political Constitution of the Republic of Guatemala”, and “as recently recognized by the United Nations General Assembly in resolution of July eighteen, two thousand and ten (Sixty-fourth Period of Sessions) by declaring the right to drinking water and sanitation as a right human, is one of the basic and essential rights that assists the human person to live in a healthy environment”.]

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?

[Under the Constitution, art. 276, and the *Amparo* Act, Courts have jurisdiction to hear cases of this type through *amparo* actions, and for the protection of such rights as fundamental rights judicially and constitutionally recognized. Take for

instance, decision on environmental rights, such as Case 3102-2009⁵⁷, the Constitutional Court highlighted the scope of the human right to an adequate and safe environment; Case 3095-2006 and 2007⁵⁸, providing that the State has the obligation to assure the possibility to breath clean air, and drink non-polluted water; or Case 4617-2013, 2015⁵⁹ providing that any use of the water resources must be consistent with the human right to water.]

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

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

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

[Under Articles 275 and 276 of the Constitution, as well as under the *Amparo* Act, an *Amparo* writ is open to the public to challenge any acts of authorities that violate any of the fundamental rights provided in the Constitution. It can be filed even before a violation has occurred. However, in order to file an *amparo* writ, the claimant must have the support of a lawyer. In addition, citizens can submit separate writs of *Amparo* in response to a single rights violation, in which case the court will study them in a consolidated matter, and will issue a single legal judgment. Moreover, there is a right to a public hearing for the parties to present their arguments. Constitutional Court hears the *amparo* only under review as second or third instance. Finally, The Court of Constitutionality recognizes remedies of *amparo* against judicial rulings, except the decisions issued by the Supreme Court.]

15. **Is there a Constitutional /Supreme Court? Are cases heard as the last appeal or may**

cases be referred directly?

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

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

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

[Yes. Although there are not many cases in which the Constitutional Court applied international human rights law in specific connection with the environment, there is a tendency to protect it, and to act in accordance with the national and international law that regulates it. For instance, in case 941-2005 “*Monumento Natural Semuc Champey*”, the Court found that the collective interest is prevalent to the private interest with respect to the sustainable development of the national natural resources., and declared an area of property a protected natural area. Also, in case 1491 of 2007, the Court applied international law and principles to declared the lack of constitutionality of several provisions of the Mining Code. This, based on (i) the prevalence of the collective good over the interest of the individual; (ii) the rights to a healthy, adequate and balanced environment as a priority for life and health; and (iii) Guatemala’s compliance with the international obligations adopted regarding the protection of the environment, the natural and cultural resources.]

⁵⁷ Guatemalan Constitutional Court, Case 3102-2009, Decision of August 11 of 2010.

⁵⁸ Guatemalan Constitutional Court, Case 3095-2006,

Decision of April 17, 2007.

⁵⁹ Guatemalan Constitutional Court, Case 4617-2013, 2015, Decision of September 28, 2015.

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

[In Spanish. However, the use of a translator is explicitly contemplated in criminal proceedings⁶⁰. In 2013 the judicial agency, through the Indigenous Affairs Unit, created the Interpretation Centre, which advises and facilitates translation in judicial proceedings.]

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

Environmental NGOs are active in Guatemala promoting their environmental agendas, not only before legislative and regulatory authorities, but also on the judicial front. There have been collaborations between government, industry and NGOs that have resulted in the advancement of issues related to protected areas, particularly via *amicus curiae* in cases before the Constitutional Court, as per Article 28 of the Constitution.

C. National human rights institutions

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

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

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

- 2. Does the mandate of the national human rights institution cover the entire human rights framework, including economic,**

social and cultural rights?

[Yes. Pursuant to Article 276 of the Constitution gives the Ombudsman the authority to supervise government administration, promote respect for human rights by the administration; investigate and denounce administrative actions that are damaging to the interest of persons; investigate complaints of human rights violations; make private or public recommendations and censor administrative actions; and promote judicial or administrative remedies or actions when appropriate.]

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

Yes, under Article 175 c) and f), this institution receives complaints of violations of all human rights, including water, sanitation and a healthy environment.

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

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

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

Under Article 275, e), the Ombudsman may issue a public censure resolution against the material and/or intellectual persons responsible for the violation of human rights (it is not binding).

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

[The institution would be entitled to file *amparo* claims before the judiciary under Article 275, which provides – among the powers of such an institution – in a general way in paragraph (f): *“To promote judicial or*

⁶⁰ Constitution of Guatemala, Arts. 58, 66, 143; Procedural

Criminal Code, Art. 142; Decreto número 17-73, 202bis;

administrative actions or remedies, where appropriate.”]

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

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

D. Regulation

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

2. These are the municipalities and the State through the Ministry of Health, INFOM (Municipal Development Institute) in coordination with the Ministry of Health, the Ministry of Environment and Natural Resources and SEGEPLAN, which is responsible for government planning of public services⁶¹.]

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

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

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

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

⁶¹ Estrategia Nacional de Gestión Integrada de Recursos Hídricos (SEGEPLAN); “Plan de Trabajo

Estratégico del Gabinete Específico del Agua” (GEA, 2009).

