

DISCUSSION PAPER N° IDB-DP- 00874

Regulators and the application of the Human Rights to Drinking Water and Sanitation in Latin America and the Caribbean

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Inter-American Development Bank
Water and Sanitation Division

September 2023

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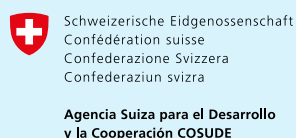


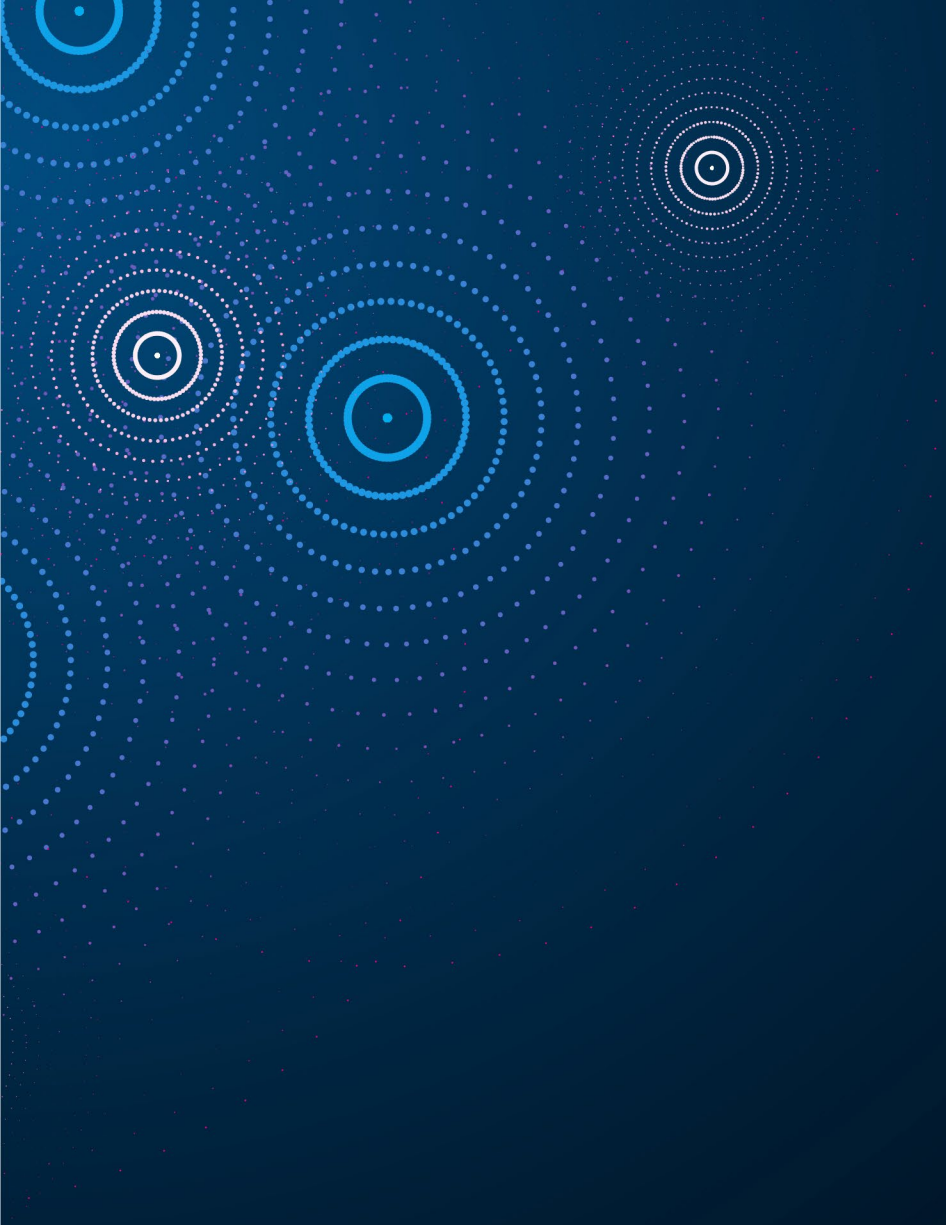
This document has been prepared by Alejo Molinari, within the framework of a consultancy financed by the AquaFund, a multi-donor fund managed by the Inter-American Development Bank (IDB), in collaboration with the International Water Association (IWA).

Two project coordinators from the Water and Sanitation Division of the IDB oversaw the preparatory process: María del Rosario Navia and Celia Bedoya del Olmo. The document has been reviewed by IDB specialists, consultants and other experts, and we would like to thank Kleber Machado, Julio Cesar Aguilera and Oscar Pintos for their help in this regard.

This work received financial support from the Multidonor AquaFund (MAF). Since its creation in 2008, the MAF has been the main financing mechanism to support IDB investments in the water and sanitation sector. It is a flexible fund, open to innovation, that assists governments in the region to achieve the Sustainable Development Goals (SDGs) through quality water and sanitation services for all, working on solid waste management and developing their capacity to face the challenges of climate change, ecosystem degradation and growing water insecurity.

The Water and Sanitation initiative AquaFund consists of the resources of donor partners, such as the Government of Austria, the Spanish Agency for International Development Cooperation (Agencia Española de Cooperación Internacional para el Desarrollo - AECID), the PepsiCo Foundation, the Swiss Federal Agency for Development and Cooperation (SDC) and the Swiss State Secretariat for Economic Affairs (SECO).





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ACKNOWLEDGEMENTS

The author wishes to express his thanks for the advice and collaboration of the members of the study team working under the IDB/IWA agreement: Carolina Latorre (IWA), Celia Bedoya del Olmo (IDB), Hong Li (IWA), Katharine Cross (IWA), María del Rosario Navia Díaz (IDB) and Robert Bos (IWA). He also appreciates the collaboration of the national and local regulators for their courtesy in responding to the survey and to the authorities who made the interviews possible: Alejandro Luis Araujo Rosso (AAPS); Alexandre Caetano (ARCE); Andrew Mendoza Paladines (EMAPAG-EP); Arlen Marisol Murcia Ramírez (ANDA); Cesar Falcon (URSEA); Daniel Echeverría Lutz (ARESEP); Diego Felipe Polanía Chacón (CRA); Esteban Diaz (EUCOP); Euripides Amaya (ASEP); Evel Marcelo Álvarez Alba (AAPS); Francisco Iturraspe (ENRESS); Freddy Felix Bustinza G. (AAPS); Gustavo Gastão Corgosinho Cardoso (ARSAE-MG); Gustavo Saltiel (WB); Ivan Mirko Lucich Larrauri (SUNASS); Jessica Rocha Gama (ABAR); Jorge Married Prior (IMTA); José Bento Rocha (ADASA); José Guccione (EPRAC); José Luis Santos (EMAPAG-EP); Juan Carlos Fuentes (ERSAPS); Odair Gonçalves (AGERGS); Oscar Pintos (AFERAS); Peter M.A. Clarke (WRA); Roberto Darío Lezcano Cáceres (ERSSAN); Rudolf Williams (PUC); Silvio Humberto Viana Diniz (ABAR), and their collaborators.

ACRONYMS AND ABBREVIATIONS

ABAR	Associação Brasileira de Agências Reguladoras (Brazilian Association of Regulatory Agencies)
ADASA	Agência Reguladora de Águas, Energia e Saneamento do Distrito Federal, Brasil (Regulatory Agency for Water, Energy and Sanitation of the Federal District, Brazil)
ADERASA	Asociación de Entes Reguladores de Agua Potable y Saneamiento de las Américas (Association of Potable Water and Sanitation Regulatory Bodies of the Americas)
AECID	Agencia Española de Cooperación Internacional para el Desarrollo (Spanish Agency for International Development Cooperation)
AFERAS	Asociación Federal de Entes Reguladores de Agua y Saneamiento de la República Argentina (Federal Association of Water and Sanitation Regulatory Bodies of the Republic of Argentina)
ARSAE	Agência Reguladora de Serviços de Abastecimento de Água e de Esgotamento Sanitário de Minas Gerais, Brasil (Regulatory Agency for Water Supply and Sanitary Drainage Services of Minas Gerais, Brazil)
CAPEX	Capital expenditures, i.e. costs of renewal and expansion of WASH infrastructure
CEAS	Comisiones Estatales de Agua y Saneamiento, México (State Commissions for Water and Sanitation, Mexico)
CONAGUA	Comisión Nacional del Agua, México (National Water Commission, Mexico)
CRA	Comisión de Regulación de Agua Potable y Saneamiento Básico, Colombia HRWS Derechos Humanos al Agua y el Saneamiento (Commission for the Regulation of Drinking Water and Basic Sanitation, Colombia)
DWSSS	Drinking water supply and sanitation services
EMAPAG-EP	Empresa Municipal de Agua Potable y Alcantarillado de Guayaquil, Ecuador (Municipal Drinking Water and Sewage Company of Guayaquil, Ecuador)
ENRESP	Ente Regulador de Servicios Públicos, Salta, Argentina (Regulatory Body of Public Services, Salta, Argentina)
EPRAC	Ente Regulador de Agua y Cloacas de Misiones, Argentina (Water and Sewage Regulatory Body of Misiones, Argentina)
ERAS	Ente Regulador de Agua y Saneamiento, Buenos Aires, Argentina (Water and Sanitation Regulatory Body, Buenos Aires, Argentina)
ERSAPS	Ente Regulador de los Servicios de Agua Potable y Saneamiento, Honduras (Regulatory Body of Potable Water and Sanitation Services, Honduras)
EUCOP	Ente de Control de Privatizaciones (Agency for the Control of Privatizations, Argentina)
GLAAS	Global Analysis and Assessment of Sanitation and Drinking-water, UN-WATER
HRWS	Human Rights to Safe Drinking Water and Sanitation
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDB	Inter-American Development Bank
INIFED	Instituto Nacional de la Infraestructura Física Educativa (National Institute of Physical Infrastructure for Education, under the Ministry of Public Education, Mexico)
IWA	International Water Association
LAC	(region of) Latin America and the Caribbean
MAF	Multidonor AquaFund
MP	Master Plan
OECD	Organization for Economic Cooperation and Development
OPEX	Operational expenditures, i.e. the operation and maintenance costs of a WASH system
RGGs	General Supervision and Sanction Regulations (Reglamento General de Supervisión y Sanción, SUNASS, Peru)



SDC	Swiss Federal Agency for Development and Cooperation
SDG	Sustainable Development Goal(s)
SECO	Swiss State Secretariat for Economic Affairs
SENASA	Servicio Nacional de Saneamiento Ambiental, Paraguay (National Environmental Sanitation Service, Paraguay)
SEP	Secretaría de Educación Pública (Ministry of Public Education, Mexico)
SIEP	Service Improvement and Expansion Plans
SISS	Superintendencia de Servicios Sanitarios, Chile (Superintendency of Sanitation Services, Chile)
SNIS	Sistema Nacional de Informação de Saneamento, Brasil (National Sanitation Information System, Brazil)
SSPD	Superintendencia de Servicios Públicos Domiciliarios, Colombia (Superintendence of Residential Public Services, Colombia)
SUI	Sistema Único de Información, Colombia (Single Information System, Colombia)
SUNASS	Superintendencia Nacional de Servicios de Saneamiento, Perú (National Superintendence of Sanitation Services, Peru)
UN	United Nations
UNGA	United Nations General Assembly
URSEA	Unidad Reguladora de Servicios de Energía y Agua (Regulatory Unit of Energy and Water Services, Uruguay)
WB	World Bank (International Bank for Reconstruction and Development, Washington DC)
WHO	World Health Organization
WRA	Water Resources Authority (Jamaica)





EXECUTIVE SUMMARY

This report presents the results of a study carried out with support from the International Water Association and the Inter-American Development Bank. The study explored the relationship between the work of regulators of drinking water supply and sanitation services (DWSSS) in Latin America and the Caribbean (LAC) and the Human Rights to Water and Sanitation (HRWS), in on-going efforts to achieve the Sustainable Development Goals. The study aimed to improve our understanding of the extent to which HRWS are incorporated into the regulatory frameworks for safely managed DWSSS, and to identify main trends, good practices and opportunities that will support their full incorporation and avoid eventual setbacks.

After collecting and studying the literature on the subject and some case studies already performed, two instruments were designed to explore the subject's state-of-the-art: a series of interviews and a survey. Representatives from five national regulatory bodies and one multilateral association of regulatory bodies were interviewed, while the survey was distributed to 52 regulators and their organizations in 37 countries in the LAC region. The survey yielded 23 responses from 14 countries, together covering a population of 542,479,268 inhabitants, equivalent to 85% of the total population of the region.

The results of the interviews reveal that the regulatory frameworks for DWSSS in Latin America and the Caribbean already include many of the HRWS criteria as well as general Human Rights principles, without mentioning them as such specifically, especially regarding the quality of drinking water and other service standards, such as reliability, acceptability and affordability, and the principles of sustainability, public participation

and accountability. DWSSS Regulatory frameworks include more criteria referring to drinking water than to sanitation. For the latter, the regulatory criteria tend to be linked more to local conditions and depend more on health and environmental regulations.

Many of the HRWS criteria are not yet included in the regulatory frameworks, particularly those linked to services outside the network coverage, such as informal settlements and rural areas, where access is more precarious or even non-existent. Frameworks may not include regulations for services in public places, for migrants or for homeless people. On the other hand, the regulations within the service network may not include the HRWS criteria linked to intradomiciliary facilities and facilities inside public buildings, or hygiene and handwashing standards, or provisions on privacy, dignity and gender issues in the access to and use of sanitary facilities.

There is still a host of opportunities for the incorporation and specific mentioning of all HRWS criteria and broader Human Rights principles in national regulatory frameworks, which would reinforce their robustness and contribute to an accelerated progressive realization of these rights. It is imperative to review, on a case-by-case basis, the criteria that have not yet been incorporated and what are the constraints on doing so, in order to identify ways of making them explicit in the DWSSS regulatory frameworks or in complementary regulations. Apart from the direct impact on the quality of the services that the explicit incorporation of said principles and criteria into the regulatory frameworks would have, the monitoring of their application by the regulatory authorities has great potential to generate substantive information. **This information will be useful to national governments in the preparation of the reports on the progressive realization of HRWS, which they have to present periodically to the United Nations Human Rights Council.**





BACKGROUND

On 28 July 2010, the UN General Assembly adopted Resolution A/Res/64/292 (United Nations, 2010) recognizing Human Rights to Safe Drinking Water and Sanitation (HRWS), which were added to the Human Rights previously recognized by the Committee on Economic, Social and Cultural Rights¹. These rights have already been adopted by most countries in the world.

One hundred and twenty-two Member States voted in favour of this Resolution; subsequently, governments gradually adopted HRWS officially, incorporating them into their national constitutions, policies, legislation and/or their jurisprudence, and committing themselves to invest in maximum efforts towards progressively providing safe drinking water and sanitation services to all residents in the territory under their administration, in line with the criteria of quality and safety, accessibility, availability, acceptability including dignity, and affordability.

States have a first-line obligation to apply and implement HRWS and meeting this obligation depends heavily on legislation and regulatory frameworks. Regulators, as the authorities in charge of ensuring adherence to regulatory frameworks, have a leading role in the implementation of HRWS.

Subsequently, on 25 September 2015, the UN General Assembly adopted the 2030 Agenda for Sustainable Development, whose strategy sets out 17 Goals (the Sustainable Development Goals - SDGs) with 169 targets of an integrated and indivisible nature, which will govern and guide global development programmes until 2030².

SDG 6 establishes the commitment **“to ensure availability and sustainable management of water and sanitation for all”**³. SDG 6 contains eight targets, of which the first two are:

6.1 By 2030, achieve universal and equitable access to safe and affordable drinking water for all.

6.2 By 2030, achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and people in vulnerable situations.

¹ The Committee on Economic, Social and Cultural Rights (CESCR) is an 18-member Committee under the United Nations, entrusted with interpreting and monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights.

² <https://news.un.org/es/story/2015/09/1340191>

³ <https://www.un.org/sustainabledevelopment/es/water-and-sanitation/>

THE PURPOSE OF THE STUDY

This study, carried out with the support from International Water Association (IWA) and Inter-American Development Bank (IDB), explores the relationship between the regulators of DWSSS in Latin America and the Caribbean (LAC) and HRWS, on the road towards achieving the UN SDGs, seeks to improve our knowledge and understanding of how much HRWS are incorporated into the regulatory frameworks for safely managed DWSSS and aims to identify main trends, good practices and opportunities that will support their full incorporation and avoid eventual setbacks.

METHODOLOGY

Following the collection and review of relevant literature and of a number of case studies already completed, **two instruments were designed to explore the state-of-the art of the subject: a series of interviews and a survey.** Representatives from five national regulatory bodies and one multilateral association of regulatory bodies were then interviewed, while a survey questionnaire was distributed to fifty-two regulators and their associations in thirty-seven countries in the LAC region.

It is important to note that the vast majority of the countries in the region have unitary political governance systems and a single regulator covering the entire country. But there are three countries that have a federal administration: Argentina, Brazil and Mexico. In Mexico, regulation has not yet been developed and the entities that provide DWSSS are self-regulated. In Argentina, the

FIGURE 1. Survey map answered in Latin America and the Caribbean



regulators are provincial and are grouped in the Federal Association of Water and Sanitation Regulatory Bodies of the Republic of Argentina (AFERAS). In Brazil, the regulators operate at State or municipal level and are grouped in the Brazilian Association of Regulatory Agencies (ABAR). In the latter two cases, the survey questionnaire was sent both directly to the regulators and through their respective associations.

Twenty-three responses were obtained to the total of fifty-two survey questionnaires distributed, which corresponds to sixteen countries (see Figure 1).



LEGAL FRAMEWORK

The obligation to provide maximum resources for the progressive realization of HRWS resides with the signatory States of UN General Assembly Resolution A/Res/64/292 of 28 July 2010. This obligation must be expressed in the legislative system of each country through its Constitution, policy framework, laws and/or jurisprudence.

Inclusion in the national Constitution represents a country's strongest possible commitment to implementing HRWS and facilitates the incorporation of the rights into legislation at lower levels – both nationally, and regionally (provinces, counties or federated states) and locally (municipalities), and finally in the regulation of services.

Incorporation of HRWS into the legislation generates obligations for the parties involved and opens a space for the design of policies that establish objectives and means of implementation of the rights.

In the LAC region, HRWS have been incorporated into legislation at different levels. The countries where HRWS have been explicitly incorporated into the Constitution are Bolivia, Ecuador, Honduras, Mexico, Nicaragua and Uruguay; other countries, such as Argentina, Brazil, Peru and Venezuela, have indirectly recognized them in their Constitution, for example by incorporating other rights from the International Covenant on Economic, Social and Cultural Rights (ICESCR) related to water and sanitation, such as the right to health, housing, food and a decent life. In Costa Rica, El Salvador and Jamaica, they have been incorporated through rulings of the Constitutional Court and other countries, including Belize, Colombia, Guatemala, Paraguay and the Dominican Republic, have been incorporating them into their legislation. In Chile and Panama, legislation that recognizes HRWS has not yet been developed⁴.



BOX 1. HRWS in the Argentine jurisprudence

Although HRWS have been indirectly recognized in Argentina through international human rights treaties, a group of residents of a new urban development in the Province of Santa Fe, at a location beyond existing service coverage, obtained a court order based on HRWS, for them to be connected to the service, thus establishing jurisprudence on the matter.

This case occurred in the city of Rafaela in the Province of Santa Fe, where the service provider is Aguas Santafesinas S.A.: 51% of the capital stock of this company is owned by the Province, 39% by the municipalities within the service area and 10% by company personnel. The regulatory framework it operates under requires it to extend services to the entire population in the concession area. The groundwater in this area is heavily contaminated with arsenic. The Secretary of the Environment of the Rafaela municipality agreed with the developer of this new neighbourhood that, if the developer built a reverse osmosis plant to bring the groundwater to drinking water quality standards, he, in return, would facilitate the sub-division of the area into plots and have the new residents “agree to accept the land without water”, that is, without the installation of a distribution network. Once the neighbourhood had become functional, the residents filed a legal claim to be provided with a drinking water supply service, based on the argument that the regulatory framework for the service, sanctioned by Provincial Law No. 11,220, could not be set aside in favour of lesser ranked decision, as was the municipal disposition of empowerment of subdividing the area into “plots without water”. As an outcome of this lawsuit, the judge, in his ruling, emphasized the UN General Assembly Resolution A/Res/64/292 of 7/28/2010, which recognizes that “the right to drinking water

⁴ This reflects the status in countries of Latin America and the Caribbean at the time the Spanish version of this report was completed, in 2019. It does not cover all countries of the LAC region, only those that responded to the questionnaire.

BOX 1. (cont.) HRWS in the Argentine jurisprudence

and sanitation is a human right essential for the full enjoyment of life and all human rights”, and General Comment No. 15 of the ICESCR [2002], which maintains that the human right to water is essential for a dignified human life. The judge’s ruling ordered connection of the entire new neighbourhood to the distribution network, even though it was at a location beyond the existing service coverage, for which the extension of the network or the effective provision of the service was not foreseen or planned.

In some countries, other agencies exist with the responsibility of supervising implementation of HRWS within their mandate. Among these are the Human Rights Secretariat (la Secretaría de Derechos Humanos) in Honduras; health sector agencies in Brazil and Panama; and, water authorities in Paraguay and Mexico. In the latter country these operate at both the Federal and the State level: the National Water Commission (CONAGUA) and the State Water and Sanitation Commissions (Comisiones Estatales de Agua y Saneamiento - CEAS), respectively.

REGULATION AND REGULATORS

In descending order, the legal hierarchy in countries starts from the Constitution, as the State’s major commitment to the application of HRWS, followed by legislation, jurisprudence and, as the lowest rung on the legal ladder – and the one closest to everyday reality –, there is regulation. Indeed, ultimately it is the regulation of services that is responsible for giving concrete shape to HRWS in people’s daily lives.

In analysing the forms that regulation of public DWSSS has taken, the United Nations Special Rapporteur for HRWS distinguishes self-regulation, regulation by contract and regulation by an independent agency (United Nations, 2017). The following three paragraphs summarize the Special Rapporteur’s views.

Self-regulation raises significant human rights challenges in terms of guaranteeing independent monitoring and providing reliable accountability mechanisms. Regulatory principles, such as impartiality, accountability, transparency and good governance, can potentially be compromised by self-regulation as there is no separation between policy, regulation and service provision.

Alternatively, regulatory frameworks may be characterized by a broad spectrum of contractual arrangements between governments which formally delegate service provision and third parties. Several human rights challenges may arise when regulating service provision by contract, particularly when non-State actors are involved. Such challenges include guaranteeing transparent and democratic decision-making, addressing power asymmetries in the bidding and negotiation process, ensuring affordable services, avoiding disconnections in cases of inability to pay, ensuring monitoring and accountability, and addressing corruption. In cases where a regulator is appointed to supervise the contract, the service standards and the rates agreed between the contracting parties must be approved by that regulator. The intervention and the oversight of the contract by a regulatory actor, if oriented by the human rights framework, can contribute to the realization of rights to water and sanitation.

Over the past two decades, in many countries a general trend in terms of regulation has been the establishment of public entities that are expected to be independent from providers, governments and the direct administration of the State; these are designated as independent regulatory bodies. The need for autonomous regulatory bodies has been reinforced by the belief that policy, regulation and provision of services should preferably be separated to ensure maximum benefit from the expertise required and to provide transparency.

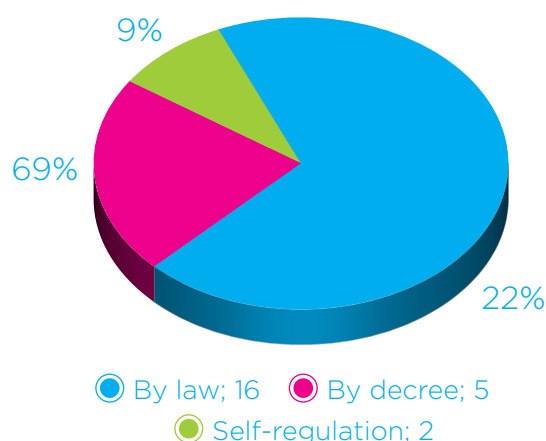
Independent and credible regulation of DWSSS is vital to building confidence in the safety and reliability of supplies (IWA, 2004).

Among the conditions for effective regulation is the need to ensure an adequate level of institutional, functional and financial independence of the regulatory bodies; a guarantee of the stability and autonomy of these bodies, including the freedom of decision-making within their legal frameworks, subject to judicial review (IWA, 2015).

A regulator must, however, act within the margins of the power delegated by the legislature, remaining subject to long-term national policies (OECD, 2014). In other words, regulators must ensure the implementation of public policies defined by the government in the regulated sectors (United Nations, 2017).

As first prerequisite for the independence of the regulator is the nature of the legal instrument by which the regulatory agency has been created: a law confers greater stability because it cannot be modified as easily as a decree, since it requires parliamentary consensus. A decree, on the other hand, can easily be replaced by another decree if the authority of the Executive changes. Thus, it was observed that, of the twenty-three regulators who responded in the survey, sixteen were established by law, five by decree and two are self-regulated providers.

FIGURE 2. Proportion of types of legal instruments used for the establishment of a regulatory agency (in %)



BOX 2. Composition of the board of directors of the CRA, Colombia

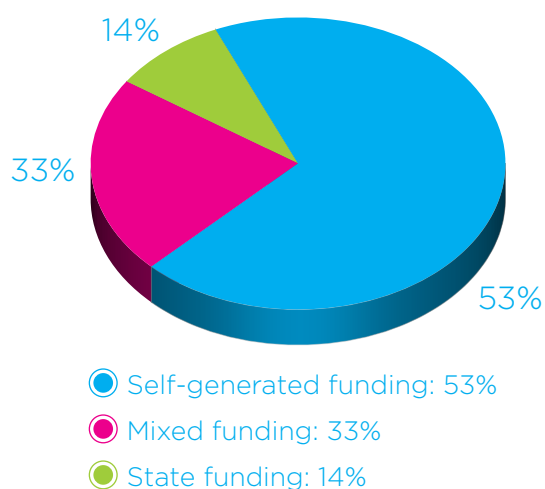
As an example, in Colombia, the Commission for the Regulation of Drinking Water and Basic Sanitation (Comisión de Regulación de Agua Potable y Saneamiento Básico - CRA) is run by a Board of Directors that was originally made up of seven members: four commissioned experts and three government counterparts. When the Commission was created, the environment and housing portfolios pertained to the same ministry. In 2010, this ministry was split into the Ministry of the Environment and the Ministry of Housing. The representatives of the Government became four: two from each ministry. The President of the Board of Directors is the Minister of Housing and, in case of a tie, he casts the deciding vote. The Administrative Unit of the CRA manages its budget and its own agenda with full autonomy, proposing its initiatives to the Commission, where, in the event of a tie, the judgement of the Government representatives prevails.

Other basic determining factors for the independence of a regulator are the level of authority from where the scope of its mandate originates and whether it has economic independence. The greater the distance from the Executive Branch and the smaller its economic dependence on the State budget, the more independent the regulatory body will be.

A minority of regulators in the LAC region derive their authority from a parliamentary intervention. In the sample analysed, leaving aside the two cases of self-regulation, only eight out of twenty-one regulatory bodies derive their designated authority from an intervention by the legislature. On the other hand, eleven of these twenty-one are self-financing; seven have mixed financing, that is, part of their budget is self-generated, part is received from the State; and, three are totally financed by the State.

In the LAC region, regulators' independence from political power varies according to the circumstances of each country. They all make an effort,

FIGURE 3.
Funding sources of regulatory bodies (in %)



however, to maintain technical independence by strengthening the training of their staff in the essential functions and regulatory tasks. In some countries, regulators receive support from their own associations, such as AFERAS in Argentina and ABAR in Brazil, for the training of their staff, while in others, such as Ecuador and Uruguay, they obtain such support from the national budget or, as is the case for Honduras, Peru and Uruguay, they receive funding for this purpose from multilateral organizations.

REGULATORY FRAMEWORK

Regulatory frameworks set the standards and norms which define the conditions under which regulated DWSSS must be provided to the population, through scientific, technical and social requirements, such as the standards for drinking water

quality and for the quality of wastewater; continuity and reliability of services; asset management through Service Maintenance and Expansion Plans (SMEP); tariff setting; public participation; transparency and availability of information; accountability; and the economic, social and environmental sustainability of service delivery systems.

Regulatory frameworks must establish the standards for the provision of services specifically linked to the HRWS criteria, so that DWSSS are accessible; available; safe and meeting quality standards; acceptable, including from the perspective of privacy and dignity; and affordable for everyone. In addition, they must include the general principles that cut across all human rights: equality and non-discrimination; economic, social and environmental sustainability; public participation; access to information and transparency; and adequate accountability.

Many of these principles have already been incorporated into the existing Regulatory frameworks in countries in the LAC region, although HRWS may not be mentioned specifically. The redefinition of standards and norms within the HRWS context will enhance their strength and relevance and facilitate the progressive realization of the rights. Regulators are responsible for ensuring compliance with these standards and norms so that, progressively, HRWS are recognized and respected to their full extent.

In the next section, the HRWS criteria will be reviewed conceptually, following the path set out by the Special Rapporteur (United Nations, 2017), and similarly the cross-cutting human rights principles will be reviewed, with the aim of observing to what extent they are being incorporated into regulatory practices in LAC. For each criterion, first a conceptual introduction will be made from the point of view of HRWS and then the reality that emerges from the interviews and the survey will be described.

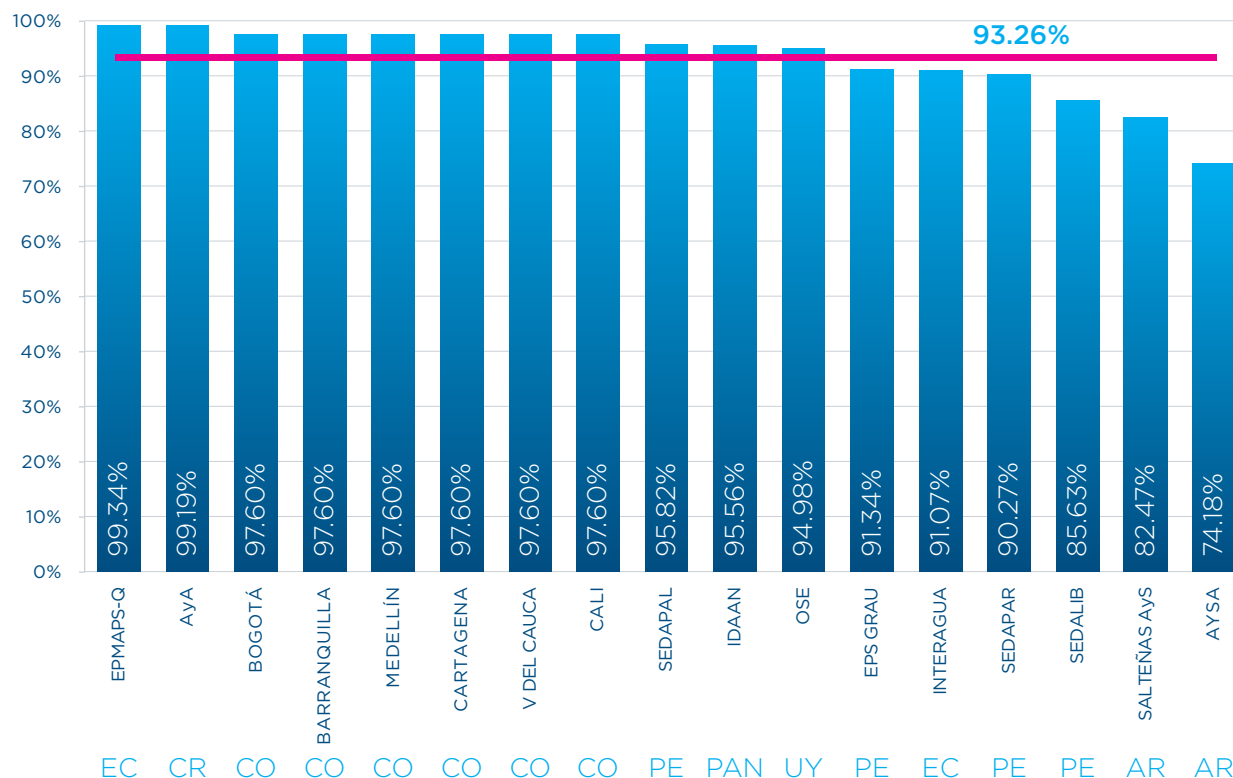
SPECIFIC CRITERIA AND NORMS FOR THE PROGRESSIVE REALIZATION OF HRWS

1. **Accessibility:** water and sanitation services provided through distribution and conveyance networks, must be accessible inside the premises or in their immediate vicinity, with secure access day and night. In the absence of household connections, the services may be delivered by (in)formal providers using alternative technologies. The sanitation service (toilet or latrine) must have private access and must not be shared with other households. The gender issue is closely linked to the conditions of accessibility, acceptability and safety of services, particularly for sanitation. Access for people with disabilities, older people, pregnant women, sick people and people with special needs must be ensured. The regulations must ensure safe access to services in public buildings in community settings, such as schools, hospitals, prisons, etc., and, in general, in situations outside the home.

In all cases consulted, the provider is responsible for the network and household connections, both for drinking water and sanitation, up to the boundaries of the property. The user is responsible for the installation inside the premises. For cases where distribution networks have not yet been developed, some regulations foresee the placement of public standpipes at a maximum distance of 500 m from the dwelling. Where this is not a viable option, the issue of access is solved by the deployment of tanker trucks.

The annual benchmarking exercise of the Association of Potable Water and Sanitation Regulatory Bodies of the Americas (ADERASA) measures the coverage by household connections in the services regulated by its associates. **For example, for the year 2018, the graph in Figure 4 was obtained.** The average coverage of drinking water supply services through household connections was 93.3%.

FIGURE 4. ADERASA survey (2018): drinking water coverage with household connections



Minimum coverage = 74.18% Average coverage = 93.26%
Maximum coverage = 99.34% Standard deviation = 6

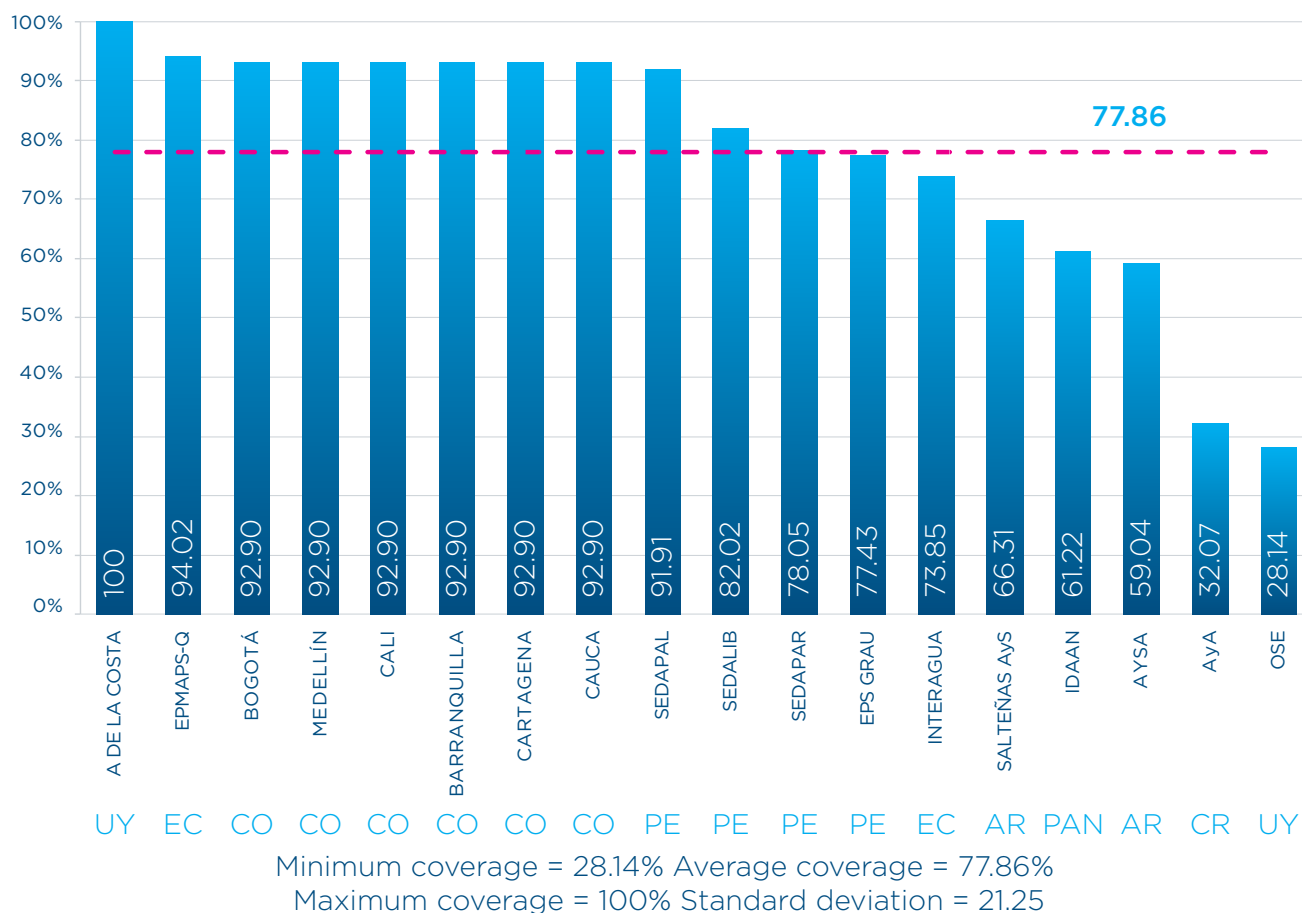
In seven of the twenty-three cases studied, the regulator has standards and norms allowing for the regulation of services in informal settlements, provided by public standpipes or tanker trucks. In the remainder of the cases this type of service is not regulated and regulation is limited to networked services. For example, in Paraguay, services for settlements of fewer than 10,000 people are the responsibility of the Ministry of Housing and the National Environmental Sanitation Service (SENASA).

For the coverage of sewerage services, the ADERASA measurement of sewer connections for the year 2018 resulted in the graph presented in Figure 5. The sample showed an average of 77.86%.

In most cases, regulations that establish the conditions for access to sanitation services inside homes and in public buildings are not the responsibility of the regulator, but of the municipalities or other authorities, such as the Ministry of Housing in Colombia. Only in two cases in Argentina does the regulator have responsibilities with respect to installations inside homes, in one case directly (ERAS) and in another through the provider (ENRESP).

The conditions of accessibility to sanitation services for people with disabilities, older people, pregnant women, sick people and people with special needs are not the responsibility of the regulators, but of other State agencies, such as the aforementioned Ministry of Housing in

FIGURE 5. ADERASA survey (2018): coverage by sewers with household connections



Colombia; the National Institute of Physical Infrastructure for Education (INIFED) of the Ministry of Public Education (SEP) in Mexico; or the Ministry of Social Development in Panama. Regulatory frameworks generally consider that the toilets are inside the dwellings and do not foresee the alternative of locating them outside the dwelling, except in El Salvador, where situating latrines outside the dwelling is permitted as well as in Peru for rural sanitation. In no case do the regulatory frameworks establish particular provisions to address gender issues linked to health and hygiene services and in situations outside the home in general.

2. **Availability:** *standards and norms must ensure the availability of a minimum quantity of reliable and safe drinking water: according to WHO recommendations, 20 litres/person/day is the essential minimum in case of shortage; 50 litres/person/day would be an intermediate supply level, with a low level of health risk (provided that the absence of contamination is rigorously controlled); and 100 litres/person/day would be an optimal level of supply, with a very low level of health risk (Howard and Bartram, 2003). In cases of special needs, an adequate amount must be provided. In the case of continuously operated (24/7) networks, services must be provided without significant interruptions that may harm users or may compromise the quality of drinking water, or, in the event of sewage overflows, the environmental conditions.*

Of the twenty-three cases analysed, only six have established a minimum supply of drinking water, ranging from 5 litres/person/day (ENRESS, Argentina)⁵; 50 litres/person/day in Bolivia, Jamaica and Mexico, to 100 litres/person/day in Panama. In Colombia, the CRA has established minima of between 11 and 16 m³/month per billed subscriber, depending on the municipality's altitude above sea level⁶;

separately from this regulation, some providers have established other amounts that they have called the "vital minimum". The remaining seventeen regulators do not have a norm that establishes a minimum quantity of drinking water to supply.

BOX 3. Minimum water supply in Panama

In Panama, in both informal settlements and in areas with a poor supply of drinking water, the provider must supply water to users using tanker trucks. For such purposes, the regulator has implemented the recommendations of the WHO regarding the minimum amount of water of 100 litres/person/day.

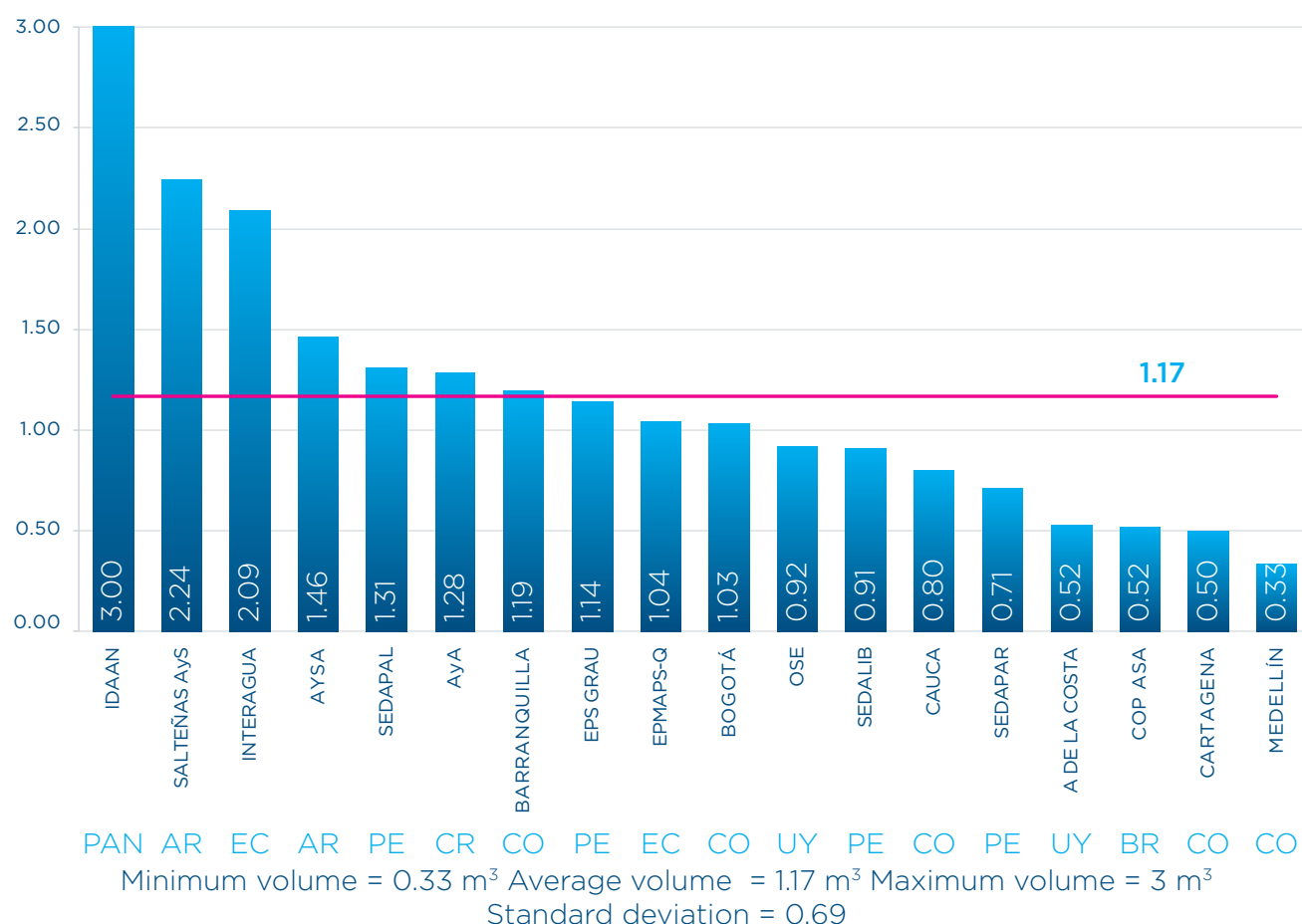
An indirect measurement of availability could be the production of drinking water per user point or per bill. The sample surveyed by ADE-RASA for the year 2018 shows an average of 1,170 litres/bill/day which, considering an average loss of 40.29% and four people per user point, would indicate an average availability of 175 litres/person/day. **The production graph created with the 2018 data collected by ADE-RASA is presented in Figure 6.**

Regarding continuity, all regulators covered by the analysis have standards and norms to deal with service interruptions: these establish a system of notification to the authorities and to the population, the timing of scheduled interruptions and the obligation of an alternative service in case of prolonged interruptions. Most regulators (seventeen out of twenty-three) have standard procedures how to deal with sewage system interruptions when there are overflows on public roads.

⁵ The obligation of the Argentinian provider to deliver 5 litres/person/day free of charge for personal use and as a supplementary provision, corresponds to services where the water supplied by the network does not meet quality standards, particularly due to chemical contaminants (arsenic, nitrates, fluorides, iron, manganese etc.), and may compromise the health of the population

⁶ Resolution CRA 750 of 2016, by which the range of basic consumption is modified, establishing different minimum amounts of drinking water to be provided according to the altitude (above sea level) at which the municipality is located.

FIGURE 6. ADERASA survey (2018): daily production of drinking water per household bill (in m³)



3. Quality and safety: drinking water quality regulations must ensure that drinking water is safe for human health, free from pathogenic microorganisms, harmful chemical substances and radiological risks. The application of the WHO Drinking Water Quality Guidelines, adapted to local circumstances and of the WHO Water Safety Plan approach (WSP; Bartram et al., 2009) is suggested. The population should be warned when drinking water is not safe and alerts and precautionary measures should be provided as appropriate. Adequate sanitation must prevent human, animal and insect contact with waste and must provide facilities for washing hands and sensitive body parts, as well as the safe disposal of personal hygiene products. The WHO Sanitation Safety Plan approach (SSP) applies (WHO, 2016). The regulations must take into account the menstrual hygiene needs of girls and women.

In all cases, there are local standards for drinking water quality, most of which (twenty-two of twenty-three) are based on WHO recommendations. **The annual measurement of the quality of the distributed drinking water of a sample of providers regulated by their associates yielded an average of 89.04% of analyses carried out in accordance with the standard, as shown in the graph presented in Figure 7.**

It is not always the regulator who has been mandated to monitor drinking water quality. In half of the cases, the first responsibility lies with the service provider, supervised by the regulator performing verification checks; while in the other half the health authority has been mandated to monitor drinking water quality and to carry out the verification of the service provider's routine controls. In case of

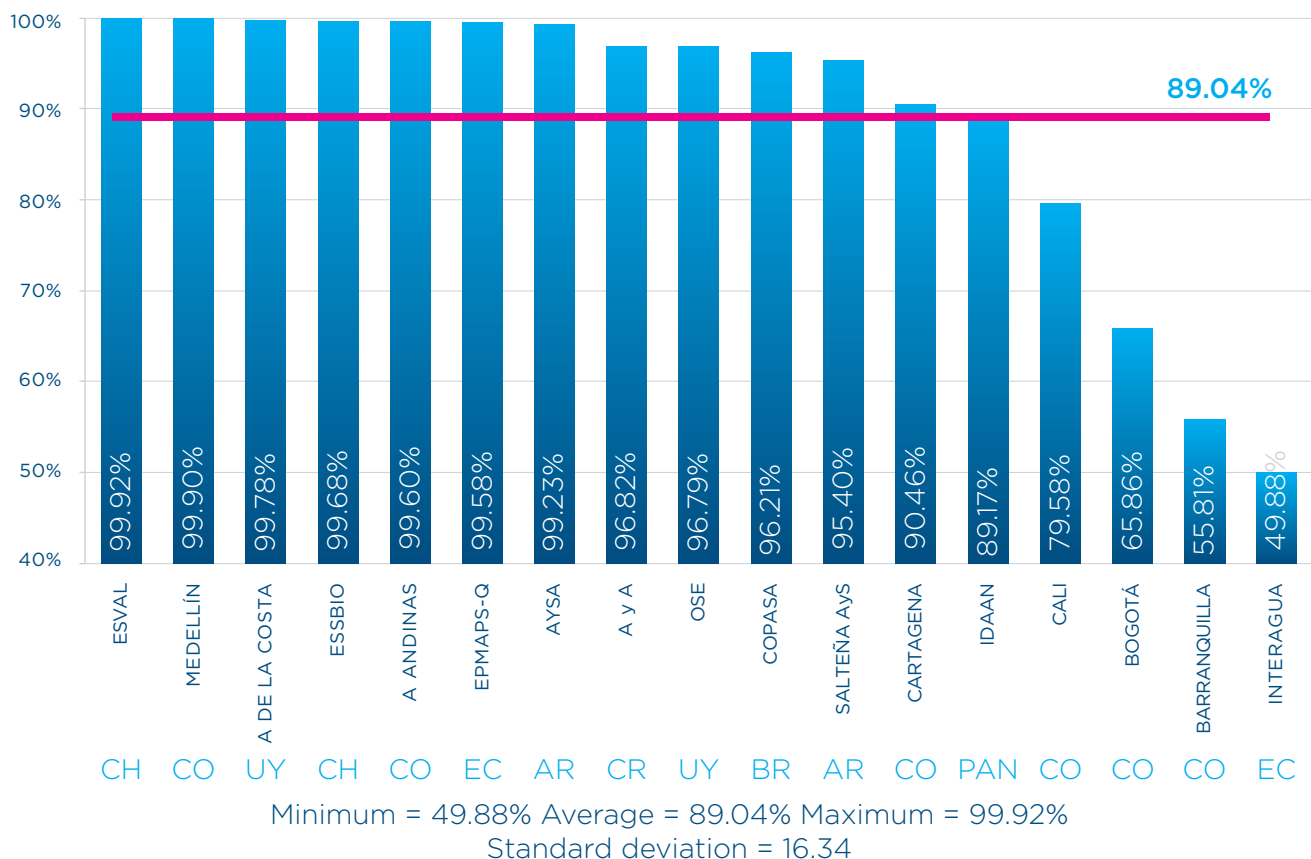
drinking water quality failures, in twenty-two out of twenty-three cases, service providers are obliged to inform the regulator, the health authority and the population, and to indicate the measures that will be taken to resolve the situation.

Out of the twenty-three cases analysed, WHO Water Safety Plans (WSP) are routinely used in nine cases; their use is in the implementation stage in three cases and they are not used in the remaining eleven cases. The regulations regarding minimum hygiene conditions, such as hand washing, female hygiene, and measures targeted at sick people and people with disabilities, are not included in the current regulatory frameworks and are generally in charge of the health authorities, or other institutions. In six of the cases analysed, there are no regulations regarding the separation and treatment of human waste in health care facilities. In three cases, there are regulations overseen

by the regulator, and in the remaining fourteen cases the health authority, the environmental authority or the communal authority is in charge.

In three cases, the normative rule that establishes the maximum acceptable water quality values for the management, treatment and disposal of wastewater, whether it be transported by conveyance networks (sewers) or through alternative services, is under the oversight of the regulator; while in the remaining cases it is the responsibility of other authorities, be they health, environmental or local authorities. In only three cases the principles and practice of WHO Sanitation Safety Planning (SSP) are applied. **The annual measurement of a sample of regulated providers carried out by ADERASA, of the quality of the treated wastewater returned to the environment, shows an average of 63.91%, as shown by the graph presented in Figure 8.**

FIGURE 7. ADERASA survey (2018): quality of distributed drinking water



Normative rules concerning the special disposal of pathogenic waste are not included in the DWSSS regulation and depend on other authorities such as those dealing with health or environment.

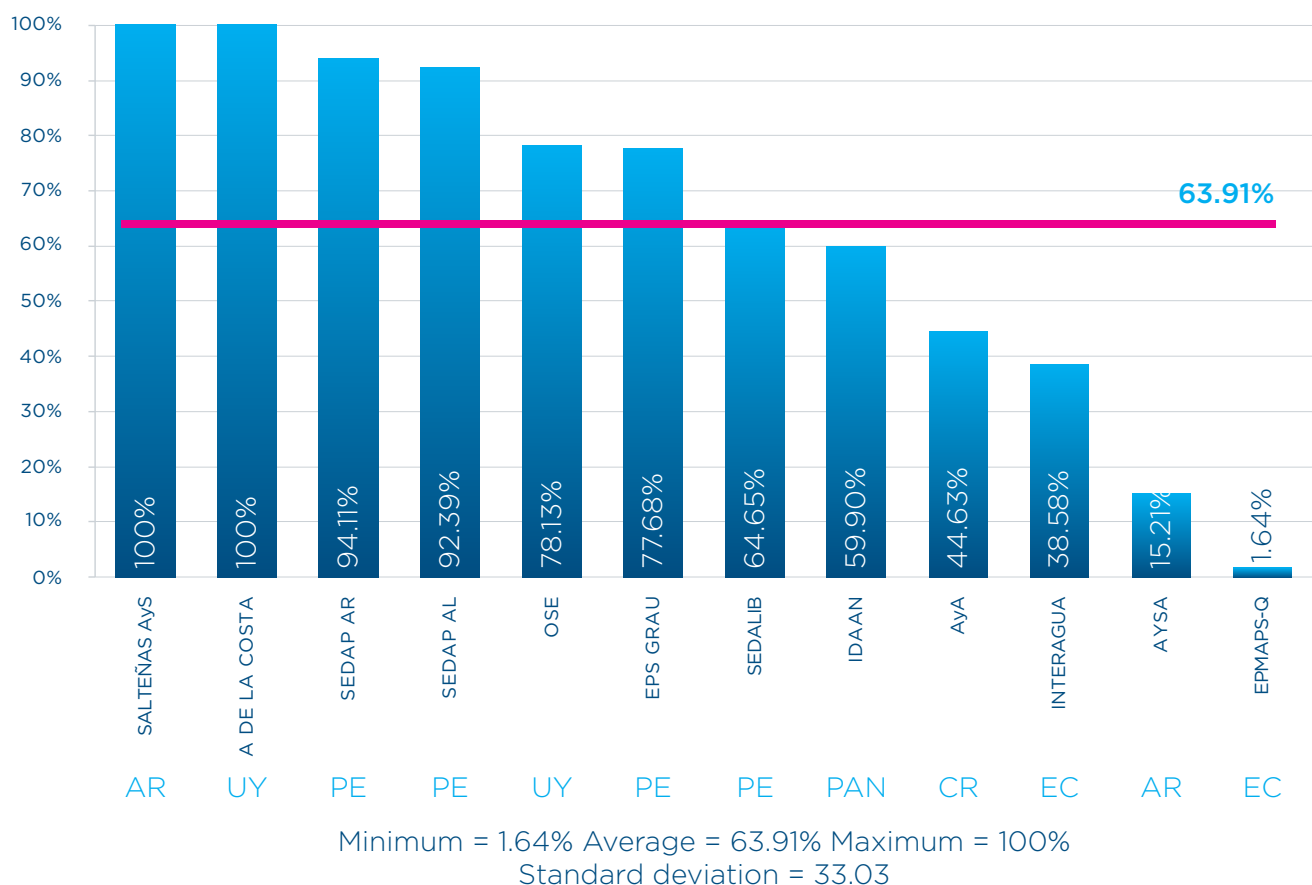
4. **Acceptability, privacy and dignity:** *drinking water must be acceptable in colour, odour and taste, consistent with the local culture. For sanitation, the regulation must provide for toilets to be built in such a way as to protect privacy and dignity, allowing the specific hygienic practices of each culture.*

The colour, odour and taste of drinking water, also called organoleptic parameters, are part of the set of quality parameters and, as such, are subject to similar regulatory interventions. Normally, the DWSSS provider itself carries out its monitoring and surveillance, and in most cases (fourteen out of twenty-three cases) the

regulator supervises them, while in the remaining cases the oversight remains in the hands of the Ministry of Health or even of local authorities. Since these parameters are the ones that users perceive sensorily, failing standards are quickly detected and are the cause of most water quality claims, allowing the provider to intervene quickly to restore the normal level of the service. The normative rules related to the protection of privacy in toilets, which set the minimum hygienic standards for public health services, are not part of the DWSSS regulatory standards, as the responsibility for this lies with the Ministry of Health, local authorities or other organizations.

5. **Affordability:** *regulations must ensure that everyone can enjoy DWSSS, without the tariffs jeopardizing the realization of HRWS, offering adequate solutions for the most vulnerable groups. The regulator must develop and design*

FIGURE 8. ADERASA survey (2018): treated wastewater quality



subsidies targeted at different types of users, and social tariffs or other financial, fiscal or transactional instruments. Connection charges to services should not prevent access. In the case of a household's inability to pay, the regulation must also address the process of limiting services to a minimum that still allows for the delivery of a basic service.

A distinction must be made between subsidies to the service provider and direct subsidies to the user. The subsidies to the service provider refer to the State contribution to cover the costs of renewal and expansion of the infrastructure (CAPEX) and/or the operating costs (OPEX) of the provision of services (Foster *et al.*, 2000).

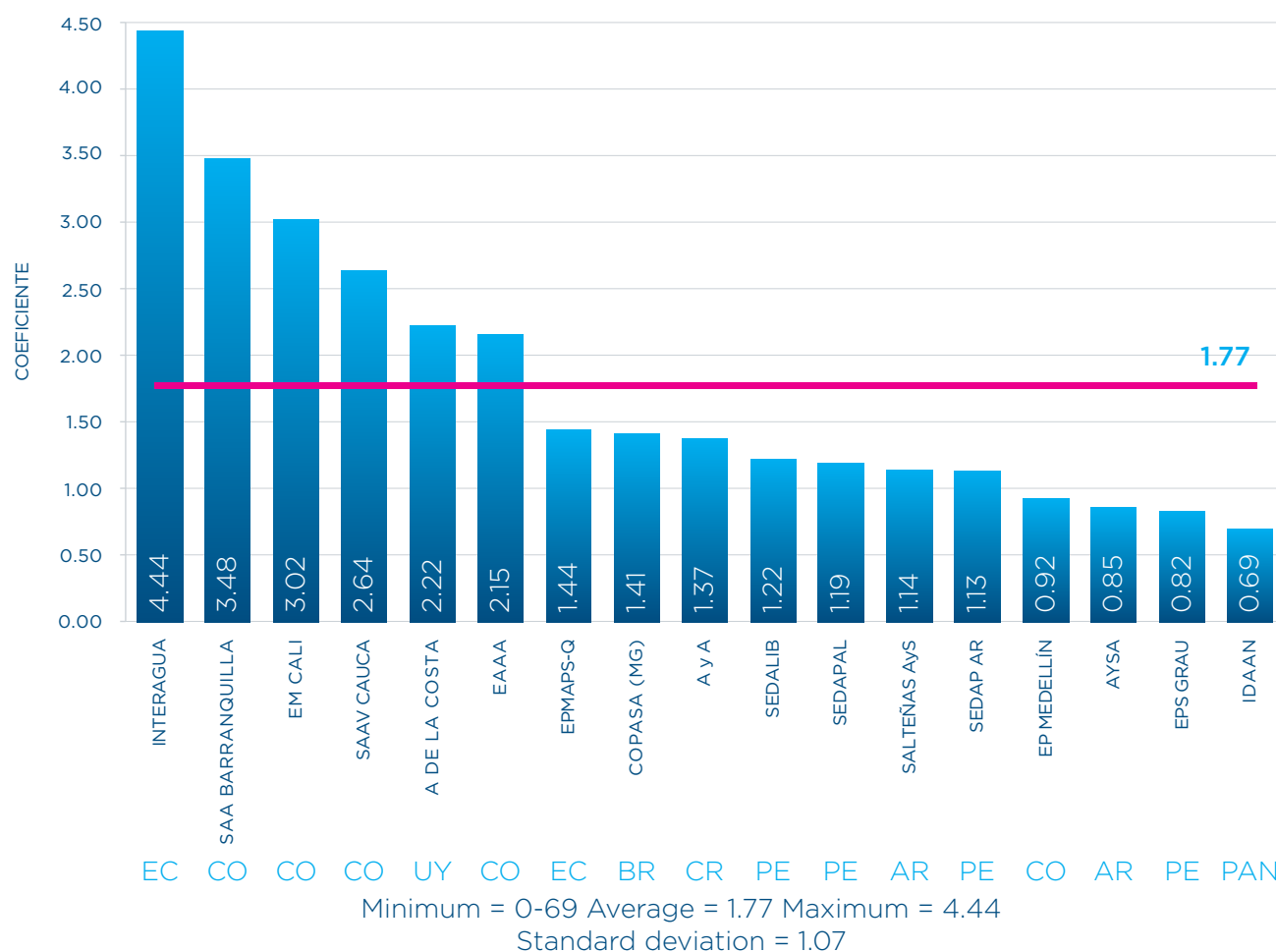
Some providers are unable to cover their operating costs (OPEX) from billing and must be

assisted from external sources. The data from the ADERASA benchmarking exercise for the year 2018 illustrate this phenomenon in the graph presented in Figure 9.

Direct subsidies to the user are earmarked to support low-income users by partial or full payment of their service bills. They can be funded from external sources or their funding can be arranged for within the tariff scheme, when subsidizing the tariffs of some users is covered by surcharges on the tariffs of others; this is also referred to as cross-subsidizing. When the State pays the provider to serve low-income, peri-urban or informal urban areas, based on community macro-meters, this is also called a subsidy.

In only three of the analysed cases, there are no direct subsidies to users. In most of the

FIGURE 9. ADERASA survey (2018): operational cost recovery co-efficient



remaining cases subsidies are provided by category of users and by consumption. Non-residential users often pay a higher unit cost than residential users. On the other hand, in management regimes without metering cross-subsidies apply when more developed areas subsidize poorer areas, through a zoning coefficient, or also when higher value properties subsidize lower value properties, through a building quality coefficient. In metered regimes, the level of subsidy is in line with increasing levels of consumption, where the unit price rises as consumption increases. In some cases, basic consumption is guaranteed at a minimum rate, for example, in EPRAC of Misiones, Argentina from 9 to 14 m³, depending on the number of inhabitants of a dwelling; 15 m³ in ARESEP of Costa Rica; and 10 m³ in ADASA of the Federal District and in other States in Brazil.

Another form of subsidy is the so-called “social tariff”. Of the twenty-three cases analysed, seven do not have this type of assistance. It is a family-focused subsidy of a temporary in nature, as normally the person receiving subsidy must requalify after a certain period, generally one year. It consists of a discount on the regular rate that can range from 20% to 80% and, in special cases of disability or extreme poverty, it can cover up to 100%. In metered regimes, a minimum consumption is generally subsidized, ranging 10 m³ to 35 m³ per month, depending on the number of family members. The subsidized part of the tariff may be covered by the other users, by the State or from another external source.

To facilitate access to services for low-income clients, some schemes provide for the financing or even the partial or total subsidy of connection charges under conditions where the charges for a household connection to drinking water and sewerage services are incurred to the client. In two of the twenty-three cases analysed, clients do not pay the connection charges; sixteen pay them financed by the service provider; and five pay them without financing or subsidy. In El Salvador, through mutual aid projects, the client can offset the cost of

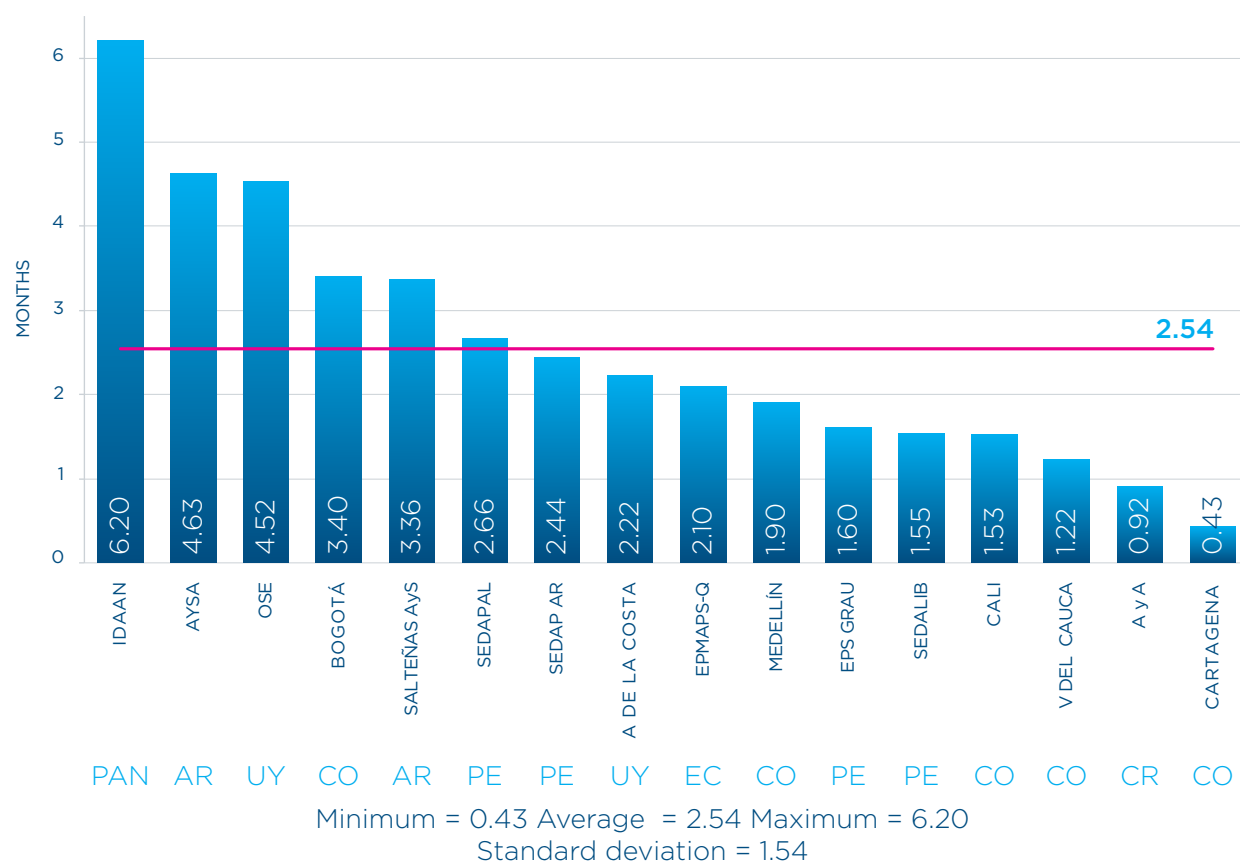
their home connections with the provision of labour for the execution of tasks supporting networks and connections. Some clients may be late in paying their bill due to their individual circumstances, in which case the regulator must facilitate the regularization of payment in order not to put the sustainability of the service at risk. **The graph resulting from ADERASA’s annual benchmarking study for 2018 and presented in Figure 10 illustrates the magnitude of this problem.**

In the event of non-payment of service bills by non-resident users, some regulations provide guidance for service restrictions, such as a reduction in flow through the household connection to ensure only minimum consumption. Others allow the interruption of DWSSS. The unpaid billing periods, before the restriction or cut, range from one to three months. Of the twenty-three cases analysed, in only one (Belize) the service cannot be reduced or cut off; in four the service to residential clients can be reduced but not cut off; and in the remaining eighteen cases, the service provider is empowered to cut off the service due to late payment by the client.

Except for one case (Jamaica), all service providers offer payment plans to clients in arrears, some with pre-established terms of a few months and others adapted to the client’s ability to pay.

If a client considers that his/her rights have been violated, either due to an improper supply cut or due to erroneous billing, in all cases analysed, he/she can appeal through the administrative channel by presenting their claim to the service provider in first instance and, in the event of an unsatisfactory outcome, he/she can resort to the regulator in second instance. In case of still being dissatisfied, the legal route is open before the local courts of justice. In five of the twenty-three cases studied, there is a compensation system for the inconveniences caused, which ranges from the simple return of the amount incorrectly invoiced to the application of fines to the service provider.

FIGURE 10. ADERASA survey (2018): months in arrears of payment of the drinking water bill



BOX 4. Subsidy for social stratification in Colombia

The case of Colombia is particular because it is based on the social stratification of the population, prepared by the National Administrative Department of Statistics (DANE). In this stratification residential properties are classified into six strata (stratum 1 being the lowest and 6 the highest). The subsidy consists of a “solidarity contribution factor” that is applied to strata 5 and 6 and intended to subsidize part of the tariff for strata 1, 2 and 3. Stratum 4 pays the regular tariff.

As a result, in accordance with article 125 of Law 1450 of 2011, for public DWSSS, subsidies in no case may exceed 70% for stratum 1, 40% for stratum 2 or 15% for stratum 3.

Additionally, minimum solidarity contribution factors are set at 50% for stratum 5 and at 60% for stratum 6. Additionally, for non-residential real estate, it is stated that real estate classified as “for commercial use” 50%, and those classified as “for industrial use” must pay a contribution of 30%. Art. 2 of Law 632 of 2000 establishes that these factors will be adjusted to the necessary percentage to ensure that the amount of the contributions is sufficient to cover the subsidies that are provided and that a balance is maintained. Utilities will allocate the resources from these contributions for subsidies to the users it serves, within its scope of operations. The National Government establishes the methodology for determining the balance referred to.

BOX 5.

Subsidy among residential users in Adasa, Brazil

Another case worth mentioning is that of ADASA, in the Federal District of Brazil, where the design of the subsidies has recently been submitted to public consultation. Users were asked about their willingness to pay an additional amount on their bills to subsidize the poorest, as a way to establish what amount may be available for subsidies. This is added to the staggered tariff in incremental blocks: the higher the consumption, the higher the billing. Who consumes up to 5 m³ monthly, only pays the cost of 1 m³. Larger consumers pay a premium to subsidize those who consume less than 5 m³. There are no external contributions. Everything is resolved within the tariffs.

BOX 6.

The social tariff programme in Buenos Aires, Argentina⁷

In the metropolitan area of Buenos Aires, Argentina, services are provided by a state-owned company, Aguas y Saneamientos Argentinos (AySA), and regulated by a dedicated regulatory body, the Ente Regulador de Agua Saneamiento (ERAS). The Social Tariff Programme for drinking water and sewage services is a social policy instrument designed for those who in greatest need. The purpose of the programme is to respond to the needs of those households that have financial difficulties in paying for these services. The benefit only operates on demand, so the user must request it. The duration of the benefit will be one year from the first invoice issued with the corresponding discount, with the possibility of renewal. Applications will be evaluated by the regulator. The service provider will apply the discount to the bills once the regulator notifies it of the approval of the corresponding request. The discount ranges from 20% to 80%, depending on the situation of the applicant. In special cases it can reach 100%. Once the benefit has been granted, users assume the commitment to pay their bill. Non-payment may result in cancellation of the benefit. The amount of the subsidies provided is compensated to the service provider by the State.

⁷ More information (in Spanish only): https://www.aysa.com.ar/media-library/usuarios/informacion_util/datos_ utiles_para_el_usuario/06_programa_tarifa_social.pdf

BOX 7.

Targeted subsidies in Chile

Until 1998, 92.6% of the sanitation service operators were public. However, with the approval of the General Law of Sanitation Services (DFL No. 382) that same year, the participation of the private sector was incorporated, going from 2.7% to 95.7% in 2013, which provides evidence of a complete change in the operations and management model of sanitation services in the country. This model represented quite a challenge, because even though the same law created the Superintendency of Sanitary Services (SISS) to oversee and regulate the operators, the participation of the private sector meant a considerable increase in the tariffs for drinking water and sewerage services. Therefore, access to services by the most vulnerable population segments (families living in poverty or extreme poverty) was seriously threatened by the economic factor.

The efficient implementation of the law that established the subsidy for the payment of drinking water consumption and sewage service (No. 18,778 of 1989) was crucial. Therefore, the law was regulated. In addition, in 2004 the system of subsidies was expanded through a law that established a social protection system for families in situations of extreme poverty “Chile solidario” (No. 19,949).

For a period of three years the State finances between 25% and 85% of the maximum monthly consumption of 15m³ of water per beneficiary, in accordance with their socioeconomic level. In the case of families in extreme poverty, the subsidy is 100%. In both cases, the subsidy is applied to the fixed charge and to the variable charges for drinking water and sewerage services. Once the period is over, the beneficiary must apply again for the subsidy, demonstrating that he/she is still eligible. The subsidies are financed through

national taxes, the Ministry of Finance transfers the funds to the municipalities, which are mandated to identify beneficiaries of the subsidy system and to reimburse the operators the subsidies paid to the users. More information can be found in Mora Portuguese and Dubois Cisneros (2012).

BOX 8.

“Vital minimum” in Colombia

In Colombia, regulations allow service providers to cut off their service in reaction to non-payment. This has given rise to a discussion about the “vital minimum”: the minimum amount of drinking water to be supplied to safeguard HRWS. Service interruption has been questioned since the formal recognition of HRWS, and the courts have ruled that people who are highly vulnerable cannot be cut off from service, but that they must be guaranteed access to a “vital minimum”, always linked to specific cases, such as pregnant women or women with small children, and not to generic social strata. This ruling has, however, become generalized, and it has been proposed to give the first stratum 6 m³ per month free of charge. The Colombian Congress also proposed projects to eliminate the possibility of cutting the service but these have not come to fruition. What has indeed resulted is that the costs of disconnecting and reconnecting are borne by the service provider, which has discouraged them from executing disconnections. A social action is preferable for people to catch up on their arrears, or pay something, before cutting them off.

CRITERIA AND NORMS OF THE HUMAN RIGHTS SYSTEM

6. **Equality and non-discrimination:** *the Regulatory framework must provide for appropriate measures and actions that ensure the progressive realization of HRWS in a non-discriminatory manner, incorporating groups at risk and those marginalized due to race, gender, age, disability, ethnicity, culture, religion, nationality or social origin. The measures must include: a) prioritization of the extension of drinking water and sanitation coverage in urban areas in decay and in rural areas; b) service to urban settlements, irrespective of land tenure and house ownership; c) facilitate access to services for the poorest.*

First, it is necessary to clarify what is the scope of the mandate that the regulatory framework gives to its regulators in terms of responsibilities, since not all of them regulate services outside the network, in informal urbanizations or in rural areas, where alternative services are usually provided. Indeed, of the twenty-three regulators analysed, in nine cases the regulator is limited to services provided through the network; in three cases the regulator covers network services and informal settlements; in three cases the regulator covers network and rural services but not informal settlements; and in eight cases the regulator covers network services, informal settlements and rural areas.

In none of the cases there are regulatory standards for services to migrants or to homeless people.

Regarding the expansion of services, in five cases organisations other than the regulator, or the municipality are in charge; in five cases regulations prioritize the most deprived areas and in the remaining twelve cases there are no binding regulations to prioritize areas most in need. For some regulatory frameworks, the lack of regularization of land tenure is an impediment to advancing in the expansion of services. Thus, in nine cases, out of the twenty-three analysed, regularization of land tenure is required to deliver services, while in the remaining fourteen progress is made regardless of land tenure.

Another impediment to the expansion of services is the rigidity of some technical regulations, which impede the acceptance of alternative technologies and services. This applies in ten of the twenty-three cases analysed.

7. **Sustainability:** *regulations must seek the economic, social and environmental sustainability of drinking water supply and sanitation systems, for present and future generations, balancing investments in maintenance, capacity development and infrastructure expansion in the Service Improvement and Expansion Plans (SIEP) or Master Plans (MP), aimed at maintaining and increasing the capacity of existing systems and expanding services to users lacking access. They must also include preparedness and resilience in the face of emergency situations through Prevention and Emergency Plans (PPE), also called Contingency Plans, whose purpose is to ensure the preparedness of staff and availability at all times of the necessary resources to deal with the most likely contingencies to occur, with the least damage to services and infrastructure.*

In the fifteen cases in which the expansion of the infrastructure depends on the service provider, SIEPs are prepared every four or five years, depending on the individual case, generally together with a comprehensive review of tariffs. These plans are reviewed annually and, whenever tariffs are linked to investments, corresponding compensations are paid when the committed investment has not been executed. In the fourteen cases in which the regulators approve the SIEPs prepared by the service providers, they usually take into account an adequate balance between investment in the maintenance and improvement of the existing infrastructure, and investment in the increase in capacity and in the expansion of services, thus ensuring the quality of services over time and progressive access to services for the population not yet served, fully in accordance with the principles of HRWS.

In twenty of the twenty-three cases analysed, the utility or whoever is in charge of the capacity development or expansion works must submit the projects to the environmental

BOX 9. Scope of regulation of ADASA, Brazil

A particular case is ADASA, the regulator of the Federal District of Brazil which, although it only regulates the main provider of water and sanitation services in the area covered by the network, also regulates the complete water cycle in the metropolitan area, granting licenses for the use of water to other service providers and industrial users, and even for irrigation; while at the other end of the water cycle, it grants wastewater release permits to both service providers and industries.

BOX 10. Scope of regulation of SUNASS, Peru

SUNASS in Peru received regulatory competence over rural areas in 2017. It has set out to implement its tasks through the district municipalities of the urbanized areas, in order to reach the 28,000 surveyed rural service providers throughout the country, with some strategies that imply the ability to articulate the self-regulation of the community boards, with the regulatory functions and supervision that the municipalities have, maintaining SUNASS as the central economic regulator. Thus, three levels of regulation act in a concerted manner: self-regulation of the community boards; supervision by the municipality and central regulation of SUNASS. The process of introducing this system started with the characterization of services, and the monitoring of water quality and service quality in approximately 750 service providers, to get an idea of how to gradually scale up the task and how to take advantage of the different dynamics that occur in the territory with a view to identifying those spaces where public investment can have a greater impact. Alignment of the incentives between the different levels of government and service providers was another goal, to share sources, systems and finally achieve a process of complete aggregation, because it is clear that, in the context of small cities and rural

populations, there must be either a merger of the larger service providers or some form of aggregation of their processes. Wastewater treatment is key because medium-sized cities in the valleys receive the worst quality of water, due to contamination with coliforms originating from other populations upstream. This is a public health issue that must be addressed with a territorial analysis strategy, seeking to generate the greatest impacts through an aggregation process. This is likely to be replicated by other governments. It is up to the tax authorities to allocate resources efficiently so as not to squander them, as happens when the allocation is made without any criteria of territorial analysis and without knowing the dynamics that are generated within. The SUNASS regulates the basins with regard to the protection of sources and seeks to integrate the processes of wastewater treatment, to protect water quality.

authority, in order to obtain the certificates demanded by environmental legislation. In all except one case the SIEPs, once approved, are made available to the public, both through the service provider's website and by other means such as flyers, the press, etc. In only two cases is the preparation of Prevention and Emergency Plans (PPE) by the service providers not foreseen. In all other cases, these are subject to the approval of the regulator and are generally reviewed with an annual or multi-year frequency or when extraordinary contingencies occur.

- 8. Public participation (active, free and meaningful):** *the regulation must allow the active participation of users, as individuals or in groups, in key decision-making, particularly in setting service standards, which may affect the enjoyment of HRWS, including tariffs. It is important to ensure all stakeholders are included. Transparency and access to information are essential for meaningful participation. The information must be objective, understandable, clear and consistent, made available to everyone in different formats and in an appropriate language. In turn, regulators must collect, analyse*

and disseminate accurate information on the performance of all regulated service providers. Regulators must establish performance indicators and set goals, which allow monitoring of how progressive realization of in all aspects of HRWS is advancing.

Except in three cases, in which this mechanism is not foreseen, in all other regulatory frameworks public hearings are routinely used, particularly on the occasion of tariff reviews. Objections raised by users and other stakeholders at such public hearings are generally not binding, but regulators are required to explain their reasons when they are disregarded. Some regulators have developed mechanisms that facilitate the participation of users, their representatives and other interested parties in the establishment of service standards and tariff setting, and that act in a consultative manner vis-à-vis the regulator's management. Thus we find the Union of Users, the Advisory Council and the User Ombudsman in the ERAS of Buenos Aires, Argentina (see Box 11); the Consultative Regulatory Council in the ARSAE of Minas Gerais, Brazil; the Council for Citizen Participation in the EMA - PAG-EP of Guayaquil, Ecuador; the Municipal Water and Sanitation Commissions in the ERSAPS of Honduras; the Citizen Tariff Committees in Mexico; and even the participation of a user representative in the EPRAC board in the province of Misiones, Argentina.

9. Access to information and transparency:

Regulators must collect, analyse and disseminate accurate information on the performance of all regulated service providers. Regulators must establish performance indicators and their goals, which will allow the advances in the progressive realization of all aspects of HRWS to be monitored.

In some cases, under the prevailing regulations service providers are obliged to submit periodic reports – annual in general – to the regulator and to their clients, detailing the results of their management over the most

BOX 11. User participation in regulation in Buenos Aires, Argentina

In the regulation of services in the Metropolitan Area of Buenos Aires, Argentina, Law No. 26,221/07, which approves the regulatory framework, establishes that users will be represented by the following advisors:

I - ADVISORY COMMISSION

The regulatory body has an advisory commission, made up of three representatives of the municipalities included in the jurisdiction of the concession; one representative of the province of Buenos Aires; one representative of the Government of the Autonomous City of Buenos Aires; one representative of the National Entity for Water and Sanitation Works (ENOHSA) and one representative of the Undersecretary of Water Resources. The Commission will issue opinions or messages establishing in its point of view those that must have mandatory treatment by the Board of Directors of the Regulatory Body.

II - UNIONS OF USERS

The Users' Union operates within the scope of the regulatory entity and is made up of representatives of the Users' Associations registered with the Undersecretary of Consumer Protection of the Ministry of Economics and Production and inscribed in accordance with the provisions of the applicable regulations on the matter. The Users' Union will issue opinions or messages establishing its point of view on issues related to the provision of the service which must be considered by the Board of Directors.

The Board of Directors of the regulatory body will provide the Users' Union with its positions and resolutions, the inventory and status of the services, the claims of the users and any other administrative document.

BOX 11. (cont.)

User participation in regulation in Buenos Aires, Argentina

III - USER OMBUDSMAN

The regulatory body will have a user ombudsman, whose mission will be to institutionally represent the interests of users in public hearings, as well as in contentious matters or administrative procedures in which the regulatory body is a party and the rights of the Users could be affected by a decision. The user ombudsman's activity shall not limit that carried out by the Users' Union by virtue of its functions and powers. On the contrary, he/she must represent the Union's criteria and positions. The user ombudsman will be selected through a public competitive process among professionals with the proper training, competencies and background for the case. He/she may not be removed from office except for the causes that apply to Directors.

recent period. On the other hand, today service providers widely use their websites and social networks to publicize their activities and work programmes, making available to clients and interested parties alike the information that may be of interest. In addition, they usually offer the possibility of making virtual contact to answer any questions about the services or to file claims.

Of the twenty-three regulators analysed, thirteen prepare at fixed intervals – annual in general – a system of performance indicators of the regulated service providers and publish this on their website, for the knowledge of the interested public. In the case of Brazil, the National Sanitation Information System (SNIS) has been developed, where almost all service providers in the country upload their data annually, as a basis for the elaboration of a common set of performance indicators. In Colombia, the Single Information System (SUI), managed by the

Superintendence of Residential Public Services (SSPD), is the national data collection system from which the performance indicators of the service providers in the sector can be extracted. As a regional reference, the Association of Potable Water and Sanitation Regulatory Entities of the Americas (ADERASA) carries out a regional benchmarking exercise every year with the performance indicators provided by the majority of its member regulators. This initiative was recognized at the time by the United Nations Special Rapporteur for HRWS as a good practice that contributes to the realization of the relevant rights (Albuquerque and Roaf, 2012).

In addition to the performance indicators mentioned above, twelve of the twenty-three regulators analysed prepare periodic partial and annual accountability reports and make them available to the public through their website. una buena práctica que contribuye a su implementación.²¹

10. Accountability: *regulations must ensure the independent monitoring of compliance with HRWS by drinking water and sanitation service providers and the right of users to present their claims when HRWS are compromised. Regulatory systems must support an appropriate and proportionate system of sanctions for service providers that do not comply with the regulations based on HRWS.*

Although the specific monitoring of compliance with HRWS by service providers has not yet been developed, as we have seen above a good part of the criteria and standards of HRWS are already included in the regulation of DWSSS, be it not under that banner. In this sense, all service providers have a dedicated unit to receive complaints from clients when they feel that their rights have been violated –many of which coincide with HRWS– and regulators have developed their own units or mechanisms to act in second instance when client expectations are not met by the service provider's handling of their claim.

Where service provision is regulated, the regulator carries out mediation tasks in cases of conflicts between clients and their service providers. In this connection, special mention should be made of the Administrative Tribunal for the Resolution of Claims (TRASS) of SUNASS in Peru, which acts in the second and final instance, determining the origin of the claim and/or holding a conciliation hearing between the client and the service provider, thus exhausting the administrative process.

In fifteen of the cases studied, sanctions and compensation regimes are applied in the event of provider failures that warrant it.

When service providers are self-regulated, the arbitrators in their disputes with users are usually the Consumer Protection authorities or municipal bodies that perform such functions.

BOX 12. **SUNASS – Peru –** **Corporate Governance**

In Peru, public sanitation service providers of which municipalities are the shareholder have among their responsibilities the provision of sanitation services. In order to achieve management efficiency the Framework Law for the Management and Provision of Sanitation Services (Framework Law) and its Regulations give a mandate to the National Superintendence of Sanitation Services (SUNASS) with new functions on the matters of: i) composition and turnover of boards of directors; ii) appointment, removal and vacancy of the members of boards of directors; iii) appointment and dismissal of the general managers; iv) accountability, performance and good corporate governance; and v) business administration and management. In this sense, SUNASS has had the function of supervising and sanctioning service providers in matters of corporate governance since 2017.

To develop its function of supervision and sanction in matters of corporate governance, SUNASS considers that corporate governance constitutes an operational system that executes a business discipline necessary to maintain a stable and productive relationship between the participants of any organization (service-providing companies). In corporate governance, transparency and accountability are more than compliance exercises: they are essential ingredients of good management, and they are required for the good health of organizations and the satisfaction with services provided to clients, constituting the final axis of the regulatory activity.

In exercising its supervisory and sanction functions and based on the Resolution of the Board of Directors No. 021-2018-SUNASS-CD published on 01 June 2018, SUNASS modified its General Supervision and Sanction Regulations (RGSS), and since then, it has included under its administration directors and general managers of municipal or mixed shareholding companies, irrespective of the way they

BOX 12. (cont.)

SUNASS – Peru – Corporate Governance

have been elected or appointed. As such, the RGSS consider the governability and governance of service providers as the objective scope of application of SUNASS' supervision and sanction functions, which includes verifying compliance with legal and/or technical obligations in matters of: i) composition and turnover of boards of directors; ii) appointment, removal and vacancy of the members of boards of directors; iii) appointment and dismissal of the general managers; iv) accountability, performance and good corporate governance; and v) business administration and management.

Annex No. 4 of the General Regulation of Supervision and Sanction (Table of Infringements, Sanctions, Scale of Fines and Aggravating and Mitigating Factors) in its item L establishes the Legal and Technical Obligations concerning Directors, General Managers, Accountability and Good Corporate Governance, which provides for the sanctions of: i) written reprimand, ii) fines and iii) dismissal, applicable to the general managers and directors of the service providers. and to the service providers themselves as legal entities.

Consequently, since the modification of the RGSS in June 2018 and in compliance with its new oversight and control functions, SUNASS has been overseeing the service providers, their general managers and directors, so that they implement efficiently and effectively the corporate governance system, through the approval of regulatory instruments established by the Framework Law and its Regulations. It has also been overseeing the correct designation of powers and responsibilities between boards of directors, the general management, shareholders (municipalities), those who may temporarily exercise the right of property (mayors or their representatives) and other interested parties. In addition, the relations between these actors must be clear, transparent, explicit and objective.

In practice, considering that the client represents the final objective of all economic activity, it is the client who must show his/her satisfaction with the provision of sanitation services; as a consequence, service providers, through their directors, managers and collaborators, have the duty to operate based on high standards of transparency, professionalism and efficiency, generating trust in the clients of sanitation services, which will produce in the long term a positive impact in terms of value and competitiveness of the service providers.



GENERAL CONSIDERATIONS

From the preceding analysis, carried out based on the information that was collected through the survey and the interviews, it can be seen that many of the HRWS criteria, standards and norms, and many of the principles that cut across all Human Rights have already been incorporated into the regulatory norms, although they are not being administered with a specific reference to HRWS.

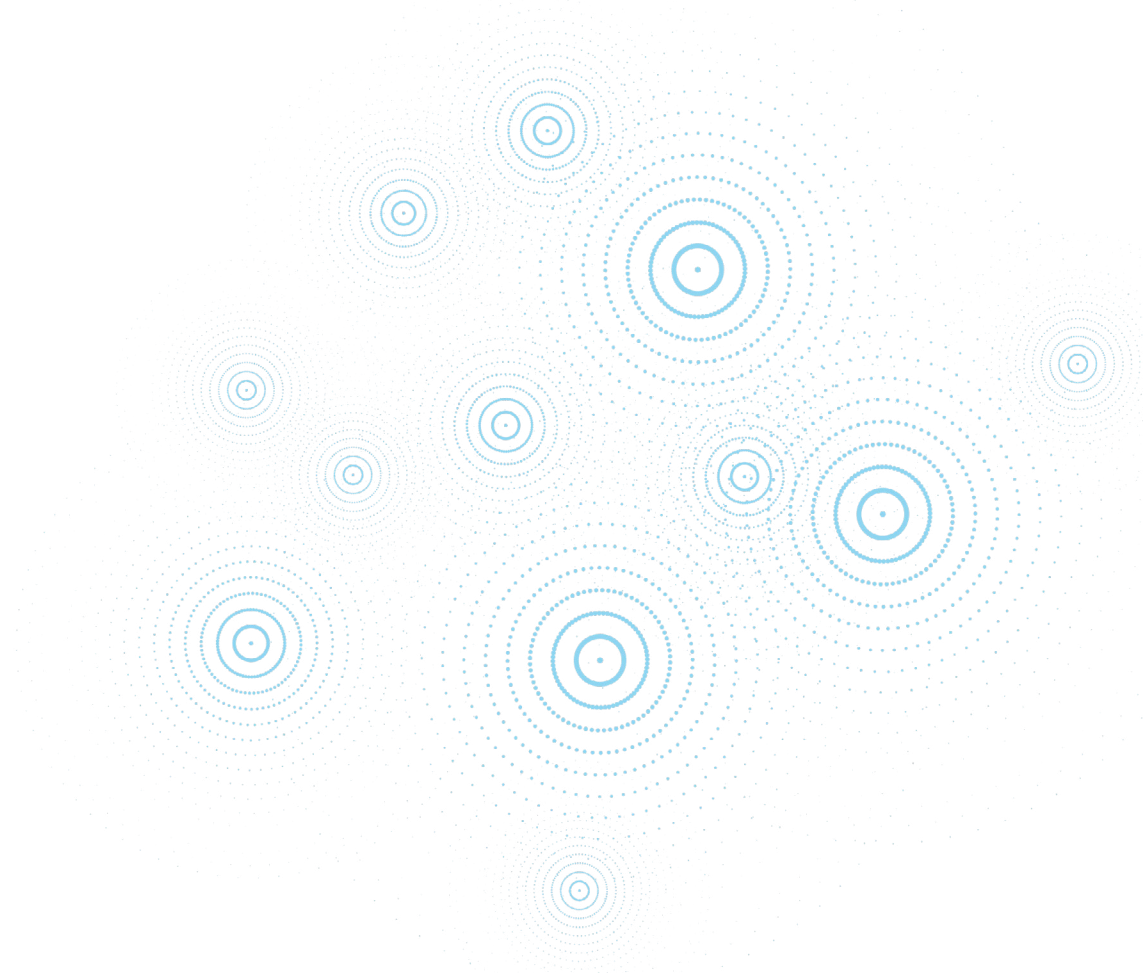
It can also be observed that the regulation of DWSSS in the LAC region shows a lot of variation and does not obey common principles, except for the most elementary issues such as drinking water quality regulation, for which all regulators base themselves on the recommendations of the WHO. On the other hand, wastewater quality regulations, in terms of collection, treatment and final disposal, obey local criteria and are generally supervised by the local environmental authorities. Not all regulators control the quality of drinking water and

wastewater, in many cases control remains in the hands of health authorities or local authorities for drinking water, and of environmental authorities for wastewater.

Another area of overlap with HRWS is the handling of client claims in the first instance by the providers and in the second instance by the regulator, who even tends to act as an arbitrator.

The scope of the regulation also varies, since at the macro level some regulate only services provided through a piped network, while others incorporate peri-urban and informal areas and yet others also rural areas. This is a limitation which clashes with the universalization of service provision required by HRWS. On the other hand, at the micro level, most regulators are not concerned with internal installations, whether in homes, institutions or public buildings.

There is uniformity in the sense that no regulator has standards and norms for services in public spaces, for migrants and for the homeless, nor are there specific regulations to address gender issues linked to sanitation and hygiene services.





CONCLUSIONS

In the last ten years, the legal framework has been evolving in the LAC region, where several countries have already incorporated HRWS into their national constitutions, while others have incorporated them into their legislation and jurisprudence. However, it remains important for some countries to update their legislation in this respect, thus eliminating any doubt about their enforceability in all contexts and encouraging the progressive realization of HRWS. Finally, those few countries whose legislation is still lacking reference to HRWS should hold an internal debate that will lead them to considering the rights in harmony with their own circumstances.

Adherence to the targets that are contained in the SDGs of the UN 2030 Agenda offers an invaluable opportunity to drill down deeper to the progressive realization of HRWS, since both schemes are intensely complementary.

Regulatory frameworks are placed at the most subsidiary level of the legislation, and they establish the technical standards and norms for the provision of services. Regulators have a leading role in the realisation of HRWS as they are responsible for adjusting and enforcing their regulatory frameworks, taking into account the particular circumstances of each community. An adequate level of institutional, functional and financial independence of regulators will improve the quality of their decisions.

The results of the survey and the interviews carried out reveal that the regulatory frameworks for DWSSS incorporate many of the criteria of HRWS and the principles of the other Human Rights, without mentioning them specifically, particularly in as much as they address the quality and safety of drinking water and other quality aspects of service delivery such as availability, continuity, acceptability, affordability, sustainability, public participation and accountability. Regulatory frameworks include more criteria related to drinking water than to sanitation, for which the standards and norms are more tailored to local conditions and depend more on health and environmental regulations.

Regarding the accessibility of services, regulatory frameworks extend to the boundaries of the client's dwelling and do not include internal facilities. The conditions of accessibility to sanitation services for the disabled, the elderly, pregnant women, the sick and people with special needs are not the responsibility of the regulators either.

All regulatory frameworks base drinking water quality standards on WHO recommendations, adjusted to local conditions. However, some regulators have limited powers to monitor the quality and acceptability of drinking water and the quality of wastewater discharges, particularly when monitoring water quality rests with the health authorities and in cases where the control of wastewater release comes under the responsibility of the environmental authorities.

As a general rule, regulators are in charge of investigating tariff schemes, although the decision on the tariff levels usually remains in the hands of the political authorities. However, the regulator plays an important role in the design of subsidy schemes and in the application of targeted discount systems, or social rates, to allow for access by the most vulnerable users. Although these mechanisms offer opportunities to resolve the issue of affordability for all users, not all regulatory frameworks consider them.

In most of the cases surveyed, the service provider is empowered to decide to cut off the service due to non-payment. This is a very sensitive issue, and it is necessary to assist regulators in the development of mechanisms and procedures that safeguard the access criteria required by HRWS through due process.

Access is also often influenced by connection charges, which tend to be financed or even subsidized for the poorest, though not always.

Progressive access to services in an equitable and non-discriminatory manner, required by the human rights principles, may be limited by regulatory frameworks that do not include the regulation of services in informal settlements or in rural areas. In both Colombia and Peru, regulators are beginning to set standards for services in peripheral urban and in rural areas. Other regulatory limitations

include the requirement of land tenure and property regularization, and the rigidity in the acceptance of alternative techniques, which can be observed in half of the cases analysed.

Almost all of the regulatory frameworks provide for the preparation and approval of service improvement and expansion plans (with medium and long-term horizons). The survey reveals, moreover, that the environmental assessment of infrastructure works is routine in almost all cases. Within the framework of HRWS, progress could be made with health impact assessments, evaluating risks and opportunities. Another type of assessment that could be applied in the planning of modifications and the creation of new infrastructure, and which has started to be implemented in recent years, is the assessment of the impact on the human rights of the affected populations.

The principles of participation and transparency of human rights offer a vast domain of action from the regulatory viewpoint. Public hearings on decision-making occasions on issues such as tariffs or specific standards or norms are used almost routinely as an instrument. But this is not enough. User participation must involve the entire regulatory process. While some regulators have found a way to incorporate users and their representatives in decisions that affect them, this practice is more the exception than the norm.

With respect to the criteria of transparency and accountability, the periodic reports on performance indicators, such as the annual benchmarking exercise of ADERASA, allow users to familiarize themselves in greater detail with the services they are paying for. Being a universally recognized tool to promote transparency, it is still underutilized in the region, since not all regulators participate in the regional exercise with their national or local studies.

Many of the HRWS criteria are not yet incorporated into regulatory frameworks, particularly those linked to off-grid services such as informal settlements and rural areas, where services are more precarious or even non-existent. They do not include regulations for services in public places, for migrants or for homeless people. On the other

hand, regulation within the network does not incorporate the criteria linked to internal facilities, both inside homes and in public buildings, nor hygiene and handwashing regulations, nor provisions on privacy, dignity and gender issues in the use of sanitation services.

Huge opportunities remain for the incorporation of all the criteria of HRWS and all the principles of the rest of the human rights into regulatory frameworks, with their specific mention, which would reinforce the solidity of the regulations and contribute to a prompter progressive realization of the rights. It is necessary to review, on a case-by-case basis, what criteria have not yet been incorporated and what are the underlying constraints, in order to find a way to make them explicit in the regulatory frameworks or in the complementary regulations.

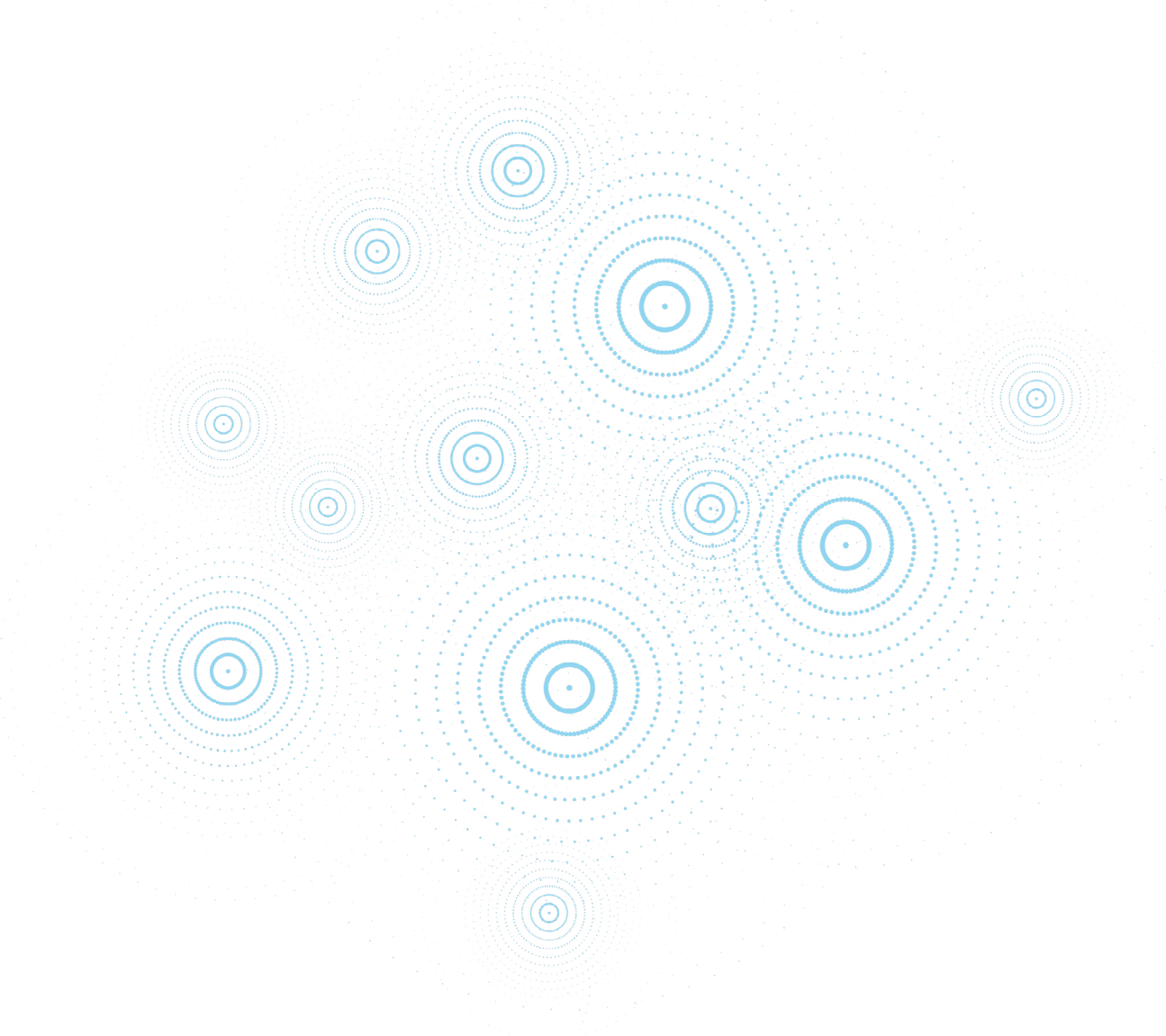
The survey results highlight that the regulatory framework for sanitation services is weak or non-existent. The fact that sanitation services are linked to local circumstances, as much physical as cultural and institutional factors, suggests the need to carry out a focused study that will make it possible to visualize what the obstacles to good regulation are. Based on such a study, recommendations could be formulated for the development of an adequate regulatory framework for sanitation, adaptable to each country or specific community. The survey shows that there are institutional gaps that influence regulation that need to be bridged, in the different national and local contexts, to provide an adequate service to users. An alternative option to explore would be to start adjusting the regulatory framework for sanitation services in public environments, with the application of the standards and norms of HRWS, such as in schools, hospitals and health care facilities, detention or refugee camps and labour camps in large infrastructure projects. These settings have common characteristics in most countries and cultures that would facilitate the development of regulations.

Half the countries that responded to the survey are involved, in some way, in the application of WHO Water Safety Plans, while only three are involved in the development of WHO Sanitation Safety Plans.

Obviously, the formulation of these plans offers important opportunities to promote HRWS within the regulatory frameworks, especially with respect to the criteria of quality and safety of water and sanitation. At the moment it seems that these mechanisms are underutilized.

Another issue that the survey brings to light is that many deficiencies are inherent to the institutional fragmentation in the management of water resources, in the relationship between the river basin and the provision of services. In this context, the challenge is to achieve an approach that is coherent with the progressive realization of HRWS. In this connection, it is worth highlighting the case of the regulator of the Federal District of Brazil, ADASA, which regulates the basin and the service, ranging from extraction permits to discharge authorizations. Another example is the city of Quito where, with the support of The Nature Conservancy”, a

Water Fund has been established as a mechanism to facilitate the participation of the communities living in the basin in the efforts to conserve the resource base. Under this agreement, it is possible to study how to implement the aspects of HRWS as they apply. Results of this study demonstrate that monitoring is a key function of regulatory authorities, inherent to their responsibilities to ensure that standards and norms are applied satisfactorily. The explicit incorporation of human rights norms and principles in the regulatory framework for drinking water and sanitation implies the expansion and intensification of monitoring efforts. Planning for the possible strengthening of the monitoring programme in relation to HRWS presents opportunities to generate substantive information, which will be useful to national governments in preparing the reports on the progressive realization of HRWS that they have to submit periodically to the United Nations Human Rights Council.





RECOMMENDATIONS AND OPPORTUNITIES

A number of recommendations arise from the above conclusions in follow up to this analysis of the level of incorporation of HRWS in the regulation of DWSSS:

- **Carry out an inventory of case studies** relevant to the jurisprudence for HRWS in LAC countries (example from Argentina [page xx](#)).
- **Further develop this study country-by-country**, jointly with each regulator, to reveal the criteria, standards and norms of HRWS that are not yet applied and the constraints that prevent their progressive realization.
- **Promote cooperation and exchange of information** between regulators and other local institutions involved in the regulation and oversight of HRWS criteria such as health authorities, environmental authorities and local authorities, which control water quality and effluents, set standards for internal facilities or supervise alternative services in informal and rural areas.
- **Promote the training of Regulators in the knowledge and application of HRWS**, both through virtual and face-to-face modalities. Base the training programme on case studies.
- **Prepare and apply a “score-card”** with clear criteria, indicating the level of capacity, application and monitoring of HRWS of the Regulators, with a periodic report (AquaRating style?). It could be managed by ADERASA, or it could be included in the GLAAS monitoring cycle, or in a collaboration between ADERASA and GLAAS.
- **Promote the strengthening of institutional arrangements** between regulators and national human rights bodies, for example through a memorandum of understanding.
- **Study and implement a limited number (three or four) of pilot projects** to develop the capacity of regulators in the progressive realization of HRWS, based on a needs assessment.
- **Provide technical assistance to regulators** in the implementation of Water Safety Plans and Sanitation Safety Plans.
- **Include HRWS as a permanent topic** on the agenda of ADERASA's annual meetings, focusing on current issues and challenges. Analyse the possibility of creating a new Working Group for the development of HRWS in regulations.



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ANNEX

SURVEY CONDUCTED AMONG REGULATORS IN
LATIN AMERICA AND THE CARIBBEAN ON THE
IMPLEMENTATION OF THE HUMAN RIGHTS TO
WATER AND SANITATION

INTRODUCTION

This survey is part of a study commissioned by the IWA and the IDB on the links between Regulators of Drinking Water Supply and Sanitation Services (DWSSS) in Latin America and the Caribbean and Human Rights to Water and Sanitation (HRWS). It seeks to understand to what extent HRWS criteria and principles are being incorporated into the regulation of DWSSS and to identify trends in the region and good practices that may help their full incorporation.

To facilitate the identification of the respondent, please indicate:

- Country: ...
- Regulatory body: ...
- Person responsible: ... Tel: ... E-mail: ...
(to facilitate follow-up queries)
- Utility: ...

La encuesta se ha elaborado en formato “word” para que se puedan intercalar las respuestas y los comentarios de quien la complete.

BACKGROUND

On 28 July 2010, the UN General Assembly adopted a Resolution recognizing the Human Rights to Water and Sanitation (HRWS), which were added to the previously recognized Human Rights. One hundred and twenty-two Member States voted in favour of this resolution; subsequently, governments gradually adopted HRWS officially. They committed themselves to invest in maximum efforts towards progressively providing safe, clean and dignified, accessible, acceptable, secure and affordable drinking water and sanitation services for all the residents in the territory under their administration.

LEGAL FRAMEWORK

Inclusion of HRWS criteria in the Constitution represents the country's commitment to implement HRWS and facilitates their incorporation into national and local legislation. This incorporation into laws generates obligations for the parties involved and opens the space for the design of policies that establish objectives and means for the realization of HRWS.



QUESTIONS

- ¿To what degree have HRWS been incorporated in your country's legal framework: are they included in the Constitution or only in the body of law?
- What is the nature of the legal instrument that establishes regulations: a law, a decree of the Executive Power, an administrative provision or another instrument?
- Have Human Rights principles and HRWS norms/criteria been explicitly incorporated into the body of law?
- Is there any entity, in addition to the Regulatory Authority, with control over Human Rights implementation, in particular of HRWS?



REGULATORY FRAMEWORK

Regulatory frameworks set the standards and norms which define the conditions under which regulated DWSSS must be provided to the population, through scientific, technical and social requirements, such as the standards for drinking water quality and for the quality of wastewater; continuity and reliability of services; asset management through Service Maintenance and Expansion Plans (SMEP); tariff setting; public participation; transparency and availability of information; accountability; and, the economic, social and environmental sustainability of service delivery systems. Regulators are in charge of ensuring compliance with these standards and their opportunities to do so will be enhanced proportionately to the level of independence allowed to them in carrying out their functions.

QUESTIONS

- *Who appoints the highest authority of the regulatory body?*
- *What is the source of funding for the regulatory authority?*
- *Does the regulator have national or international support for the training of its staff?*

10% of the questionnaire completed

Regulatory frameworks must establish the standards for the provision of services specifically linked to the HRWS criteria, so that DWSSS are accessible; available; safe and meeting quality standards; acceptable, including from the perspective of privacy and dignity; and affordable for everyone. In addition, they must include the general principles that cut across all human rights: equality and non-discrimination; economic, social and environmental sustainability; public participation; access to information and transparency; and adequate accountability. In the next part of this questionnaire, the HRWS criteria will be reviewed

conceptually, followed by a review of the cross-cutting human rights principles; some questions will be asked to ascertain their degree of inclusion into the regulations.

CRITERIA AND SPECIFIC RULES FOR THE PROGRESSIVE REALIZATION OF HRWS

1. Accessibility: Drinking water and sanitation services provided through distribution and conveyance networks must be accessible inside the premises or in their immediate vicinity, with secure access day and night. In the absence of household connections, the services may be delivered by (in)formal providers with alternative technologies. The sanitation service (toilet or latrine) must have a private entrance and must not be shared with other households. The gender issue is closely linked to the conditions of accessibility, acceptability and safety of services, particularly of sanitation. Access for people with disabilities, older people, pregnant women, sick people and people with special needs must be ensured. The regulations must ensure safe access to services in public buildings in community settings, such as schools, hospitals, prisons, etc., and, in general, in situations outside the home.

QUESTIONS

- *¿Do the regulations set the conditions of accessibility of reticulated piped drinking water systems? On the premises? At a minimum distance from the dwelling? Others?*
- *In the absence of a household connection for drinking water supply, are there any standards or norms that regulate informal services? Who controls them? Is there a strategy to integrate informal services into the regulatory framework?*
- *Do the regulations set conditions for access to sanitation in homes and buildings for community use?*
- *Are there regulations concerning accessibility to sanitation for the disabled, older people, pregnant women, the sick and people with special needs?*

- *Do the regulations foresee the location of sanitary facilities inside or outside the home?*
- *Do the regulations set standards for community buildings? And in general, for facilities outside the home?*
- *Are there specific provisions to address gender issues related to health and hygiene services?*

 **20% of the questionnaire completed**

2. Availability: the standards must ensure the availability of a minimum quantity of reliable and safe drinking water: according to the WHO recommendations, 20 litres/person/day is the essential minimum in case of shortage; 50 litres/person/day would be an intermediate supply level, with a low level of health risk (provided that the absence of contamination is rigorously controlled); and 100 litres/person/day would be an optimal level of supply, with a very low level of health risk. In cases of special needs, an adequate amount must be provided. In the case of continuously operated (24/7) networks, services must be provided without significant interruptions that may harm users or may compromise the quality of the drinking water or the environmental conditions, in the event of sewage overflows.



QUESTIONS

- *Do the regulations determine a minimum daily quantity of drinking water per person? Do they provide for a minimum service for special cases?*
- *Do the regulations set a ceiling to the number of drinking water supply interruptions? Is there a system of notification to the population for programmed interruptions? Is the provider obliged to provide an alternative service in case of prolonged interruptions?*
- *Do the regulations provide for the performance of special interventions or activities in case of interruption of the wastewater collection and/or treatment service?*



30% of the questionnaire completed

3. Quality and safety: drinking water quality regulations must ensure that drinking water is safe for human health, free from pathogenic microorganisms, harmful chemical substances and radiological risks. The application of the WHO Drinking Water Quality Guidelines, adapted to local circumstances, and of the WHO Water Safety Plan approach (WSP) is suggested. The population should be warned when drinking water is not safe, and alerts and precautionary measures should be provided as appropriate. Adequate sanitation must prevent human, animal and insect contact with waste and must provide facilities for washing hands and sensitive body parts, as well as for the safe disposal of personal hygiene products. The WHO Sanitation Safety Plan approach (SSP) applies. The regulations must take into account the menstrual hygiene needs of girls and women.



QUESTIONS

- *What standards and norms are used for drinking water quality management? Are they based on WHO recommendations?*
- *Who or what institution is in charge of drinking water quality monitoring and control?*
- *Is the WHO Water Safety Plan concept used?*
- *Does the provider have an obligation to warn the population of incidences of sub-standard drinking water quality and to recommend precautionary measures?*
- *Are there standards and norms regarding the separation and treatment of human waste in sanitary facilities? Who monitors their application?*
- *Is the WHO Sanitation Safety Plan concept used?*
- *Are there regulations regarding minimum hygiene standards such as hand washing, female*

hygiene, and special hygiene measures for sick and disabled people?

- Do the regulations establish the maximum acceptable values in the handling, treatment and disposal of human waste, whether they are conveyed by sewers or through alternative services?
- Do the regulations cover the special disposal of pathogenic waste?

 **40% of the questionnaire completed**

- 4. Acceptability, privacy and dignity:** drinking water must be acceptable in colour, odour and taste, consistent with the local culture. For sanitation, the regulation must provide that toilets be built in such a way as to protect privacy and dignity, allowing the specific hygienic practices of each culture.

PREGUNTAS

- Do the standards address drinking water colour, odour and taste? Who is in charge of ensuring compliance?
- Are there regulations related to the protection of privacy in toilets? Do the regulations provide for the minimum hygienic conditions for sanitation services?

 **50% of the questionnaire completed**

- 5. Affordability:** regulations must ensure that everyone can enjoy DWSSS, without the tariffs jeopardizing the realization of HRWS, offering adequate solutions for the most vulnerable groups. The regulator must design subsidies targeted at different types of users, and social tariffs or other financial, fiscal or transactional instruments. Connection charges to services should not prevent access. In the case of a household's inability to pay, the regulation must also address the process of limiting services to a minimum that still allows for the delivery of a basic service.

QUESTIONS

- Does the applicable tariff system provide for cross-subsidies between types of users? Can you briefly describe what the subsidy system consists of?
- Does the tariff system include the application of one or more types of social tariffs for those who cannot pay the full tariff? Can you briefly describe them?
- Who pays the cost of a household connection for DWSSS (connection charges)? Is there a financing or subsidy system for the payment of the connection charges in case the user must pay them? Are alternative payments such as in-kind labour contributions an option?
- Do the regulatory procedures prohibit the interruption of services in the event of a user's inability to pay? What is the procedure for constraints on or interruption of the service in case of non-payment?
- Are special payment plans implemented for delinquent debtors?
- Are administrative or judicial mechanisms foreseen so that a user can claim if he/she considers that his/her rights have been violated? Is there any compensation scheme?

 **60% of the questionnaire completed**

PRINCIPLES OF THE HUMAN RIGHTS SYSTEM

- 6. Equality and non-discrimination:** the Regulatory framework must provide for appropriate measures and actions that ensure the progressive realization of HRWS in a non-discriminatory manner, incorporating groups at risk and those marginalized due to race, gender, age, disability, ethnicity, culture, religion, nationality or social origin. The measures must include: a) prioritization of the extension of drinking water and sanitation coverage in urban areas in decay and in rural areas; b) service to urban settlements, *irrespective of land tenure and*

house ownership; c) facilitate access to services for the poorest.



QUESTIONS

- Does the regulatory framework include rural services, or does it cover only urban areas? Do these urban areas also include informal housing developments?
- In the event of having to expand services, is there any regulation that prioritizes the most disadvantaged areas?
- Is there progress in the expansion of drinking water and sewerage networks in settlements or in areas where land tenure and property ownership are not legalized?
- Does the regulation permit the use of alternative techniques (overhead drinking water pipes, condominium networks for wastewater management, etc.) to serve the poorest in non-urbanized areas?



70% of the questionnaire completed

- 7. Sustainability:** regulations must seek the economic, social and environmental sustainability of drinking water supply and sanitation systems, for present and future generations, balancing investments in maintenance and in increasing infrastructure capacity (through Service Improvement and Expansion Plans - SIEP). It should also include emergency preparedness and resilience (EPR).



QUESTIONS

- Do the regulations require that service providers prepare a Service Improvement and Expansion Plan (SIEP) and submit it to the regulator? With what frequency?
- Are SIEPs approved by the Regulator? Does the Regulator, when analysing the SIEP, take into account an adequate balance between investment in existing assets and in the expansion of systems? What are the criteria that apply?

- Is there an obligation for the utility to present to the competent authority the environmental impact assessments (and possibly the social impact and health impact assessments) of the SIEP? Do the management plans that come out of these assessments also address the standards and principles of HRWS?
- Are the SIEP, in particular the service coverage expansion component of such plans, available to the public?
- Does the regulation foresee the need for a Prevention and Emergency Plan (PPE) so that the service provider is always in a position to continue its essential functions, even in emergency situations?
- How often is the PPE checked and updated?



80% of the questionnaire completed

- 8. Public participation and access to information:** the regulation must allow the active participation of users, as individuals or in groups, in key decision-making, particularly in setting service standards, which may affect the enjoyment of HRWS, including tariffs. It is important to ensure the inclusion of all stakeholders. Transparency and access to information are essential for meaningful participation. The information must be objective, understandable, clear and consistent, made available to everyone in different formats and in an appropriate language. In turn, regulators must collect, analyse and disseminate accurate information on the performance of all regulated service providers. Regulators must establish performance indicators and set goals, which allow monitoring how progressive realization of HRWS in all their aspects is advancing..



QUESTIONS

- Are there mechanisms that facilitate the participation of users and their representatives in establishing service standards and setting rates? Can you briefly describe them?

- *Are service providers obliged by regulations to prepare and publish information on the services they provide to the population? How do you communicate the information? Through your website? Through periodic reports? Using other means?*
- *Does the regulator prepare a system of performance indicators for the service provider at certain intervals, analyse it and publish it for the knowledge of users and other interested parties?*
- *Does the regulator prepare periodic reports and publish them for the information of users and other interested parties?*
- *Do the regulations provide for a system of sanctions for service providers failing to comply with their obligations? What is the procedure for applying sanctions?*
- *Do the regulations foresee eventual corrective actions, indemnities or compensations to the users that are entitled to these?*



90% of the questionnaire completed

9. Accountability: regulations must ensure the independent monitoring of compliance with HRWS by drinking water and sanitation service providers and the right of users to present their claims when HRWS are compromised. Regulatory systems must support an appropriate and proportional system of sanctions for service providers that do not comply with the regulations based on HRWS.



QUESTIONS

- *Does the regulation prescribe the service provider to have a system for receiving complaints from users regarding service issues?*
- *Is there an authority that mediates between the service provider and the user in case of conflict?*

It would be of **great help** to us if, after completing this questionnaire, the person who has completed **it describes in a few paragraphs some experiences from their regulatory career**, which illustrates the application of one or more of the attributes of HRWS analysed above, to illustrate practical cases of their incorporation into the regulator's own activities. For example, modification of existing regulations or introduction of new regulations in line with HRWS; implementation of subsidy regimes or social tariffs, to facilitate the availability of the service to the poorest; targeting of investments for the extension of services into peri-urban and rural areas; etc. Finally, please accept our gratitude for completing this questionnaire.

For any questions or suggestions, please contact:



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CONGRATULATIONS!
You completed the questionnaire.
WE ARE EXTREMELY GRATEFUL



