
GOOD PRACTICES IN ACCESS TO WATER AND SANITATION IN CENTRAL AMERICA:

Lessons from Guatemala, Honduras, El Salvador and
Nicaragua



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FOREWORD

The purpose of this study is to share experiences of good practices towards the realisation of the human rights to water and sanitation in four States of Central America: El Salvador, Guatemala, Honduras and Nicaragua. Such good practices have been, and are still being, implemented by different stakeholders in the water and sanitation sector. They range from NHRIs to civil members of a particular community. They are based on the information gathered through a workshop on “The realisation of the human rights to water and sanitation and SDG 6 in Central America”, which was organised by WaterLex in El Salvador between 24 and 26 April 2018 (The Workshop). For methodological reasons, the study has been divided by State. A brief introduction to the normative and institutional framework of each State is thereby provided, followed by the specific good practices of its different pertinent actors in water and sanitation provision.

This work adopts a broad approach to the term “practice” as encompassing any activity which promotes the full enjoyment of human rights in the field of water and sanitation or the comprehension of its rights and obligations in a manner compatible with the fundamental human rights principles. Hence, it may include very diverse practices such as legal and policy frameworks as well as implementation and accountability mechanisms. As such, a good practice can be expressed in terms of international treaties, legislation (at national, sub-national and local levels), regulations, policies, strategies, institutional frameworks, planning and coordination procedures, international cooperation policies, programmes, projects, campaigns, subsidies, financing mechanisms, tariff structures, operators’ contracts, complaints procedures and judicial and quasi-judicial decisions^a. They do not necessarily need to be best practices but good practices. Whereas they may not yet have achieved the goal to ensure universal, safe, affordable and acceptable access to water and sanitation, they constitute a step forward in that direction.

It is worth noting that the participants of The Workshop identified their own good practices, based on the normative and cross-cutting criteria, which are co-substantial to the realisation of the human rights to water and sanitation.

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^a Cf. Paragraph 10 of the report of the former Special Rapporteur. UNITED NATIONS, A/HRC/15/31/Add. 1, op. cit, p. 5.



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(IMAGE 1)

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GENERAL REMARKS AND SCOPE OF THE WORK

Whilst Central America possesses enough hydrological capacity to cover its vital needs, there is still at present a strong deficit in general access to water¹. In all of these countries, every change of government results in the change of all the authorities, including those responsible for water and sanitation provision and water management. The lack of continuity in the management structure in turn hinders real access to water and sanitation.

Despite those political conjectures and the macroeconomic pressures of a still unstable global environment, there has been significant progress in the drinking water and sanitation provision sector in the last years in the region. In this respect, all the Central American States have reported that they have met the Millennium Development Goals with regards to water provision.

The Human Rights to Water and Sanitation (HRWS) have been expressly recognized both as a fundamental human right and a legal norm by virtue of United Nations General Assembly Resolution 64/292, of 29 July 2010². Within the Inter-American system, the Organization of American States' General Assembly Resolution 2349 (XXXVII-O/07) declares that access to safe drinking water and basic sanitation is indispensable for a life with human dignity³. Additionally, the Inter American Court of Human Rights has analysed and affirmed the Human Right to Water on numerous occasions⁴.

This resolution can be considered as a source of International Law since it recognizes a right to all individuals, empowering them with a certain capacity and the corresponding obligation of the States composing the international community. Only certain resolutions of an international organization are sources of international legal norms. In order to be so, they must: (a) Amount to an expression of will of an international organization with sufficient capacity. The organization in question would be endowed with such capacity by virtue of its constituent treaty or statute; (b) The expression of will must not be conditioned to the consent of another subject of International Law. This means that it does not depend on the consent of the Member States of the organization; (c) It must tend to create a legal norm within the international legal order. Hence, The right to water and sanitation is thus a legally binding norm for all Member States of the United Nations.

Until now, the only multilateral agreement recognizing this right at a regional level is the 2006 Central American Water Covenant, signed between Belize, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, and

1 Cf. GWP, *La situación de los recursos hídricos en Centroamérica; hacia una gestión integrada*, 2017, p. 7, available at: https://www.gwp.org/globalassets/global/gwp-cam_files/situacion-de-los-recursos-hidricos_fin.pdf

2 e.g. practically the entire international community. Cf. BARBERIS, Julio, "Les résolutions des organisations internationales en tant que source du droit de gens", in: BEYERLIN, U. et al. (eds.), *Recht zwischen Umbruch und Bewahrung. Festschrift für Rudolf Bernhardt*, Heidelberg, Springer, 1995, pp. 21-39 and pp. 34-35 in particular. See also BARBERIS, Julio, *Formación del derecho internacional actual*, Buenos Aires, Ábaco, 1994, pp. 159-167.

3 <http://www.oas.org/37ag/docs/eng/2349.doc>

4 See especially I/A Court H.R., *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, p. 83, paragraph 164; I/A Court H.R., *Case of the Xákmok Kásek Indigenous Community. v. Paraguay*. Merits, Reparations and Costs. Judgment of August 24, 2010. Series C No. 214, pp. 44-45, paragraphs 195-196; I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, pp. 85-86, paragraph 167 and I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 218, p. 65, paragraph 215.

Panama. Article 1 of this treaty expressly declares that water in all its forms belongs to the public domain and its access is an inalienable and fundamental human right. It establishes among its objectives “advance in the achievement of providing access to drinking water and basic sanitation services to all the neglected population from Central America and Dominican Republic, thus contributing to the fulfilment of the Millennium Goals as well as of those contained in the national development plans”⁵. However, this treaty has not been ratified by the States signatories; therefore, it has not yet entered into force. Whilst its provisions are not yet binding norms upon its States Parties, the latter must refrain from acts going counter to the object and purpose of the treaty⁶.

Although some of these States recognize the HRWS at a national level, mainly in their respective Constitutions, there is still a long road ahead until its effective local implementation⁷. Since most Constitutions are quite recent, the pertinent national and local regulation as well as the institutional implementation of universal access to water and sanitation within any of these countries will require a certain lapse of time.

In this respect, it has been put forward that water management measures must take into account the various stakeholders involved in the area, and the area itself with its geological and hydrological features. Water is not only a resource but also a natural resource: an element of Nature⁸. Strengthening of the institutional framework is crucial in this regard. Investments in the sector of water and sanitation should guarantee both technical training and coordination among the different institutions working at a national and local level. This promotes a more efficient rendering of the service, a systemic approach and a better management of the available water resources. Along this line, works performed in the area of sanitation, mainly sewage systems, should go hand in hand with those destined to safe drinking water provision. Sadly, this still constitutes a major challenge within the region.

Undoubtedly, Central American States face different realities and challenges with respect to water management and water and sanitation provision. Whilst some countries possess a more developed normative order, others benefit from a stronger institutional framework. There are also cases where there is neither a sufficiently strong normative apparatus, nor an institutional one in the water and sanitation sector. And cases where both the normative regime and the institutions applying them are more evolved. Given these diverse normative and institutional scenarios, spontaneous grass-root experiences have in practice made up for the above-mentioned limitations through community joint efforts and actions of National Human Rights Institutions (NHRIs) to secure the provision of safe drinking water and sanitation, as will be explained below.

General Comment No 15 of the Committee on Economic, Social and Cultural Rights (CESCR) on the right to water defines this right as entitling everyone “to sufficient, safe, accessible, physically accessible and affordable water for personal and domestic uses”⁹. This document has played a crucial role in the emergence of the Human Right to Water, and that of Sanitation, and in its further development¹⁰. The above-referred criteria should be applied

5 Article 2, paragraph (b) of the Covenant.

6 Cf. Article 18, paragraph a) of the Vienna Convention on the Law of Treaties between States, *United Nations Treaty Series* (U.N.T.S), Vol. 1155, p. 336.

7 QUEROL, María, “The Human Right to Water and Sanitation: The Challenges of its Application in Latin America”, in: REY CARO, Ernesto et al. (eds.), *Estudios de derecho internacional en homenaje a la Dra. Zlata Drnas de Clement*, Córdoba, 2014, p. 785.

8 BERTI SUMAN, Anna, *The Human Right to Water in Latin America: Challenges to its Implementation and Contribution to the Concept*, International Water Law Series, Leiden, Brill, p. 7.

9 UNITED NATIONS, E/C.12/2002/11, p. 2, paragraph 2.

10 Cf. WINKLER, Inga T., *The Human Right to Water: Significance, Legal Status and Implications for Water Allocation*, Oxford, Hart Publishing Ltd, 2012, p. 38.

in all circumstances in the provision of water and sanitation services: availability, quality, acceptability, accessibility, affordability, non-discrimination, participation, accountability, impact and sustainability¹¹. The former five are considered normative criteria since they are provided by the normative content of the HRWS. All the latter are qualified as cross-cutting because they are based on human rights principles and more general human rights considerations¹².

Availability requires a sufficient number of sanitation facilities with associated services in order to avoid excessively long waiting periods. Water must be available continuously, and in a sufficient quantity, to satisfy drinkable water and personal hygiene requirements as well as other personal domestic uses such as cooking or doing the laundry, among other activities. Whilst it is not possible to determine with precision the necessary quantity, international recommendations and calculations provide a general orientation to determine whether the criterion in question is being met in practice. Along this line, it has been put forward that all domestic necessities can be covered with 100 litres per inhabitant daily¹³.

Water and sanitation services must be safe from a hygienic standpoint. In this regard, it is important to avoid the contact of people and animals, including insects, with human excreta. It is crucial to ensure access to safe water and soap for hand-washing in facilities. And above all, the quality of the water must be such that it does not compromise human health¹⁴.

With reference to acceptability, the criteria to be taken into account may vary among different cultures. It could be necessary to provide separate facilities for men and women at public places. Ultimately, the colour, smell and taste of water should be acceptable.

Water and sanitation facilities should be physically accessible to everyone within the premises of each household, academic institution, public or workplaces. In addition, the use of such facilities, must have an affordable price for everyone. The Special Rapporteur on the rights to water and sanitation stresses that affordability, as a human rights criterion, requires that the use of water, sanitation, and hygiene facilities and services is accessible at a price that is affordable to all people. Paying for these services must not limit people's capacity to acquire other basic goods and services guaranteed by human rights, such as food, housing, health, clothing and education¹⁵.

Concerning cross-cutting criteria, they are applicable to every human right since they ensure the inclusion of those who are marginalized and excluded within its scope of protection. Non-discrimination aims to prevent or correct situations of denial or restricted access to water sources and sanitation facilities to a

11 For a more detailed explanation of these criteria, see WATERLEX, National Human Rights Institutions' Roles in Achieving Human Rights-based Water Governance, Geneva, 2015, pp. 21-48, available at: <https://www.waterlex.org/new/wp-content/uploads/2016/01/NHRI-Training-Manual-January-2016.pdf>

12 *Ibid.*, paragraph 11, p. 5.

13 Cf. HOWARD, Guy & BARTRAM, Jamie, *Domestic Water Quantity, Service Level and Health*, Geneva, OMS, 2007, p. 22. During disaster situations, on the contrary, the fixed absolute minimum would be of 15 litres per capita daily. Cf. *Humanitarian Charter and Minimum Standards in Humanitarian Response*, Geneva, The Sphere Project, 2011, p. 98. Nevertheless, this number would not cover hygiene needs, which entail many risks to health.

14 The WHO's Guidelines for Safe Water Quality define safe water as that which "does not represent any significant risk to health over a lifetime of consumption, including different sensitivities that may occur between life stages". WHO, *Guidelines for Drinking-water Quality*, Vol. 1, Geneva, WHO, 2008, p. 1.

15 UNITED NATIONS, A/HRC/30/39, p. 8.

certain group of people due to their colour, sex, language, ethnicity, nationality or other reasons¹⁶.

As stated in the UN General Assembly's Declaration on the Right to Development (1986), participation must be "active, free and meaningful"¹⁷ going beyond mere consultation and rendering of information. It requires a real and actual possibility of expressing concerns and demands and influence the decision-making processes. It is vital that all the groups, people and interested communities are represented as such.

Implementation of the right to water and sanitation presupposes accountability, meaning the determination of the responsibility of those who violate this right and demand of its compliance. Judicial procedures must therefore be accessible, affordable, timely, and effective¹⁸. There are also quasi-judicial mechanisms such as national human rights institutions and the pertinent organs of most human rights treaties. The 2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights establishes the competence of the Committee to receive and consider communications from individuals claiming that their rights under the Covenant have been violated. The Committee may also undertake inquiries on grave or systematic violations of any of the economic, social and cultural rights set forth in the Covenant, and consider inter-state complaints¹⁹. Hence, the right to water and sanitation would be included amongst these rights.

The sectors of water and sanitation are filled with good intentions. However, it is also necessary to supply the necessary means in order to guarantee the effective enjoyment of the right to water and sanitation. More often than not, the high costs of maintaining certain water and sanitation facilities result in their discontinued use. To provide an example, works in the sector such as building latrines may be rendered completely useless if they are not accompanied by awareness-raising campaigns among the population involved. For instance, if the people do not understand the effects and benefits of access to safe-drinking water and safe sanitation, they might not be ready to change certain habits such as open defecation.

Lastly, the realization of the rights to water and sanitation must ensure that there is "sufficient and safe water for present and future generations"²⁰. Sustainability calls for specific programmes to address depletion of groundwater resources due to over-extraction or diversion, reduction of watershed contamination, monitoring of water reserves, and assessment of the impact of climate change phenomena on water availability and quality²¹. From an economic viewpoint, sustainable uses must make sure that the poorest segments of society can still afford water and sanitation services. Also, a sustainable use foresees the continuance and maintenance of the provision of services after a certain water or sanitation project has been terminated. In this respect, capacity building of the local community and/or the local private sector may

16 Cf. General Comment No 20 of the Committee on non-discrimination and economic, social and cultural rights, which defines discrimination as "any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights". UNITED NATIONS, E/C.12/GC/20, pp. 9-11, paragraphs 29, 33, and 35.

17 UNITED NATIONS, A/RES/41/128, annex, article 2, paragraph 3.

18 Cf. General Comment No 15, E/C.12/2002/11, p. 17, paragraph 55.

19 The Optional Protocol was adopted on 10 December 2008 and entered into force on 5 May 2013. UNITED NATIONS, A/RES/63/117, Annex, articles 2 and 10.

20 General Comment No 15, E/C.12/2002/11, *op. cit.*, p. 10, paragraph 28.

21 On the relationship between sustainability and the human right to water see BROWN WEISS, Edith, "The Evolution of International Water Law", in: *Recueil des Cours de l'Académie de Droit International*, Vol. 331 (2007), pp. 311-323.

prove very effective.

For the purposes of this work, a good practice is one which meets at least two of the normative criteria above described and simultaneously does not run counter to any of the cross-cutting criteria. In addition, it is important to stress that in all of the good practices, which will be hereby described, it was the actors themselves who developed mechanisms within their scope of work to ensure access to water and sanitation in the light of their respective realities and junctures.

In the words of the former Special Rapporteur on the subject: “[w]e are used to concentrating on what is still wrong, on the shortfalls in Governmental policies and actions, and less on the good steps that are already being taken to implement human rights”²². Let us then focus on the good steps that are being taken in El Salvador, Guatemala, Honduras, and Nicaragua to implement the human rights to water and sanitation.

22 DE ALBUQUERQUE, Catarina, *On the Right Track: Good practices in realising the rights to water and sanitation*, Lisbon, Textype, 2012, p. 11: available at: http://www.ohchr.org/Documents/Issues/Water/BookonGoodPractices_en.pdf



(IMAGE 2)

EL SALVADOR

Normative and Institutional Framework

El Salvador shares the Lempa River Basin with Guatemala and Honduras, the Paz River Basin with Guatemala and the Goascorán River Basin with Honduras. However, this State has not signed any international agreement regulating the management and protection of its transboundary freshwater courses.

From an international normative standpoint, El Salvador is a State Party to several international human rights instruments, which impose legal obligations relating to the Human Right to Life and the HRWS. This country has ratified the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities. In addition, it has ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. By virtue of such a legal instrument, individuals can submit cases of alleged violations of their human rights to the Committee on Economic, Social and Cultural Rights, after having exhausted all available domestic remedies.

From a regional standpoint, El Salvador is a State Party to the San José Pact (the American Convention on Human Rights) and to its Additional Protocol on Economic, Social and Cultural Rights (San Salvador Protocol). Whilst the HRWS are not expressly recognised in either of those agreements, they are implicitly. Their realisation is a necessary precondition for the enjoyment of those human rights which are in fact recognised by the Pact: the right to life, the right to a decent standard of living, the right to health, the right to education, the right to proper housing and the right to food. Within the Central American system, El Salvador has also signed the Central American Water Covenant on 11 August 2006, which expressly stipulates: “Water in all its forms is a public domain and its access is a fundamental and inalienable human right”²³. However, such treaty has not yet been ratified and is therefore not in force. Still, by virtue of the application of Article 18, paragraph a) of the Vienna Convention on the Law of Treaties, A State is obliged to refrain from acts, which would defeat the object and purpose of a treaty when it has signed it²⁴.

From a domestic perspective, none of the international norms agreed upon, and thereby binding upon El Salvador, have been incorporated into its national legislation. Although efforts are being made to reform Article 69 of the Political Constitution to include the HRWS²⁵, at present it contains no provision on such rights. Neither is there a general law on freshwater resources except for a project that is being discussed at the Legislative Assembly since 2012. The regulatory framework existing in El Salvador on water and sanitation provision is quite fragmented and none of the norms in force make express reference to the

23 “El agua en todas sus formas es un bien de dominio público y su acceso es un derecho humano fundamental e inalienable”, Principio 1, *Convenio Centroamericano del Agua*, 11 August 2006, available at: http://forodelagua.org.sv/sites/default/files/documentos/2013/01/convenio_centroamericano_del_agua_jeb.pdf

24 *United Nations Treaty Series* (U.N.T.S), Vol. 1155, p. 336.

25 See *infra.*, p. 21 of the present study.

HRWS²⁶. It could be argued, though, that these human rights are implicitly included both in the Law on the Environment and in the Health Code. Article 49 of the Law of the Environment states that the Ministry of Environment shall be responsible for supervising water quality and availability. A special regulation shall contain the technical norms to that effect taking into account certain criteria, which include guaranteeing drinking water availability, quantity and quality, the use of appropriate water management practices, and respect of environmental norms among others²⁷. Similarly, by virtue of Article 61 of the Health Code, cities and urban settlements shall be endowed with drinking water services and when there is no such service, the State will provide it within its resources through its pertinent specialised institutions²⁸.

In addition, Salvadorian constitutional case law has explicitly recognised the HRWS, based upon the interpretation of Articles 2, 65 and 117 of the Political Constitution²⁹.

El Salvador lacks an institutional framework ensuring a coordinated and adequate management of its water resources. With regard to freshwater management, both the Ministry of Agriculture and Livestock and that of Environment and Natural Resources (MARN) manage water basins at a national level. Locally, there are approximately 40 institutions working on basin protection. The best known are the Water Basins Association of El Salvador and the Hydroelectrical Basins Association of El Salvador.

The National Water Mains and Sewers Administration is the governing body and main water and sanitation service provider in urban areas. It sets its own quality of service standards and can provide licenses to decentralised water and sanitation service providers. Whereas the Ministry of Health is responsible for monitoring the quality of drinking water, the Ministry of the Environment and Natural Resources is responsible for the management of water resources. In turn, the Ministry of Economics approves modifications to water tariffs. Hence, there is no autonomous regulatory agency in El Salvador for the water and sanitation provision sector. The regulatory framework of El Salvador could thus be categorised as one of self-regulation, whereby public service providers regulate their own activities, set tariffs and quality standards and monitor their own performance³⁰.

26 The mentioned norms are: the Law for the Environment (1998) and its regulations, Norm on Waste Waters Dumped onto a Recipient Body (2009), Irrigation and Drainage Law (1972) and its regulation, Forestry Law (2002) and its regulation, the Health Code (1988), Technical Norm on Water Quality (for human consumption), Law of the National Mains and Sewers Administration (1961), Law of the Hydroelectric Executive Commission of the Lempa River (1948), Mining Law (1995), the Municipal Code (1986), Law on the Integrated Freshwater Resources Management (1981).

27 Article 49 states: "El Ministerio será responsable de supervisar la disponibilidad y la calidad del agua. Un reglamento especial contendrá las normas técnicas para tal efecto, tomando en consideración los siguientes criterios básicos: a) Garantizar, con la participación de los usuarios, la disponibilidad, cantidad y calidad del agua para el consumo humano y otros usos, mediante los estudios y las directrices necesarias; b) Procurar que los habitantes, utilicen prácticas correctas en el uso y disposición del recurso hídrico. c) Asegurar que la calidad del agua se mantenga dentro de los niveles establecidos en las normas técnicas de calidad ambiental; d) Garantizar que todos los vertidos de sustancias contaminantes sean tratados previamente por parte de quien los ocasionare; y e) Vigilar que en toda actividad de reutilización de aguas residuales, se cuente con el Permiso Ambiental correspondiente". These criteria have been duly considered Article 69 of the General Regulation of the Law on the Environment.

28 "Las ciudades y poblaciones urbanas deberán estar dotadas de servicio de agua potable, y cuando no los tengan, el Estado; de acuerdo a sus recursos y conforme a los planes respectivos, se los proveerá por medio de los organismos especializados correspondientes". Similarly, Article 63 of the same legal instrument stipulates that water used for human consumption shall have the sanitary quality that the Ministry of Health shall deem good and will enforce quality norms in every building, where water is used for drinking purposes.

29 See judgment on the proceeding pertaining to constitutional protections 513-2012 of the Constitutional Chamber of El Salvador Supreme Court of Justice.

30 Cf. Report of the Special Rapporteur on the human rights to water and sanitation on regulation, 19 July 2017. UNITED NATIONS, *A/HRC/36/45*, p. 9, paragraph 30.

The National Water Mains and Sewers Administration provides services to approximately 64 % of the country's population and to some 90% of the urban population, with a total of approximately 800,000 (domestic) users in 156 of the 262 towns in El Salvador³¹. In addition, El Salvador has 2,323 rural water networks that are not interconnected, not linked to the National Water Mains and Sewers Administration, and managed by community associations: rural water management councils, ADESCOs or water committees and municipal authorities³².

The water administrative councils (or rural water boards – *Juntas Administradoras de Acueductos Rurales*), are autonomous community associations, which are organised to provide drinking water to rural communities. They work with the Health Ministry and are regulated by virtue of the Executive Decree 29/1986. They do not manage sanitation services. Whilst these systems are non-profit making, water administrative councils collect fees to cover operating and maintenance costs. It is worth noting that the absence of State support jeopardises the supply of clean drinking water in rural areas.

Similarly, ADESCOs are non-profit making organisations which work with municipalities to promote and implement community projects to improve living conditions of local populations in areas such as health, education, water and infrastructure. They are established by municipal ordinances and are regulated by the Municipal Code of El Salvador.

Finally, the Social Investment Local Development Fund (FISDL) promotes local development and the participation of communities, private companies and governmental authorities to finance social and economic infrastructure projects.

Good Practices in Water and Sanitation in El Salvador

Administrative Water Councils of Nahuizalco (*Juntas Administradoras de Agua de Nahuizalco*) and the Setting of a Fixed Water Tariff

The *Juntas Administradoras de Agua* (Administrative Water Councils) seek to ensure access to water to the entire population of four humble communities of Nahuizalco, a municipality in the Sonsonate department³³ of a rural area in Western El Salvador, through a fixed tariff structure. In order to achieve this goal, they have been working in collaboration with the Community Development Associations (*Asociaciones de Desarrollo Comunitario –ADESCO*) and Non-Governmental Organisations (NGOs) such as ARUMES (*Asociación Red Uniendo Manos El Salvador*).

31 Cf. National Water Mains and Sewers Administration, *Actualización de Subsidios (Update on subsidies)*, January 2016.

32 National Water Mains and Sewers Administration, *Diagnóstico de los sistemas de abastecimiento de agua potable y saneamiento no administrados por ANDA en El Salvador, (Diagnosis of water supply and sanitation networks not managed by ANDA in El Salvador)*, 2015.

33 The Sonsonate department is composed of 16 municipalities. The municipality of Nahuizalco is formed by the following cantons: Anal Abajo, Anal Arriba, Cusamaluco, El Arenal, El Carrizal, El Canelo, El Cerrito, El Chaparrón, La Guacamaya, La Pushtán, Sabana Grande, Sabana San Juan Abajo, Sabana San Juan Arriba, Sisimitepet, Tajcuilujlan.

Each community or canton has an administrative water council with its own directive board. ADESCOs in El Salvador are legally constituted organizations composed of a group of citizens of a certain community, which aim to promote its development. They are expressly overseen by the Municipal Code of El Salvador³⁴ and function at a local level throughout the entire country. They partner with each municipality in promoting and implementing projects for the wellbeing of the communities which they serve. The efforts of ADESCOs are primarily focused on improving the living conditions of the communities in which they operate in a variety of areas such as health, education, water, and infrastructure. They are composed of a minimum of 25 members and they mediate between the citizens and the authorities.

The agreement on a fixed rate based on the capability to pay of those citizens who are in more vulnerable situations, benefits the entire community without discrimination, thus leaving no human being behind in its access to drinking water and sanitation.

Water provision flow is based on the size of the population of each community and on whether they have access to a freshwater source. According to a census conducted in the micro-region of Juaya, in the Sononate department, 500 families reside in the canton of El Cerrito, 800 families in Sisimitepet, 500 more families live in Pushtán, and 900 families in El Carrizal³⁵. The fixed tariff enables these families to enjoy 24 hours of uninterrupted water provision, the volume of which varies depending on the climate conditions of the area (mainly the precipitation and the state of the freshwater sources³⁶). Water is collected at those sources and then stored in reservoirs, from where it is distributed to the communities. Each household possesses a water tank of approximately one cubic metre. Plumbers, who are employees of the Administrative Water Council, chlorinate the water twice a day, more specifically at 5 a.m. and at 2 p.m. respectively. At present, households from the above-mentioned cantons are paying from USD 2,50 up to a maximum of USD 4,50 per month for their drinking water, depending on the canton where they are situated. Such practice is affordable for these families.

With regard to sanitation, the Community Health Unit of the municipality of Nahuizalco is in charge of environmental sanitation through the construction of latrines for each household in the communities under consideration.

Both the Administrative Water Councils and promoters of the Health Unit of the Nahuizalco municipality measure the water quality and verify if it is duly chlorinated. They also take samples from the cesspools on a daily basis to check if they are filtering grey waters. In so doing, they report to the health inspector of the municipality. In turn, the Administrative Water Councils monitor this practice to ensure compliance of the municipality to its responsibilities. In addition, each family needs to clean its own cesspool every four months. Thus, water quality is ensured.

34 Cf. *Código Municipal de San Salvador*, Articles 118 -125.

35 *Evaluación de Amenazas Naturales y Propuesta de Plan Municipal de Reducción de Riesgo en el Municipio de Salcoatitán, Microregión de Juaya, Sononate*, available at: <http://portafolio.snet.gob.sv/digitalizacion/pdf/spa/doc00037/doc00037-contenido.pdf>

36 It is also a fact that, during the drier months of the year, some households may have as little as 4 hours of access to drinking water per day.

The above-mentioned good practice does work: not only does it guarantee access to drinking water to all of the citizens of the community, it also prevents and has in fact decreased water-related diseases in the region.

Furthermore, sustainability is ensured in more ways than one. On the one hand, the practice described is sustainable from a financial standpoint since it is the same citizens within each community who are called upon to fix the pipelines in case of rupture. It is also environmentally sustainable when the Water Administrative Council invests in reforestation in the region.

It is interesting to notice that the Water Administrative Councils gather twice a year to account to all the citizens of the community. Every two years, these beneficiaries can also propose candidates to be elected at the directive board. Since only three of the six members of the board leave their positions, continuity in management is thereby secured. Such practice translates into good administration. This is a clear case in which civil participation lies at the core of the good practice, safeguarding not only good functionality but also its transparency.

Community Water Management and Water Provision Through Well-Extraction in Izalco

Similarly to the first good practice, this one is implemented through a local Administrative Water Council and takes place within the boundaries of the Sonsonate department. In this case, the Anglican Church teamed up with the local ADESCO, the municipality of Izalco, and the citizens of the San Marcos community in managing their freshwater resources to ensure drinking water provision to its 200 inhabitants, approximately 40 families.

Following the earthquake of 2001, and its devastating aftermath in most of the country, the Anglican Church launched a project in 2005 to build houses for the most affected ones. As a result, the community of San Marcos was created in the canton of Tapalshucut, in the municipality of Izalco. Naturally, the next challenge became drinking water provision.

Whilst access to freshwater sources was not a problem in itself, its good governance was crucial in order to secure adequate drinking water provision to the entire population. Despite the abundant hydrological capacity of the Bandera River basin, where the San Marcos community is situated, its citizens were aware that only through an efficient management, treatment, and operation of the extraction well constructed in 2013, would they actually have access to sufficient drinking water in their respective homes. In line with this necessity, the Anglican Church, together with the local ADESCO and the citizens of San Marcos, formed the directive board of the local Administrative Water Council.

Accordingly, the well is cleaned fortnightly and its water is periodically chlorinated, which translates to a sustainable practice guaranteeing good water quality. Water accessibility is procured through pipelines so that the citizens of San Marcos can fill their water tanks and barrels in each household.



An affordable water tariff is fixed each month based primarily upon the cost of the electricity used for water pumping. The maintenance cost of the extraction well and the cost of chlorine are also taken into consideration. Failure to duly pay this tariff may result in interruption of the service, unless the family in question proves that they are unable to afford it. In such cases, the beneficiaries can pay in kind with their work: cleaning the well, for example.

As in the case of Nahuizalco *supra* described, this good practice, which has been implemented for the past five years, benefits from transparency, fosters responsibility amongst all the actors involved, and includes public participation. It is based upon civil participation.

Capacity Building and Training in HRWS in the Chalatenango Department

It cannot be disputed, at present, that local non-governmental organisations play a key role in guaranteeing the realisation of the HRWS. A good example in this respect is provided by PROVIDA, a Salvadorian NGO operating across all departments of the country. PROVIDA provides capacity building in primary health care, water governance and access to drinking water and risk management.

Similarly, an interesting practice has been fostered in several municipalities of the Chalatenango department, in the North of El Salvador, with very good results. In conjunction with the municipalities of Chalatenango, ADESCOs, educational centres and the Ministry of Health and that of Environment and Natural Resources respectively, PROVIDA has facilitated the creation of the Chalatenango Water Network. The mission of the network is to “realise the human rights to water and environmental sanitation, to improve the quality of life of women, girls, boys, youngsters and elderly adults of the Chalatenango department (...) through processes of political incidence, access to water, integrated environmental sanitation, institutional strengthening, integrated freshwater resources management and monitoring of responsibility and

environmental compliance”³⁷.

In addition, PROVIDA has assisted in the identification of risks and existing weaknesses of the water system, and subsequently proposed targeted actions to address these issues. One example is the need for reforestation of the areas surrounding the freshwater sources, especially in the recharge zones of the Lempa River basin³⁸. In this respect, planting of Asper bamboo was suggested as an alternative remedy due to its many ecological benefits compared to other species³⁹.

Furthermore, the NGO, in cooperation with various municipalities, ADESCOs and administrative water councils, has been striving for the past years to update the Statutes of the ADESCOs. The aim of such modification is to “guarantee access and quality of drinking water and sanitation to the citizens of the Chalatenango department, through collective and supportive work and respecting the human rights to water and sanitation”. It also seeks to “contribute to the realization of the human right to water and sanitation, in conformity with the principles of equity, parity, equality, respect for biodiversity, social and economic value of the water and probity”⁴⁰.

Additionally, thanks to the efforts of PROVIDA, new public policies in water and sanitation have been adopted in several municipalities in conformity with a human rights-based approach. One such example is that of the San José de las Flores municipality. In this case, the Public Policy in Water and Sanitation was adopted with a gender-based approach, having duly consulted the representatives of the communities involved, the administrative water councils, ADESCOs and representatives of the different organs of the municipality in question⁴¹. Along this line, the municipality of Nejapa, in the San Salvador department, has also benefited from the assistance of this NGO and has accordingly endorsed a similar public policy.⁴²

It is worth noting in this regard, that this entire practice of capacity building and training in access to drinking water and sanitation with a human rights-based approach has a domino effect at the



37 ASOCIACION DEPARTAMENTAL DE ADMINISTRADORES DE SISTEMAS DE AGUA DE CHALATENANGO, *Plan Operativo 2016*, pp. 3-4.

38 Ibidem, p. 5.

39 Asper Bamboo is known to absorb 35% more carbon dioxide than other trees and emits 35% more oxygen. It would prevent erosion more efficiently. In addition, its leaf litter would create a fertile layer in the soil that can last up to 6 years. Finally, they form a natural gate by regulating hydrological flows. Asper bamboo has the capacity of absorbing large amounts of surplus water during floods and of liberating that water during droughts. Cf. *Proyecto: Recuperación de condiciones de fuentes de agua de municipios de Chalatenango*, p. 1, points 1) to 5).

40 *Estatutos de la Asociación Departamental de Administradoras de Sistemas de Agua de Chalatenango*, Art. 4, paragraphs a) and b) respectively. See also Article 2 of *Estatutos de la Asociación de Desarrollo Comunal El Sitio, Cantón El Sitio, Municipio de Arcatao, Departamento de Chalatenango*.

41 ALCALDIA MUNICIPAL DE SAN JOSE DE LAS FLORES, *Informe Anual 2014*, p. 2.

42 This information was made available by Ms. Roxana Dueñas, (RIP), officer at the Nejapa municipality.

community level. PROVIDA shares its knowledge and assists the municipalities and ADESCOs, who in turn assume the responsibility of transferring that knowledge to the administrative water councils. The latter subsequently provides that training to the communities within which they operate.

All of the above shows the various ways in which capacity building and training in HRWS translate into concrete actions to actually ensure a real access to drinking water and sanitation. It is considered good practice in the sense that its multiple effects at a normative level (as with the statutes updates), institutional level (in the case of the water network), and political level (with the adoption of municipal public policies as the ones above described) evince a step forward towards ensuring the realisation of the HRWS. It is noteworthy to mention that all of this is achieved through a grassroots approach, thus promoting public participation.



The El Salvadorian Office of the Human Rights Advocate and Its Defence of Community Water and Sanitation Systems

Pursuant to its constitutional mandate to ensure the respect and effective guaranteeing of human rights, the Office of the Human Rights Advocate has recently established a working roundtable with representatives from administrative water councils (Juntas Administradoras de Agua), in order to find a solution to the alleged debt they would owe to ANDA, the National Administration of Water Mains and Sewers.

In 2009, the Ministry of Economy issued the Executive Agreement No 867, which gave the administrative water councils responsibility for the collection of tariffs for private use of water mains and sewage system services. Such a measure was adopted regardless of the fact that water administrative councils are community provider systems of water and sewage and as such possess a social goal: the realisation of the HRWS. The imposition of this responsibility resulted in large debts for water administrative councils. Whilst in 2013 a new Executive Agreement exempted them from payment of the mentioned tariff, such norm did not have retroactive effects. The amount owed between 2009 and 2013 surpassed hugely the economical capacity of the water councils, seriously compromising their financial sustainability. The very accessibility to water and sanitation in rural areas where the water councils operate could seriously become endangered by the debt described.

For this reason, the Human Rights Office has been developing joint actions through the framework of the working roundtable of the Legislative Assembly with a view to obtaining a decree pronouncing the social interest of the water councils and the consequent debt remission. Such good practice endeavours

to protect not only the sustainability of the water councils but also the provision in itself of drinking water of good quality at an affordable price. In addition, it promotes non-discrimination of the most vulnerable communities, which reside in the rural areas, where the administrative water councils provide water and sanitation. The above-referred working roundtable serves as a negotiation platform, where the support of the Human Rights Office endows the whole process with more transparency.

Hence, this good practice undoubtedly constitutes a step forward towards the full realisation of the HRWS in El Salvador.

Promoting Changes in Legislation and Constitutional Reform Considering the HRWS

We have previously examined the role of non-governmental organisations in capacity building in relation to the HRWS. NGOs may also largely contribute to the adoption and modification of legal norms protecting those human rights. Such is the case of ASPRODE (*Asesoría a Programas y Proyectos de Desarrollo*), a Salvadorian NGO working on development projects locally, regionally and internationally. ASPRODE leads political advocacy initiatives via the El Salvador Water Forum to achieve constitutional reform, which expressly recognises the Human Right to Water.

Whilst the reform of the Political Constitution of El Salvador was approved in April 2012, it has not yet been ratified. As a matter of fact, Article 248, paragraph 2 of the Political Constitution states that to finalize the reform process, the Legislative Assembly must ratify its approval. The new Article 69 would recognise that:



(IMAGE 6)



(IMAGE 7)

Meetings at the El Salvador Office of the Human Rights Advocate

“water is a resource, which is essential for life. Consequently, the State is under the obligation to benefit from and preserve freshwater resources, procuring its access to its inhabitants”⁴³. Such a norm would contribute to the realisation of the HRWS from an integrated water management approach. Still, this is not at present a binding legal norm in El Salvador, since it is not yet in force.

Both the Water Forum and the Office of the Human Rights Advocate (The Office) have on several occasions demanded that the Commission on Legislation and Constitutional Affairs of the Legislative Assembly should ratify this necessary reform, which would also include the Human Right to Food. Consequently, on 8 April 2015, The Office issued a resolution establishing that it is the responsibility of the 2012 to 2015 plenary legislative assembly for failing in its duty to adopt legislative measures, to give effect to and to properly guarantee the exercise of, and to adapt domestic legislation to the requirements deriving from international law, and for failing to comply with repeated calls from The Office in that respect⁴⁴.

In addition, both the United Nations Special Rapporteur on the Human Rights to Water and Sanitation, Mr. Leo Heller, and the Special Rapporteur on the right to food, Ms. Hilal Elver, have urged the former President of El Salvador, the President of the Legislative Assembly and the Presidents of the Commission on Legislation and Constitutional Affairs and that of Environment and Climate Change respectively, to obtain such ratification before the end of their mandate⁴⁵. Moreover, they stressed that: “once this constitutional reform is ratified, we dare underline that the organic or framework laws on the HRWS and on the Human Right to Food should constitute an essential next step. The establishment of a legal framework is a fundamental first step to the realisation of human rights”⁴⁶. Along this line, ASPRODE has also been working through the Water Forum to obtain the approval of a General Water Act (*Ley General de Aguas*), which is currently opposed by certain political parties, that would favour water privatisation. The proposed law expressly sets the priority of the use of water for human consumption over other uses. There are also differences between the proposals put forward to discussion with regards to the composition of the governing body.

In its Report on his mission to El Salvador, which took place between 11 and 18 May 2016, the Special Rapporteur on the HRWS urged the Legislative Assembly to ratify the amendment to article 69 of the Constitution and explicitly to incorporate into the final text the expression “human rights to water and sanitation”, which is absent from the proposal currently under consideration. The current text alludes only to water, excluding the right to sanitation. “The explicit inclusion of these rights into the Constitution will help ensure their effective recognition and implementation, thereby guaranteeing those rights in national legislation and judicial decisions”, stressed the Special Rapporteur⁴⁷.

43 “[E]l agua es un recurso esencial para la vida, en consecuencia, es obligación del Estado aprovechar y preservar los recursos hídricos y procurar su acceso a los habitantes”.

44 PROCURADURIA PARA LA DEFENSA DE LOS DERECHOS HUMANOS (2015), *Resolución del 8 de abril de 2015, Exp. SS-0060-2015*, available at: www.pddh.gob.sv

45 Cf. Letter of both Special Rapporteurs of 16 April 2015 in this respect. The mandate of the current president will come to an end on 1 June 2019.

46 “Una vez que dicha reforma constitucional sea ratificada, nos permitimos señalar que la aprobación de leyes marco u orgánicas sobre los derechos humanos al agua y al saneamiento y el derecho a la alimentación deberían constituir un siguiente paso esencial. El establecimiento de marco legal es un primer paso fundamental para la realización de los derechos humanos”. *Ibidem*

47 UNITED NATIONS, *A/HRC/33/49/Add.1*, p. 6, paragraph 20.

It is also interesting to note that the former Special Rapporteur on the HRWS had similarly urged the Salvadorian President and the pertinent governmental authorities three years before to obtain the ratification of the constitutional reform⁴⁸.

Through the express recognition of the Human Right to Water, the above-described practice of ASPRODE seeks to ensure availability, accessibility, and affordability to the entire Salvadorian population in its access to safe drinking water. The proposal submitted by the Water Forum for the adoption of the referred pertinent norms has been duly formulated, guaranteeing civil participation through prior consultation with the population. This is also a transparent good practice since all the information has been made available and agreed upon within the communities and it has involved all the interested sectors in the field of water and sanitation provision.



48 See Letter from Ms Catarina de Alburquerque of 1 October 2013.

GUATEMALA

Normative and Institutional Settings

Guatemala possesses several transboundary basins, which it shares with Mexico, Honduras, Belize, and El Salvador. With Honduras, Guatemala shares the Motagua, Chamalecón, and Lempa River Basins (this latter is also shared with El Salvador). It also shares the Paz River Basin with El Salvador and the Hondo River Basin with Belize and Mexico. With these latter countries, Guatemala shares more transboundary basins. Whereas it shares the Moho, Sarstún, Temash, and Mopán/Belice River Basins with Belize, the basins of the Suchiate, Coatán, Grijalba and Usumacinta River straddle both Guatemalan and Mexican territory. Despite the existence of so many transboundary basins, there is at present no international treaty regulating the water management of any of these basins between Guatemala and its Central American neighbours.

In respect to the normative framework, Guatemala is a State Party to various international legal instruments such as the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of Persons with Disabilities. Nevertheless, it is not a party to the Optional Protocol to the Pact on Economic, Social and Cultural Rights. Guatemala has also ratified the San José Pact (the American Convention on Human Rights) but has not yet acted accordingly with regards to the Additional Protocol on Economic, Social and Cultural Rights (San Salvador Protocol). Despite the fact that it is not yet in force, Guatemala has also signed the Central American Water Covenant.

As for its domestic norms, the legal framework on access to water and sanitation is mainly provided by Articles 93 and 97 of the Political Constitution of the Republic of Guatemala, decree 68-86 (Law on the Protection and Improvement of the Environment) and decree 236-2006 on Wastewater Discharge and Reuse and Sludge Disposal, the Health Code and the Municipal Code. It is worth noting that none of these legal norms include a gender-based approach or take due regard of the more vulnerable groups among the population. There is at present no specific legal regime in Guatemala regulating water management from a natural, social or economic standpoint or the rights and obligations thereby ensuing⁴⁹.

Whilst the Political Constitution does not explicitly recognise the HRWS, Articles 93 and 97 would allude to it indirectly through the protection of the rights to health and to a healthy environment respectively. In addition, Articles 122, 126 and 127 of the same legal instrument addresses it through the concept of water being of public domain and its special environmental protection.

Despite the absence of a specific water law in Guatemala, as above discussed, Governmental Agreement 418-2003 on the National Policy for the Drinking Water and Sanitation Sector does explicitly

49 Cf. ROJAS ORTUSTE, Franz, *Políticas e institucionalidad en materia de agua potable y saneamiento en América Latina y el Caribe*, Santiago de Chile, CEPAL, 2014, p. 38.

recognise the HRWS in its clauses⁵⁰. Since municipalities deal with water management at a national level, the Municipal Code and corresponding norms regulate their duties.

It is noteworthy to mention the judgment of the Constitutional Chamber of 1 April 1988, which interprets Article 97 of the Political Constitution and establishes the priority of the social use of water over other uses⁵¹.

With respect to its institutional structure, there are no basin agencies in Guatemala. Freshwater resources are managed on a sector basis. Thus, freshwater basins management would not be considered holistically from an integrated management approach⁵². Whilst the Ministry of Environment and Natural Resources (MARN) is in charge of basin management, it is not expressly responsible for drinking water access from those basins. Nevertheless, since it is responsible for wastewater and for the environment in general, it should be implicitly responsible for drinking water access. By virtue of Article 253 of the Constitution, the municipalities are responsible for drinking water and sanitation provision nationally. Other organs such as the Vice-Presidency, the Health Ministry, and MARN perform monitoring functions, mainly of water quality.

In Guatemala, municipalities often centralise water and sanitation provision in urban zones and only occasionally does it reach nearby communities. Due to the lack of water and sanitation systems in rural areas, the neighbours of many communities created the OCSAs, community organisations of drinking water and sanitation services, also known as drinking water committees⁵³. OCSAs act as rural managers providing drinking water to households and are sometimes in charge of wastewater and sewage systems as well, as described below⁵⁴. Municipal authorities invest mainly in infrastructure, leaving capacity building and training in water and sanitation provision to NGO's.

The institutional fragility of the water and sanitation sector is further exposed by the lack of an autonomous regulatory agency, which results in huge differences in water tariff rates⁵⁵. Such absence, combined with the lack of a proper legal framework on freshwater management and consequently on water and sanitation provision, more often than not result in duplicity of efforts and low operativeness of normative enforcement⁵⁶.

50 Other clauses dealing addressing access to water and sanitation are the following: Law on Protected Waters (decree 4-89), Forestry Law (decree 10-96), Health Code, Civil Code (Decree 1932-33), Specifications on monitoring and control of water quality for human consumption (Ministerial agreement 523-2013; Regulation of the law on Food Security and Nutrition National System No 75-2006; Decree 113-2009 on Sanitary Norms for Provision Services, COGUANOR Norm (water for human consumption - 83-2013); norms 1148-09 on water for human consumption, 178-2009 on Certification for water quality, 572-2001 on Design of rural water systems, OMS Water Quality Guidelines, Norm 278-2004 on the National Program to monitor water quality for human consumption, Technical Norm 29001 on drinking water.

51 Cf. SALA CONSTITUCIONAL, *expediente 1491-220*.

52 In line with this idea, the 1986 Treaty (between Guatemala, El Salvador, Honduras, the OAS Secretary General and the Inter American Agriculture Institute) formulating the Trifinio Plan and that of 1997 on its execution state that its scope of application is the Lempa River basin. However, none of these agreements contain any norm on management and sharing of its waters.

53 ALIANZA POR EL AGUA, *La Gestión Comunitaria del Agua y Saneamiento*, p. 7 in: http://alianzaporelagua.org/documentos/Gestion_Comunitaria_Agua/Guatemala.pdf

54 See *infra*, p. 30.

55 MINISTERIO DE AMBIENTE Y RECURSOS NATURALES (MARN), *Informe Ambiental del Estado de Guatemala 2016*, p. 133, available at: www.marn.gob.gt/Multimedios/8879.pdf
Cf. ROJAS ORTUSTE, *op. cit.*, p. 40.

56 MINISTERIO DE AMBIENTE Y RECURSOS NATURALES (MARN), *op. cit.*, p. 223. See also GLOBAL WATER PARTNERSHIP, *La situación de los recursos hídricos en Centroamérica: Hacia una gestión integrada*, *op. cit.*, p. 42.

Good Practices in Water and Sanitation in Guatemala

The Human Rights-Based Approach to Water Governance of the Guatemalan Human Rights Ombudsman

As part of its legislative mandate, the Guatemalan Human Rights Ombudsman is responsible for monitoring compliance of the State with its obligations to respect, protect and promote the HRWS. These obligations have been particularly stressed in the most recent report of the Human Rights Ombudsman to the Guatemalan Parliament as well as in other specific reports, which will be analysed below. In addition, such obligations have been actively realised by the Human Rights Offices (*Defensorías*) through direct monitoring actions⁵⁷.

The inclusion of the topics of drinking water and sanitation provision in the current National Strategy for the Prevention of Chronic Malnutrition 2016-2020 is indeed praiseworthy. Certainly, access to water and sanitation constitutes a fundamental axis of nutrition and food security. This National Strategy seeks to amplify its geographical coverage and improve water quality and sanitation. Its goal is to guarantee access to drinking water through socially sustainable systems for families with children of less than two years of age in the most vulnerable areas due to their high prevalence of chronic malnutrition⁵⁸.

Nevertheless, the IX Report of the Human Rights Ombudsman to the National Council on Nutrition and Food Security (*Consejo Nacional de Seguridad Alimentaria y Nutricional*) recommended to the Nutrition and Food Security Secretariat (*Secretaría de Seguridad Alimentaria y Nutricional*) to ensure effective implementation of concrete actions, which are actually beneficial for the population based on the introduction of the “water and sanitation” and “change of behaviour” indicators as pillars of the National Strategy. Furthermore, the Report condemns the unjustifiable delay in such implementation due to administrative procedures. Along this line, the Human Right to Food Office (*Defensoría de Alimentación*) went even further with a follow-up in 2017 of the Strategy and concluded that significant progress was still necessary in the fields of water and sanitation⁵⁹.

On another note, the Guatemalan Municipal Code establishes the obligation of the municipalities to provide drinking water and sewage systems⁶⁰. To this end, municipalities must negotiate economic resources with the Municipal Development Institute (*Instituto de Fomento Municipal – INFOM*) in order to implement the said obligation in practice. Still, the Annual Circumstantiated Report of the Human Rights Ombudsman denounces that these resources are not being effectively implemented, with only 23% of the 2017 annual budget having been effectively used, due to lack of proper management.

57 The following good practice was presented by Dr. Miriam Roquel Chávez, Deputy Human Rights Ombudsperson of Guatemala.

58 Cf. <http://www.sesan.gob.gt/wordpress/wp-content/uploads/2017/07/Estrategia-para-la-Prevencion-de-la-Desnutricion-Cronica.pdf>. See especially pp. 5 and 10 *et seq.*

59 PDH/Defensoría de Alimentación. *Informe Final de Supervisión a la Secretaría de Seguridad Alimentaria y Nutricional -SESAN-; Implementación y Monitoreo de la Estrategia Nacional para la Prevención de la Desnutrición Crónica*. Agosto 2017. (p. 103, paragraph 5)

60 Cf. Articles 68 and 142 paragraphs a) and b) of the *Código Municipal*.

With regard to availability, notwithstanding the 38 hydrological basins in Guatemala producing approximately 97,000 million of cubic metres of water annually, inappropriate water management and contamination are still big obstacles to overcome. Accordingly, the Human Rights Ombudsman has observed that the exclusionary model adopted in water management results in discrimination. Such a model denies accessibility to all citizens of the country to its freshwater resources, especially to indigenous communities in rural areas, where national averages are constantly and significantly lower than in urban zones.

Between 2015 and 2017 several complaints on cases of river diversion were submitted to the Ministry of Environment and Natural Resources (*MARN*). Consequently, the Socio-environmental Human Rights Office (*Defensoría Socioambiental*) conducted an inquiry in June 2017 to follow-up on the state of those proceedings, only to find that none of the 21 cases submitted had been resolved. It concluded that the main reasons underlying such negligent behaviour were: the absence of field inspections due to insufficient human resources⁶¹; unsatisfactory results of the existing inspections due to the lack of legally qualified human resources; obstructions and dilatory procedures by private companies to prevent inspections and the difficulty of identifying those legally responsible for the freshwater diversion⁶².

Concerning accessibility, discrimination is still one of the biggest issues in Guatemala. Whilst it is estimated that 77.8% of the households have access to pipelines either within the buildings (55.9%) or within their respective lots (21.9%), there is still a huge gap between urban and rural areas, with only 33% of optimum access in the latter⁶³. In addition, the need to secure access to drinking water is also vital in public spaces related to health and education. A recent public report of civil society to the Human Rights Ombudsman revealed the results of monitoring 174 stations and 71 public health centres from 87 municipalities. 14% of the stations and 3% of the public health centres did not possess any piped water system. Additionally, the Ministry of Education has no information in this regard, which makes it necessary to overcome this deficiency as soon as possible to enable informed decisions.

Regarding quality, the Ministry of Health and Social Work (*MSPAS*) is the institution responsible for monitoring that water from provision systems complies with acceptable chemical and microbiological parameters for human consumption. This Ministry has inventoried 82% of the water systems operating at a national level. The pending gap corresponds largely to rural systems. Solely 34.31% of the identified systems rely on disinfection components with chlorine or its derivatives (78% in the urban and 34% in the rural area). Accordingly, the most recent report of the Human Rights Ombudsman on the situation of human rights in Guatemala expresses its concern about the higher level of urban water provision systems compared to rural ones⁶⁴.

61 There are at present public officers in charge of up to 700 cases.

62 Defensoría Socioambiental/ PDH. *Informe de monitoreo: Ministerio de Ambiente y Recursos Naturales por el desvío de ríos*, Junio 2017, pp. 7-11. In addition, polluting economic practices such as agroindustry and mining hinder contribute also to hindering accessibility to clean freshwater resources. Such was the case of the pollution and ecocide of the Pasión River in 2015.

63 It is also worth noting that the Water Monitoring System (*SIVAGUA*) from the Ministry of Public Health and Social Work, reports that 98% of the citizens from the urban area and 84% of those from the rural area have access to drinking water through a provision system. Cf. PDH, *Informe Anual Circunstanciado 2017*, pp. 351-352.

64 See the graphic sheet at *Ibid.*, p. 354.



It is worth noting that the large majority of systems, which do succeed in providing water of very good quality (evaluated both through chlorination processes and microbiological analysis), are in urban areas. Although, 43.5% of the samples taken in rural areas did not present any sign of contamination, 56.5% of the samples evidenced the presence *E. Coli* or other bacteria of a faecal nature.

According to the findings of the Socio-Environmental Office, some municipalities of the Guatemala department such as Chinautla, San José del Golfo, San Pedro Ayampuc y San Pedro Sacatepéquez did not have any type of water system provision which comply with the parameters of free residual chlorine. Hence, there would be deficiencies in water quality in areas closer to the city as well. In line with this observation, the Human Rights Ombudsman Office has urged the need to increase efforts towards full compliance with the Rules for Discharge and Reuse of Residual Waters and Sludge Disposal (*Reglamento de las Descargas y Reuso de Aguas Residuales y de Disposición de Lodos*). Whereas several governmental agreements may have delayed the deadline for compliance to 2019⁶⁵, the Ombudsman Office has denounced such practice as dilatory, all the more so when 52.7% of households today lack proper sewage systems.

As demonstrated above, this Guatemalan NHRI plays a central role both in the protection and promotion of the HRWS. In more ways than one, through the fulfilment of its legal mandate, the national Ombudsman Office acts as an institutional catalyst for change serving as a bridge between State organs and civil society.

65 PDH/ Defensoría Socioambiental. *Informe de Monitoreo Ministerio de Ambiente y Recursos Naturales, cumplimiento del Acuerdo 236-2006*. Septiembre 2017.

The Role of Local NGOs in Strengthening Capacities of OCSAs

ASOVERDE (*Asociación de Desarrollo Verde de Guatemala*) is a Guatemalan NGO whose mission is to strengthen capacities and improve access to opportunities for civil society through the facilitation and promotion of sustainable development. Its areas of work include food security, sustainable forestry management, integrated freshwater resources management, inclusive business, and climate change.

For the past 4 years, ASOVERDE has been working together with government institutions and other NGOs on the National Policy of the Drinking Water and Sanitation Sector (*Política Nacional del Sector de Agua Potable y Saneamiento*). The first goal of this national policy is to expand coverage and improve the functioning of the public services of water and sanitation⁶⁶. To this end, it seeks to accomplish 95% of coverage in access to drinking water and 90% in basic sanitation at a general level by the year 2025⁶⁷.

ASOVERDE operates in the department of Chiquimula, in the eastern part of the country, where the infant mortality rate is amongst the highest in the country. At present, chronic malnutrition, affecting 46% of Guatemalan children under the age of two, results in acute dehydration and high mortality. Hence, real access to safe drinking water and sanitation is all the more compelling in this area.

As laudable as the ambitious goals of the national policy may appear, they do not seem to properly consider the role of community water managers in this regard. Additionally, whilst most efforts in this sense are focused in cities, rural areas are still largely neglected regarding access to water and sanitation. Given this context, ASOVERDE came to the conclusion that the only way to effectively improve clean drinking water and sanitation provision in these areas was through capacity strengthening of the OCSAs.

As above explained, OCSAs (*Organización Comunitaria de Servicios de Agua Potable y Saneamiento*) are community organisations in the drinking water and sanitation sector. These organisations or committees are developed in a particular community to manage and operate the services of running drinking water (and eventually sewage and solid waste), which are not provided by their respective municipalities. They negotiate government aid and international cooperation, invest, and provide labour force for the construction of water systems. They organise themselves and operate the water systems, taking proper action towards the sustainability of the service in time⁶⁸.

ASOVERDE's comprehensive capacity strengthening to OCSAs includes a human rights perspective, which includes technical human capacity building and field implementation considering the HRWS. Also, whereas most of public investment currently focuses on infrastructure, the NGO advises the pertinent governmental institutions to obtain more capacity strengthening. It considers that a solid platform of operation, within an integrated water resources management approach, should be a prerequisite of any infrastructural work in the fields of water and sanitation. The main challenge that this good practice, and similar initiatives,

66 GOBIERNO DE GUATEMALA, *Política Nacional del Sector de Agua Potable y Saneamiento*, p. 18.

67 *Ibidem*.

68 ALIANZA POR EL AGUA, *op. cit.*, p. 6.

have faced so far is the rich cultural diversity of Guatemala. Apart from Spanish there are 23 more different languages spoken throughout the country. This transforms the idiomatic barrier and the cultural practices into obstacles difficult to surmount at times. Just for illustrative purposes, some indigenous communities in the departments of Quiché and San Marcos have voiced their concerns against the chlorination method for drinking water since it would fade the colours of their natural fabrics.

In this context, the Human Rights Ombudsman has been coordinating efforts with the Academy of Mayan Languages, to train interpreters in all of the above-mentioned languages to overcome the language barrier. Furthermore, ASOVERDE duly takes into account and respects the practices of each community they work with whilst simultaneously striving to instil amongst the population better hygienic practices and ergonomic conditions for their community water collection systems. Thus, they promote domestic accessibility to safe drinking water.

The present good practice has also resulted in a radical improvement of both water quantity and water quality. Water quality is being monitored monthly throughout the Chiquimula department, especially the provision of chlorine, by the respective municipalities. In addition, such practice supports the participatory tariff *calculi*, which translates into more affordability. Civil participation and non-discrimination are ensured through the organisational models of the OCSAs and the empowerment of the citizens, who democratically elect their authorities. These latter authorities are accountable for their actions during the community assemblies, which are periodically held to such end.

It is noteworthy to mention in this respect the community of San Jacinto in Chiquimula. This community is the only one in Guatemala where 100% of its OCSAs currently have access to safe drinking water and has been certified by the Health Ministry. Such a successful community experience undoubtedly serves as a model for both present and future experiences that ASOVERDE and other NGOs pursue.

HONDURAS

Normative and Institutional Settings

As referred above, Honduras shares the Lempa River basin with Guatemala and El Salvador and the Motagua and Chamalecón River basins with Guatemala. With Nicaragua, Honduras shares the basins of the Coco/Segovia, Choluteca and Negro Rivers. And with El Salvador, it has also been discussed that it shares the Goascorán River basin. Still, as in the case of the previous States above referred to, Honduras does not have a treaty regulating the uses and management of those transboundary freshwater resources.

In regard to international law, Honduras has ratified the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of Persons with Disabilities. In addition, it has ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Within the Inter-American system, this State is a party to the San José Pact and to its Additional Protocol on Economic, Cultural and Social Rights, all of which instruments implicitly that recognise – as above explained – the HRWS as prerequisites for the realisation of other human rights thereby included. Within the Central American region, although it is not yet in force, Honduras has signed, same as its neighbours, the Central American Water Convention.

The domestic water and sanitation normative and institutional framework of Honduras is quite complete. It is noteworthy to observe that, in general, it incorporates the different components of the HRWS⁶⁹. Since its 2013 reform, the Constitution of Honduras expressly recognises the HRWS and stipulates its equitable use, preferably for human consumption⁷⁰. In addition, Article 145 of the Constitution incorporates the sustainability criterion by guaranteeing the preservation of freshwater sources to prevent them from jeopardising human life and public health.

The 2009 General Water Act (decree 181-2009) constitutes a significant step forward towards the realisation of the HRWS. Not only does it expressly recognise these rights in its Article 11, paragraph 17), in Article 3 it also establishes water for human consumption as preferential and privileged over other uses. Also, it states that the use and development of the freshwater resources will be managed by the State through its Water Authority. After many years without being actually conformed, in 2016 the Freshwater Resources Directorate from the Environment Secretariat (SERNA) was bestowed as Water Authority by the President. The General Water Act promotes civil participation through basin agencies (basin, sub-basin and micro-basin boards), which serve as platforms for coordination and consensus in actions of the public and private actors involved in the multi-sectorial management each basin⁷¹.

69 CAF, *Implementación del derecho humano al agua en América Latina*, VII Foro Mundial del Agua, Corea 2015, p. 35, available at <http://scicoteca.caf.com>

70 Cf. Article 145 of the Constitution of Honduras.

71 Cf. Article 19 of the General Water Act.

The 2003 Framework Law of the Drinking Water and Sanitation Sector stipulates in Article 1 that water and sanitation service provision shall be governed by the principles of quality, equity, solidarity, continuity, generality, environmental respect and, civil participation. It further specifies the notion of continuity as the quality of water and sanitation services being supplied in a continuous and accessible manner to all of its users.

Furthermore, this Framework Law recognises the role of water councils (water boards) and municipalities as the main water and sanitation services providers in the country⁷². In addition, it creates the Nacional Council on Drinking Water and Sanitation (CONASA) as the governing body of the water and sanitation services sector. It is composed of four State Secretaries, the Association of Honduran Municipalities (AMHON), a representative from the water councils, a representative from the users and the General Manager of the National Water Mains and Sewers Autonomous Service (SANAA). CONASA formulates and approves water and sanitation policies, develops strategies and national plans, defines goals and designs the investment program. It also coordinates actions with the different institutions – both public and private – working in technology, capacity-building, service improvement, and conservation of the freshwater sources.

Moreover, the above-mentioned Law creates the Drinking Water and Sanitation Services Regulatory Agency (ERSAPS) as a decentralised institution, ascribed to the State Health Secretariat with functional, administrative and technical independence. The Regulatory Agency regulates, monitors, and oversees water and sanitation services provision at a national level⁷³. Additionally, according to Article 14 of the same legal instrument, it regulates water tariffs. Finally, the Framework Law bestows on SANAA the functions of a technical secretariat to support CONASA, ERSAPS, municipalities and water councils with regards to sanitation services provision.

Good Practices in Water and Sanitation Provision in Honduras

Technical Assistance to Honduran Administrative Water Councils

The Honduran Administrative Water Councils Association (AHJASA – *Asociación Hondureña de Juntas Administradoras de Agua*) provides technical assistance, capacity building, and input supply to Administrative Water Councils across the country. It promotes community development processes, which enable technical independence and local sustainability. In order to achieve such a goal, it works in empowering and delegating more responsibility to water consumers, which translates into a better water provision service.

Five years ago, AHJASA launched the “Circuit Rider” Program, which aims to attain self-sustainability of water systems in rural regions of Honduras through technical training and assistance. They noted that the lack of sustainability and quality in drinking water and sanitation services were tantamount to lack of

72 Cf. Article 21 of the Framework Law of the Drinking Water and Sanitation Sector.

73 Cf. *Ibid.*, Article 9.

development. In this context, communities are frequently compelled to seek external financial assistance to build, rebuild or improve their water systems. AHJASA believes that designing and building a new water system and training an administrative council falls short of solving the problem. Sustainability is directly linked to an equitable and community development process of the beneficiaries of water and sanitation services.

The Circuit Rider Program has been implemented in the municipality of Santa Lucía, in the department of Francisco Morazán with good results. Availability was attained inasmuch as it was possible to increase the quantity of drinking water per consumer to approximately 25 gallons per minute. In addition, water tanks were built to ensure that every citizen of the community has domestic water storage. Regarding water quality, tablet chlorinators were installed in every distribution water tank and the acidity levels of water are constantly monitored.

Moreover, this good practice consists of a development process of civil society, incorporating public participation. Additionally, since all members of the community must participate in the meetings of the General Assembly every six months to present a report of its activities, access is in no way discriminatory. Rather the opposite: its main trait is its inclusiveness. Water tariffs are fixed according to the economic capacities of citizens of the community to make them affordable. Similarly, special consideration is given to single mothers and the elderly. The Administrative Water Councils themselves finance the water tanks of the more vulnerable groups. Also, those families who live closer to the freshwater sources receive a monetary compensation in return for monitoring them.

Whereas the lack of technical self-sustainability was a shortcoming, AHJASA complemented the program described with the creation of a Network of Community Technicians in 2014. To this end, it developed a *syllabus* on Water System Administration, Operation and Management. The launched pilot program has already certified six technicians, who have been hired by the El Triunfo municipality in the department of Choluteca. This project aims to certify an additional 150 technicians to assist 900 communities in four departments of the country⁷⁴.

Social Audit of the Water and Sanitation Administrative Council of Granadillos

The Office of the National Human Rights Advocate (CONADEH) has both a constitutional and a legislative mandate to guarantee “rights and freedoms recognized in the Constitution of the Republic and in the treaties and international conventions ratified by Honduras”⁷⁵. In this capacity, it launched the “Strategy of Municipalities of Solidarity-Based Welfare” in 2016 in 36 municipalities, promoting two in each of the 18 departments in Honduras. The program aims to promote the respect, promotion, and protection of a decent standard of living and human security in those communities.

In this context, and in conjunction with the Civic Transparency Commission⁷⁶ (Comisión

74 Certificates are issued by CONEANFO, the National Commission for the Development of Non Formal Alternative Education (*Comisión Nacional para el Desarrollo de Educación Alternativa No Formal*).

75 Article 1 of *Ley Orgánica del Comisionado Nacional de los Derechos Humanos*, Decreto 2-95, 24 October 1995.

76 The Civic Transparency Commission conducts an audit at every institution, which manages economic resources of the State.

Ciudadana de Transparencia) and the Municipal Commissioner, CONADEH has recently started a social audit of the Administrative Water and Sanitation Councils of the Granadillos community, in the municipality of San Pedro de Tutule, in La Paz department. This social audit verifies access to drinking water and water quality and monitors the water tariff. In light of those findings, CONADEH prepares reports and provides recommendations to both the Administrative Water and Sanitation Council and to the local systems of human rights promotion and protection.

In this perspective, CONADEH requested the tariff and consumer satisfaction records from the Directive Board of the Administrative Water and Sanitation Council. It was noted that all households benefit from sufficient and affordable clean water, for at least six hours per day for an annual tariff of

300 Honduran Lempiras⁷⁷. The water tariff is socialised amongst each one of the water beneficiaries and agreed on at the consumers' assembly. The tariff can either be paid monthly, or the total amount paid by the end of the second month of the year, thus further ensuring affordability.

The Administrative Water and Sanitation Council relies on a community technician, who has been trained on chlorination and other quality water management procedures as well as on maintenance of the community water system. He is available 24/7 every day of the year in case of emergency in the water system⁷⁸. In addition, the quality of the water is regularly tested, by previous request to AJHASA or to the Centre for Study and Control of Pollutants (*Centro de Estudio y Control de Contaminantes – CECCO*).

CONADEH also observed that water is provided on a family basis, including parents and children. A different tariff is charged for any other member of the family living under the same roof. This raised the issue of teenage mothers, who are being charged as another family regardless of the fact that they still live with their parents. The Office of the Human Rights Advocate duly raised this issue from a human rights-based approach, with a view to avoid any type of discrimination in the access to water and sanitation.

By virtue of Article 59 of the Law of Municipalities, both the Civil Transparency Commission and the Municipal Commissioner provide reports to the municipal authorities, which specify their findings and provide pertinent recommendations. Municipal authorities are in turn legally obliged to provide a reply to their requests and recommendations. Failure to comply with such recommendations may result in a complaint from both Commissions. The realisation of the HRWS is also assured through CONADEH, within the



77 That would amount to approximately 12,5 US dollars at the present exchange rate.

78 The community technician receives in this example a monthly salary of 2,000 Honduran Lempiras, approximately 84 US dollars.

scope of its mandate to guarantee the implementation of human rights. Hence, the Administrative Water and Sanitation Councils are responsible and accountable institutions in the field of water and sanitation.

This good practice also favours civil participation in the sense that the beneficiaries from the water services bi-annually elect members of the Directive Board of the Administrative Water and Sanitation Council. In addition, the latter holds compulsory meetings annually to submit financial reports of its activities to the members of the community.

Whilst Administrative Water and Sanitation Councils are financially sustainable, CONADEH and the other institutions above mentioned concluded that there is still no sustainability plan ensuring water for future generations. In addition, more efforts should be invested in achieving environmental sustainability, especially in the light of huge deforestation practices in the region.

Amongst its findings, these three commissions stress the need to improve the administrative and technical areas of the Directive Boards, since most elected members of the community in this capacity possess no formal educational background. Furthermore, they stress the importance of capacitating and training specialized community technicians in water and sanitation and of educating the entire community in the protection of their freshwater resources through an integrated freshwater management approach.

In light of the good practice outlined above, CONADEH has a significant role in assisting and providing technical support to the social audits for the Water Councils to ensure the effective realisation of the HRWS.

Promotion of Associative Models Among Water Administrative Councils Through an Integrated Basin Management Approach

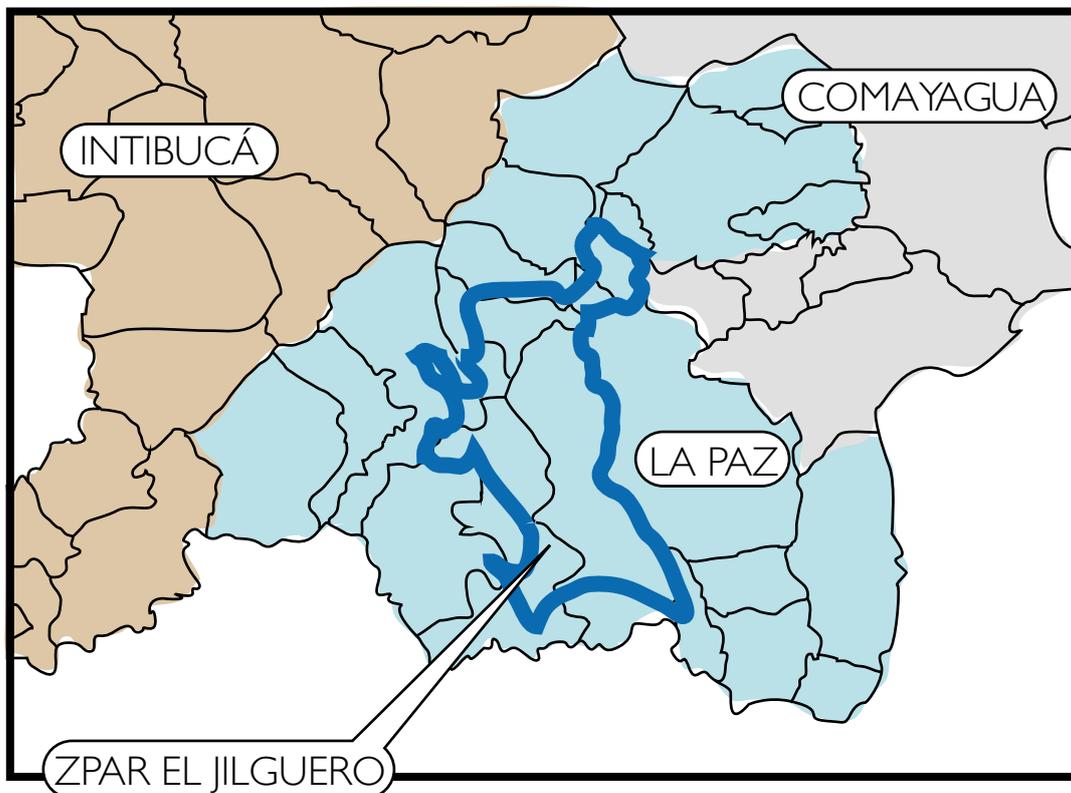
The Association for the Integrated Management of the La Paz and Comayagua Basins (ASOMAINCUPACO) is a community NGO, which seeks to achieve community development considering the protection and recovery of natural resources, especially water, and adopting an integrated water management approach. Its idea is that administrative water councils are the primary cell for integrated basin management⁷⁹. It is composed of more than 2500 families and integrates 60 communities settled in the basins of the La Paz and Comayagua rivers.

Since 2013, ASOMAINCUPACO has been working in the promotion of associative models, basin agencies (*organismos de cuenca*) for Administrative Water Councils in connection to the above river basins. These cover two Honduran Protected Areas: One is “Reserva el Jilguero” Protected Area covering a territory of 108.993 acres⁸⁰ and including nine municipalities of the La Paz department. It possesses a huge hydrological capacity, feeding three basins: The Goascorán River international basin (shared with El Salvador), the Lempa River international basin (shared with El Salvador and Guatemala), and the Ulúa River basin. The second, “Reserva Biológica de Montecillos”, is a mountain chain in the middle of the country with an overall surface of

79 <http://www.asomaincupaco.org/organizacion/>

80 Approximately 44,108.01 hectares.

THE JILGUERO PROTECTED AREA



(MAP 1)

50.244 acres⁸¹, including eight municipalities of the Comayagua department, two from the La Paz department and two from the Intibucá department. Its main rivers are the Cumes, the Guango lolo and, the Calán.

Through the above-referred associations, water administrative councils have benefited from continuous capacity building and technical assistance. Their aim is to increase the organisational and management capacities of the water administrative councils as community water and sanitation providers.

ASOMAINCUPACO has provided training to the water administrative councils and has helped them obtain legal personality, draft their own internal statutes, and set work plans in water and sanitation provision. In addition, the ASOMAINCUPACO has contributed to the improvement of the management capacities of the administrative water councils through the protection and conservation of micro-basins, which supply their water, and of their protected areas within which they lie. In this regard, they have largely contributed to the official declaration of micro-basins as “zones of forestry protection” and to the issuance of the pertinent municipal ordinances.

81 This would amount to approximately 20.333,33 hectares.

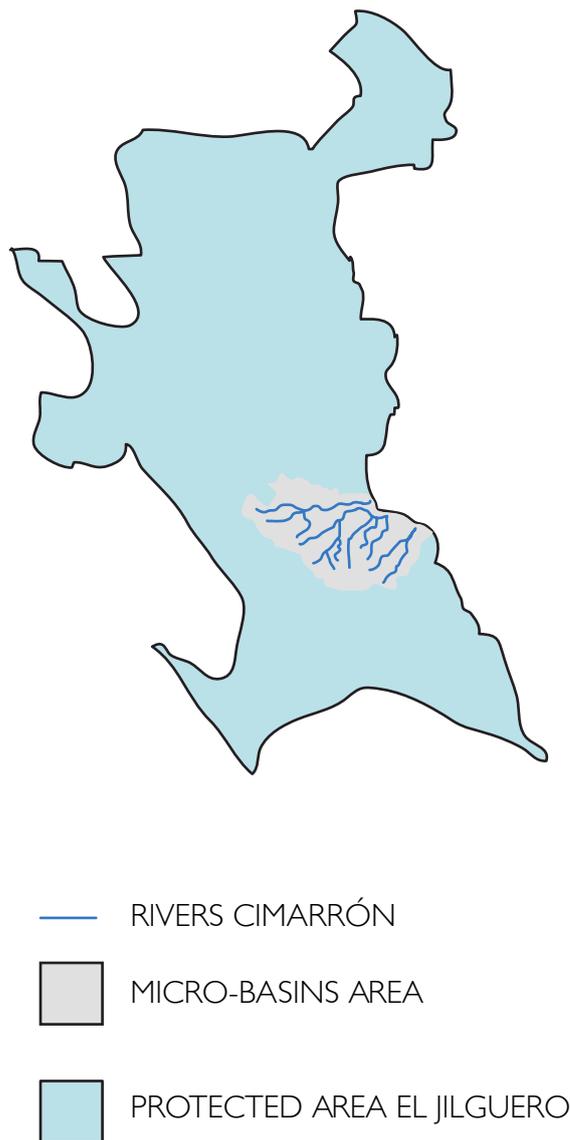
The present good practice has significantly increased water availability amongst the communities involved. The large majority of the population has at present 24/7 -access to safe drinking water. What is more, physical accessibility has been improved too, through the enhancement of the drinking water and sanitation service, reaching new families, which used to be left out of the water system. Also, the administrative water councils have invested in washable latrines.

The establishment of a water tariff based on the real costs of the service, with differentiated rates in certain particular cases such as those of single mothers, ensure affordability. Additionally, the introduction of tablet hypochlorinators and the conduction of physical, chemical, and bacteriological tests at least every six months, have radically ameliorated water quality.

Whereas this project involves every community as a whole and each of its actors, it benefits from a high degree of acceptability and civil participation. It is tantamount to a non-discriminatory practice. Its transparency and accountability are furthermore guaranteed with periodic assemblies. The promoted associative models include the conduction of surveillance commissions.

The multiple benefits of the micro-basin agencies are evident. The practice above described has resulted in a sharp decline in water-transmitted diseases, such as diarrhea or parasitism. It is also worth noting the case of the Opatoro municipality.

EL CIMARRÓN IN EL JILGUERO



(MAP 2)

Whereas Opatoro was one of the municipalities with the highest rates of water related diseases, it is now a model community in water and sanitation provision in Honduras. Thanks to the creation of 17 administrative water councils⁸², which operate with a real integrated freshwater resources management and human rights-based approach, safe drinking water and sanitation provision is today a reality in Opatoro.



(IMAGE 11)

82 The administrative water councils of Opatoro have been labelled “A” category, the highest existing ranking for this type of institutions.

NICARAGUA

Normative and Institutional Nicaraguan Framework

Nicaragua shares the Wangki/Coco/Segovia, the Choluteca, and the Negro River basins with Honduras. With Costa Rica it shares the San Juan and the Naranjo River basins. Unfortunately, as with the other transboundary river basins of Central America above mentioned, there is no treaty regulating the uses and water management of these freshwater resources.

Nicaragua has ratified the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of Persons with Disabilities. However, it has not yet given its consent to be bound by the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. In addition, Nicaragua is a State Party to the San José Pact (the American Convention on Human Rights) and to its Additional Protocol on Economic, Social and Cultural Rights (San Salvador Protocol). Similarly to El Salvador, Guatemala, and Honduras, Nicaragua has also signed the Central American Water Convention, which has not yet been ratified and is thus not yet in force.

Since the 1995 constitutional reform and for the past twenty years, the water and sanitation institutional framework has undergone big changes in its development process.

Whereas it does not explicitly recognize the human rights under analysis, the Nicaraguan domestic normative framework establishes obligations with respect to water and sanitation provision. Article 105 of the Nicaraguan Constitution prescribes the obligation of the State to promote, facilitate, and regulate the rendering of water public services and declares health services as indeclinable State duties. Furthermore, the State is obliged to “render (these services) without exclusion, to improve them and extend them”⁸³.

The General National Water Act of 2007, also known as Law 620⁸⁴, certainly constitutes a great stride in the reformulation of the legal regulatory framework for freshwater resources in Nicaragua⁸⁵. Article 13, paragraph c) of this law stipulates that: “[w]ater is a vital resource, limited, vulnerable and finite, whose preservation and sustainability is the fundamental and unwavering duty of the State and of the society as a whole. Its access is an inalienable right of every human being”⁸⁶. Thus, it explicitly recognises the right to water. In addition, the law states that drinking water shall not be subject to any type of privatisation, either direct or indirect, and that it shall always be considered as a public good. The State is responsible for its

83 *Constitución política de Nicaragua y sus reformas. Agosto de 2003*, at: <http://www.ilo.org/dyn/travail/docs/2134/Constitucion.pdf>

84 Available at:

<http://legislacion.asamblea.gob.ni/Normaweb.nsf/%28%24All%29/C0C1931F74480A55062573760075BD4B>

See also its Regulation, issued by Decree No 44/2010.

85 Cf. CAF, *op. cit.*, p. 39.

86 “El agua es un recurso vital, limitado, vulnerable y finito cuya preservación y sustentabilidad es tarea fundamental e indeclinable del Estado y de la sociedad en su conjunto. Su acceso es un derecho irrenunciable de todo ser humano”.

management, monitoring, and control through the institutions created to that effect or through those, which shall be thereupon created⁸⁷. Furthermore, the State is under the unwavering obligation to promote, facilitate, and adequately regulate drinking water provision in good quantity and of good quality to the Nicaraguan people, at differentiated rates and favouring those sectors with less economic resources⁸⁸. Accessibility and affordability are further ensured with a provision forbidding the State from interrupting the water provision service to the population who lives in extreme poverty conditions. Water used for human consumption has priority over any other use, according to this norm⁸⁹.

It is worth noting that Law 620 created the National Water Authority (ANA), as a specialised organ within the structure of the Agriculture and Irrigation Ministry. It possesses technical and normative functions, as well as operational, monitoring, and surveillance capacities in the operation, management and administration of Nicaraguan freshwater resources from a national standpoint. The mentioned law also foresees and regulates the functions of the basin agencies (*organismos de cuenca*) and the basin committees (*comités de cuenca*). Whilst the former possesses technical, operative and administrative functions within the specific territory of a basin, the latter are independent community-based organs, which monitor a certain area, such as a river basin, the implementation of Law 620 with respect to water management⁹⁰.

In addition, the Ministry of Health (MINSA) fulfils sanitary monitoring functions of the water and sanitation provision systems. Not only does it survey the quality of drinking water. It also grants permits for the final disposal of effluents. Also, the Ministry of Environment and Natural Resources (MARENA) regulates the discharge of wastewater treatment plants and of industrial effluents into recipient bodies⁹¹.

The General Law for the Services of Drinking Water and Sanitary Sewage (Law 297 of 1998) provides the specific normative framework for the sector of water and sanitation provision. The Nicaraguan Institute of Water Mains and Sewers (INAA) is the body responsible for the enforcement of Law 297. INAA is effectively acting as the regulatory agency of the Nicaraguan water and sanitation sector. In this respect, it grants or denies concessions, licenses and permits for the utilisation of water in the sector under examination and it sets the water tariffs.

In addition, the National Commission on Drinking Water and Sanitary Sewers (CONAPAS) is the institution in charge of planning and formulating policies, objectives, and strategies within the sector. It is the political body for the sector of water and sanitation provision.

Whilst in urban areas water and sanitation services are provided by the Nicaraguan Company of Water Mains and Sewers (ENACAL), CAPS are in charge of such provision in rural areas. Drinking Water and Sanitation Committees (CAPS) are community organisations, legally recognised by law, which are registered at

87 Cf. Article 4 of the General National Water Act.

88 Cf. Article 5 of the same law.

89 Cf. Article 66 of the above mentioned law and Article 9 of its Regulation.

90 See Articles 31 and 35 respectively of the General National Water Act.

91 Cf. Decree 33-95.

the National Registry of Rural Providers of Drinking Water and Sanitation (INAA) and possess their respective certifications. The Special Law on Drinking Water and Sanitation Committees (Law 722 of 2010), regulates their functions in rural areas of the country. In this respect, it is noteworthy that this norm expressly recognises access to water in its preamble as “a fundamental human right, indispensable for the life and health of people and a requisite for the realisation of all the other human rights”⁹².

In addition, there are independent operators in more than forty municipalities⁹³. Municipalities are also responsible for works of infrastructure, and the New Emergency Social Investment Fund (Nuevo FISE) supervises and finances hydraulic and sanitary works.

Since 1998, the responsibility for water and sanitation provision is shared in practice by CONAPAS (as the political body for the sector) INAA (as its regulatory agency), ENACAL, basin agencies and basin committees and CAPS.

Good Practices in Water and Sanitation in Nicaragua

RED CAPS' Actors Inclusive Approach to Water and Sanitation Provision

An integrated approach including all the actors involved in the service has enabled the implementation of a common action with regards to the provision of safe drinking water and sanitation in Nicaragua. Such an inclusive perspective prevents the duplication of efforts within municipalities with regards to water and sanitation projects, environmental management and community organisation.

Such good practice works at an institutional level, gathering together the respective municipal governments within Nicaragua, non-governmental organisations and CAPS. CAPS “manage, operate and maintain water and sanitation services within a community, with the support of all the users to which they render account of their management and activities”⁹⁴. The “Special Law on Drinking Water and Sanitation Committees” (No 722) lays down the norms for the organisation, constitution, legalisation and good functioning of CAPS throughout the country⁹⁵. By virtue of Article 10 of this norm, CAPS are divided into different categories according to the level of complexity of their respective water provision systems. These categories range from highly complex



(IMAGE 12)

92 <http://legislacion.asamblea.gob.ni/normaweb.nsf/9e314815a08d4a6206257265005d21f9/a63305b993cddb210625775f0069e8b3?OpenDocument>

93 Cf. CEPAL, *op. cit.*, p. 51.

94 Article 6 of the “Special Law on Committees on drinking water and sanitation” (No 722).

95 Cf. Article 1 of the same legal instrument (Law No 722).

mini-water mains with electrical pumping to less complex gravity mini-water mains⁹⁶.

The Nicaraguan CAPS Network (RED CAPS) brings together 5,600 CAPS in the rural areas of the country⁹⁷. 35,000 people work voluntarily for CAPS, of which 41% are women and 59% are men, which evidences a non-discriminatory practice. It acts as a link between CAPS and national institutions in the water and sanitation sector⁹⁸. It implements Law No 722 through an equitable gender relationship, promoting community hygiene, and development and participation for the conservation of freshwater resources and to improve water quality⁹⁹.



The mentioned good practice is applied in every municipality in the country where a CAPS operates¹⁰⁰. An inclusive strategy in relation to drinking water and sanitation provision has enabled the enhancement and improvement of drinking water and sanitation systems. Accessibility has been ameliorated through the construction of water provision systems as close as possible to the homes in each community. Water quality is constantly monitored thanks to the coordinated efforts of CAPS, ENACAL (Nicaraguan Company of Aqueducts and Sewers -*Empresa Nicaragüense de Acueductos y Alcantarillados Sanitarios*), and the Health Ministry. In addition, reforestation practices seek to safeguard environmental sustainability.

Whilst CAPS are responsible for sanitation provision, in practice they share this task with the pertinent municipal authorities. The latter also register and provide technical support to CAPS. NGOs and international organisations provide support with infrastructure. FILSE (Social Emergency Investment Fund) does its part through construction works in the communities, such as latrines.

Each CAPS has a villagers' assembly, including one representative from each household. The assembly is the decision-making organ of CAPS. Hence, civil participation is ensured. The directive board is the maximum authority of CAPS and is between five to nine members, which are elected by vote. It is in charge of the administration, operation and management of the water provision system. Access to information is assured through SIASAR, the Rural Water and Sanitation Information System¹⁰¹.

96 Whereas mini-aqueducts by electrical pumping are mostly located in the Pacific region of the country, those by gravity are located in the central region and the Caribbean coast.

97 Source: INAA, (Instituto Nicaragüense de Acueductos y Alcantarillado Sanitario), the regulatory agency of the drinking water and sanitation sector.

98 Likewise, the Departmental CAPS Network operates as a link with departmental authorities and municipal CAPS Networks with the municipal ones.

99 ALIANZA POR EL AGUA, *La Gestión de los Comités de agua y saneamiento en Nicaragua*, pp. 26-28 in: http://alianzaporelagua.org/documentos/Gestion_Co-munitaria_Agua/Nicaragua.pdf

100 At present, CAPS are classified in categories ranging from A to D according to the level of compliance with the criteria set forth by the law of water service providers.

101 SIASAR is a joint initiative, launched by Nicaragua, Honduras and Panama as a tool of basic, updated and proven information about rural water and sanitation services of a particular State. Cf. <http://www.siasar.org/es/reports>

An example of this practice is provided by EL Júcaro CAPS, from the San Dionisio municipality, in the Matagalpa department. Driven by their mission to improve drinking water services, they have focused their efforts in three aspects. Firstly, they conserve their freshwater recharge zones, buying the land where those zones are located and through forest conservation and reforestation practices. Secondly, they wash and clean their drinking water intakes and storage tanks. They apply constant chlorination and regulate the provision of water by sectors. In addition, they efficiently manage drinking water and that for domestic uses, properly maintaining its conduction and distribution lines. As a result, they are able to preserve their infrastructure and water quality. Lastly, particular focus is given to the organisation of the CAPS. Since they were legalised by Law No 722, El Jincón CAPS keeps its books in order (minute books, account ledgers etc.), it summons assemblies periodically to keep the users informed of its activities, and operates in working groups.

An all-encompassing practice as described implicates all of the actors in the water and sanitation sector. In so doing, it exponentially improves its management and conservation capacities of the freshwater resources used and it enhances water and sanitation provision. It includes exchange of information, knowledge transfer, elaboration of consensual plans, and the development of negotiation skills amid the actors involved. It facilitates an active participation of women, thus promoting gender equality and inclusion. This a practice engages local youth as well to enable generational renewal and sustainability.

CONCLUSIONS

Throughout these cases, we have described how good practices in water and sanitation provision in El Salvador, Guatemala, Honduras, and Nicaragua further reinforce the strengths, and recover some of the deficiencies of their respective normative and institutional frameworks. Whilst some of these frameworks appear more complete from a formal standpoint, as in the case of Honduras, these countries still face challenges, which need to be promptly addressed¹⁰². A clearly defined independent regulatory organ would certainly contribute to ensure a more coordinated institutional structure and to overcome irregularity and discontinuity in water and sanitation provision in El Salvador. A specific water law and an autonomous regulatory agency in Guatemala would indeed strengthen the water and sanitation provision regime. More capacity-building would reinforce the operative capability of water and sanitation related institutions in Honduras. In Nicaragua, institutional restructuring combined with more investment and education in sanitation would increase drinking water coverage and access to sanitation.

These good practices evidence the efforts of NHRIs, community organisations, and NGOs to ensure access to drinking water and sanitation in their respective areas of influence. Still, it is important to bear in mind that, regardless of whether it delegates these services, the State bears the primary responsibility for guaranteeing the human rights of all persons. In conformity with human rights law, it is incumbent on the State to promote and protect the enjoyment and full realization of HRWS for all its inhabitants. States are under the obligation to respect human rights relating to water and sanitation by moving as expeditiously and effectively as possible towards ensuring access to safe, affordable and acceptable water and sanitation for all, in conditions of dignity and privacy¹⁰³.

The HRWS have been recognized both internationally and regionally. At a regional level, it has been recognised indirectly by the Organization of American States General Assembly, and expressly by the Inter American Court of Human Rights on numerous occasions. Consequently, all the State Members of OAS – to which El Salvador, Guatemala, Honduras, and Nicaragua are no exception - must incorporate these rights in their respective national legal orders. Furthermore, the consistent, repetitive, and uninterrupted *dicta* of the Inter American Court of Human Rights in this respect allows us to conclude on the existence of nascent regional customary HRWS¹⁰⁴. Within the Central American system in particular, Central American States still need to ratify the Central American Water Covenant.

Access to safe drinking water and sanitation in Central America urgently needs to be articulated with an integrated management approach to freshwater resources. Sharing transboundary water resources will be an essential part of reaching the UN Sustainable Development Goals Agenda, particularly the Water Goal

102 GWP, *La situación de los recursos hídricos en Centroamérica: hacia una gestión integrada*, op. cit., pp. 21-22.

103 A/HRC/33/49/Add.1, p. 18.

104 Cf. The International Law Commission Special Rapporteur's *First Report on Formation and Evidence of Customary International Law*, 17 May 2013, in: UNITED NATIONS, A/CN.4/663, pp. 36-37. See also BARBERIS, *Formación*, op. cit., pp. 210-212 and BARBERIS, J., "Réflexions sur la coutume internationale", *Annuaire français de droit international*, Vol. XXXVI, 1990, pp. 9-46.

(Goal 6). Target 6.5 requires water planners, managers, and users to adopt an integrated water management approach with strong national institutions and legal frameworks¹⁰⁵. In line with this idea, in the Report on his Mission to El Salvador, the Special Rapporteur on the HRWS recommends to the Governments of neighbouring countries that they “[e]stablish a cooperative relationship by means of bi- or trilateral treaties which ensure sound management of transboundary river basins and assert that the use of water for human consumption has priority over other uses, setting the principles of the HRWS at their core”¹⁰⁶. Defining how Central American transboundary water resources will be managed is certainly key for the economic and social development of all States in the region and a prerequisite for its efficient use of and conservation in water and sanitation provision. Strengthening the dialogue processes in the region can foster the conclusion of legal agreements to that end and the establishment of the pertinent institutions to implement them.

All in all, it can be asserted that significant progress has been made in the Central American region to overcome the challenges it faces with regards to water management and water and sanitation provision. The described efforts made in this respect in El Salvador, Guatemala, Honduras, and Nicaragua attest to this program.

Good practices in these four countries may provide more enlightenment to other actors of the same or other regions of the world facing similar challenges, stimulating them to introduce the necessary adjustments to improve water and sanitation services in their respective areas of operation. Such practices do also strengthen – even if informally in some cases - the institutional apparatus of the State in which they take place, providing solutions in areas where there is not enough water and sanitation coverage. In addition, they cover normative and regulatory loopholes in water and sanitation provision. These practices which are also able to incorporate an integrated water management approach, incentivise more efficient water management and conservation, thus ensuring environmental sustainability in their areas of operation.

To conclude, and in light of the Sustainable Development Goals, the good practices from El Salvador, Guatemala, Honduras, and Nicaragua shared throughout these pages are unquestionably heading in the right direction to ensure availability and sustainable management of water and sanitation for all.

105 GWP, *Integrated water resources management in Central America: the over-riding challenge of managing transboundary waters*, 2016, p. 40, available at: https://www.gwp.org/globalassets/global/toolbox/publications/technical-focus-papers/tfp_central_america.pdf

106 A/HRC/33/49/Add.1, p. 20, paragraph 98. See also GWP, *La situación de los recursos hídricos*, *op. cit.*, p. 7. Cf. COLOM CABALLEROS DE MORAN, Elisa, *Estado legal de las cuencas transfronterizas en Centroamérica*, Guatemala, CORDAID, 2014, p. 66.



(IMAGE 14)

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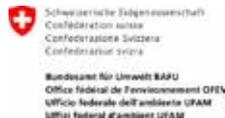
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