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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Follow-up on the visit of the Special Rapporteur to El Salvador

Report of the Special Rapporteur on the human rights to safe drinking water and sanitation*

Summary

The Special Rapporteur seeks to enhance the effectiveness of his official country visits by undertaking a follow-up analysis of the recommendations included in the country mission report. The report of the official visit to El Salvador (A/HRC/33/49/Add.1) was presented to the Human Rights Council in September 2016. The main findings of the follow-up are presented in this report, introducing the level of development of the recommendations and highlighting further recommendations derived from the current status.

* The present document is being issued without formal editing.



I. Background

1. Pursuant to resolutions 27/7 and 33/10 of the Human Rights Council, the Special Rapporteur on the human rights to safe drinking water and sanitation undertakes official country visits to promote the progressive realization of the human right to safe drinking water and sanitation.
2. The Human Rights Council encourages all Governments to continue to respond to requests by the Special Rapporteur, to follow up effectively on the recommendations of the mandate holder and to make available information on measures taken in this regard (Resolution 33/10, para 15). Furthermore, the Manual of Operations of the Special Procedures of the Human Rights Council stipulates that Special Procedures mandate-holders can seek to enhance the effectiveness of their country visits in various ways, including by formulating their recommendations in ways that facilitate implementation and monitoring and undertaking follow-up initiatives through communications and further visits (paras. 97 to 105). In this connection, the Special Rapporteur seeks to enhance the effectiveness of his official country visits by undertaking a follow-up analysis of those visits focusing on the implementation of recommendations presented in his country visit reports.¹
3. The Special Rapporteur undertook an official visit to El Salvador at the invitation of the Government from 11 to 18 May 2016. Following the conclusion of the visit, the Special Rapporteur shared his preliminary findings with the Government. Additionally, he issued a press release and the end of mission statement,² and held a press conference on 18 May 2016. The final report was presented to the Human Rights Council in September 2016 ([A/HRC/33/49/Add.1](#)).
4. In undertaking the present follow-up report regarding his visit to El Salvador, the Special Rapporteur has, between 1 January 2018 and 1 November 2018, conducted desk research on the implementation of the recommendations provided to the Government in his country mission report, in order to develop a picture of the Government's current actions, inactions and progress. To support the research, questionnaires to the Government and to other stakeholders were sent. Whilst no response from other stakeholders was received, the Government of El Salvador submitted a written response to the questionnaire on 15 November 2018, along with the "Final Report: Annual Measurement of Strategic Institutional Results".
5. In the current report, the main findings of the follow-up are presented, introducing the level of development of the recommendations and highlighting further recommendations derived from the current status. It is organized through relevant clusters of recommendations. The level of implementation of the recommendations are assessed in accordance with the following categories: 1) good progress, 2) progress on-going, 3) limited progress, 4) progress not started, 5) unable to assess due to lack of information and 6) retrogression.
6. List of acronyms used in the current report
 - UCA (Centroamerican University José Simeón Cañas)
 - PLANAPS (Plan Nacional de Agua Potable y Saneamiento)
 - ANDA (Administración Nacional de Acueductos y Alcantarillados)
 - CONAPS (Consejo Nacional de Agua Potable y Saneamiento)
 - MINED (Ministerio de Educación)
 - MINSAL (Ministerio de Salud)

¹ For more information on the follow-up analysis project see: <https://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/FollowUpAnalysisOfficialCountryVisits.aspx>.

² See: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19974&LangID=E>.

- ANA (Autoridad Nacional del Agua)
- MARN (Ministerio del Medio Ambiente y Recursos Naturales)
- FISDL (Fondo de Inversión Social para el Desarrollo Local)
- MJSP (Ministerio de Justicia y de Seguridad Pública)

II. Legal, institutional and policy frameworks

A. Recommendation on the constitutional amendment

RECOMMENDATION 1: “Ratify the reform of article 69 of the Constitution, to which end it is essential explicitly to include in the final text the expression “human rights to water and sanitation” which is absent from the proposal currently under consideration.” (A/HRC/33/49/Add.1, para. 96 (b) (i)).

7. During his visit to El Salvador, the Special Rapporteur noted that domestic legislation, and in particular the Constitution, did not incorporate the human rights to safe drinking water and sanitation. In April 2012, the legislative assembly approved the reform of article 69 of the Constitution on the duties of the Government to ensure the quality of the environment and of food products, but this was not approved at the time of the visit. The Special Rapporteur also pointed out that the Constitutional Chamber of the Supreme Court recognized the right to water in its case law, and interpreted it as one of the fundamental rights recognized by the Constitution (A/HRC/33/49/Add.1, paras. 18, 19 and 20).

8. According to desk research, on 22 August 2016, five deputies from the Legal and Constitutional Affairs Commission, a Parliamentary Committee of the legislative assembly in charge of studying constitutional reforms, among other duties, issued a favourable opinion to approve a constitutional amendment concerning article 69. The proposed amendment included an explicit mention of the human right to water, but not the human right to sanitation.³ As of the time of the submission of this report, the constitutional amendment has still not been approved by the legislative assembly. On 7 March 2018, the President of El Salvador, urged all political parties in the legislature to pass a law guaranteeing the human right to water.

9. The Government specified that the 2018-2021 term of the Legislative Assembly had before it four proposals to reform the Constitution to include within it recognition of the human rights to water and sanitation. Such proposals are being assessed in the Legal and Constitutional Affairs Commission so that the reform can be agreed in the current political term and the legislative assembly can approve it in the next 2021-2024 political term.

10. The Special Rapporteur notes that some steps were taken by the legislative assembly, such as the favourable opinion of the Legal and Constitutional Affairs Commission to approve the amendment to article 69 of the Constitution recognising the human right to water. However, he points out that no significant steps have been taken in order to ratify the amendment to the Constitution, which explicitly includes the human right to water. Furthermore, he highlights that the proposed amendment to the Constitution does not include the right to sanitation which, whilst closely interlinked with the human right to water, is itself a distinct right. The explicit inclusion of these rights in the Constitution will help ensure their effective recognition and implementation, thereby guaranteeing the rights in national legislation and judicial decisions (A/HRC/33/49/Add.1, para. 20).

LIMITED PROGRESS: The Special Rapporteur urges the legislative assembly of El Salvador to adopt the amendment to the Constitution recognising the human rights to water and sanitation according to international human rights standards.

³ Legislative assembly of El Salvador, “Dictamen favorable para reconocer en la Constitución el derecho humano al agua y a la alimentación adecuada”, 22 August 2016.

B. Recommendation on general law on water resources

RECOMMENDATION 2: “Guarantee that the general law on water resources currently under consideration assign priority to the human rights to water and sanitation as the cornerstone of any policy and that it clearly state that priority in the use of water should be given to human consumption” (A/HRC/33/49/Add.1, para. 96(b)(ii)).

11. The Special Rapporteur noted in his country visit report that since 2012, a general law on water resources (“Ley General de Aguas”, hereinafter referred to as “General Law”) has been under discussion before the legislative assembly and that the main differences in proposals put forward during discussions concerned the composition of the governing body and clear references to the principle of priority for human consumption (A/HRC/33/49/Add.1 para 21).

12. Three other proposals for a water law were presented following the Government’s proposed draft General Law in 2012. On the 14 June 2017, the first proposal for a water resources law was presented to the legislature that put forward the creation of a permanent, autonomous regulatory entity. On 22 June 2017, a second proposal on a water law⁴ was presented by the Universidad Centroamericana José Simeón Cañas and the Office of the Human Rights Procurator, that has as its basis the creation of a public governing body called the National Water Authority (ANA).⁵ The third proposal was presented to the Environment and Climate Change Commission by representatives from the Water Expert Committee (a group of independent professionals with mutual concern about the situation of water resources and the lack of regulation) on 4 July 2017.⁶

13. At the beginning of the current 2018-2021 political term, the Environment and Climate Change Commission agreed to give priority to the consultations related to the proposed general law on water resources. The Commission met and discussed the proposed law with various stakeholders comprising universities, water experts and representatives of civil society and the private sector. The Government informed the Special Rapporteur that among the articles of the draft general law on water resources that have already been adopted by the Environment and Climate Change Commission, article 7 addresses the human rights to water and sanitation. According to the Government, the Commission did not yet address the draft article on uses of water, however it noted that proposed draft bills and the Commission provide that priority would be given to water for human consumption.

14. The Special Rapporteur recognises the efforts of the Government and of the Parliament to discuss the draft law with various stakeholders and approve a general law on water resources that recognises and ensures the implementation of the right to water. In particular, he welcomes the fact that the Environment and Climate Change Commission of the legislative assembly approved article 7 recognising the human rights to water and sanitation and that the Commission is likely to prioritize water for human consumption. The Special Rapporteur notes, however, that a proposed general law on water resources has not yet been approved. Given the droughts and the urgent situation of water resources in El Salvador, he highlights the importance of prioritizing water for human consumption, placing the needs of the population first. The Special Rapporteur calls on the members of the legislative assembly to achieve a consensus on the adoption of a law that assigns priority to the interests of citizens and guarantees the normative content and principles of the human rights to water and sanitation (A/HRC/33/49/Add.1, para 22).

PROGRESS ON-GOING: The Special Rapporteur urges the Government and the legislative assembly of El Salvador to move toward with the approval of a general law

⁴ “La Regulación Pública de las Aguas con Participación Ciudadana”, available at <http://www.uca.edu.sv/wp-content/uploads/2018/06/regulacion-publica-de-aguas-con-participacion-ciudadana-UCA.pdf>.

⁵ Legislative assembly of El Salvador, “Diputados conocen nueva propuesta de régimen administrativo nacional para una ley General de Aguas”, 27 June 2017.

⁶ Legislative assembly of El Salvador, “Comisión de Medio Ambiente y Cambio Climático conoce propuesta de Ley Integral de Agua”, 4 July 2017.

on water resources, assigning priority to the achievement of the human rights to water and sanitation and clearly stating that human consumption should be afforded priority with regards to the use of water.

C. Recommendation on legal framework

RECOMMENDATION 3: “Urgently adopt a framework law on the water and sanitation subsector, which focuses on the realization of human rights, provides guidance for the sector’s institutions and guarantees appropriate regulation of services.” (A/HRC/33/49/Add.1, para. 96(b)(iv)).

15. During his country visit, the Special Rapporteur identified that more than twenty different bodies are responsible for the distribution and supervision of water resources, nevertheless, El Salvador lacked an institutional framework to ensure coordination and proper management of water resources. (A/HRC/33/49/Add.1 para. 25).

16. According to the desk research conducted for the preparation of this follow-up report, The National Drinking Water and Sanitation Plan (PLANAPS) presents two scenarios to improve the legal framework of the subsector of water and sanitation. In the “ideal scenario” access to sanitation would be guaranteed through sewerage networks and treatment plants, and a law on the drinking water and sanitation subsector would be developed. Under the “ideal scenario” PLANAPS aims to design a proposal that will be presented to the legislative assembly for approval and streamlined to initiate institutional adjustments, by 2022. Alternatively, the “transitional scenario” would consist of strengthening the existing legal framework through legal reform by designing laws that apply to the National Water Mains and Sewers Administration (ANDA) clarifying roles regarding service provision in the Municipal Code and Health Code; establishing relations between different service providers, and strengthening monitoring and application of sanctions for non-compliance with laws and norms. As at the time of submission of this report, no information has been received that suggests that the adoption of a framework law on the water and sanitation subsector has been approved.

17. According to the information provided by the Government, the Government’s capacity to ensure the human rights to water and sanitation is limited due to the lack of a legal framework regulating the different uses of water. This has prevented the establishment of a regulatory entity for the water and sanitation sub-sector. The Government has noted that it is creating the National Drinking Water and Sanitation Council (CONAPS), which will institutionalise the water and sanitation sub-sector and coordinate all the actors therein. Furthermore, in 2018 the Government introduced the National Policy on Integrated Water Resources Management which recognizes the human right to water and requires the necessary institutions to ensure the availability of safe and sufficient water.

18. The Special Rapporteur notes the efforts of the Government to create bodies such as CONAPS to institutionalise and coordinate the water and sanitation sub-sector. However, taking into account the plurality of entities that provide water services, and the disparity in services offered by different service providers, as well as the inequalities present in access to adequate water and sanitation among the population of El Salvador, it is necessary that a law regulating the water and sanitation subsector is adopted. Through a legislative framework, the provision of water and sanitation services can be guaranteed according to international human rights standards and the human rights obligations and responsibilities of service providers can be implemented and enforced.

PROGRESS NOT STARTED: The Special Rapporteur notes that the Government has not yet adopted legislation on the water and sanitation sub-sector which promotes the realisation of the human rights to safe water and sanitation, and which regulates services and provides guidance for institutions operating within the sector. He urges the Government to progress its efforts to introduce such a law with due expediency.

D. Recommendation on the National Plan for Water and Sanitation

RECOMMENDATION 4: “Draw up the national plan for water and sanitation via a participatory process that involves other service providers, such as the rural water boards and representatives of civil society. The plan should set the normative substance of human rights at the core of all its assessments, proposals and recommendations and make provision for actual measures to ensure that the whole of the country’s population has access to services, in conformity with the Sustainable Development Goals, to which El Salvador has subscribed” (A/HRC/33/49/Add.1, para. 96(c)).

19. PLANAPS was completed in September 2017 and presented on 25 January 2018. Its implementation is planned to span from 2019 to 2039. The Plan lists among its key aims, “to ensure the human right to water and sanitation”. The Plan also cites targets 6.2 and 6.3 of the SDG agenda as central goals for sanitation, however it does not mention SDG target 6.1. The Government indicated that PLANAPS assesses how much progress will be made by 2030 in the realization of SDGs and that targets under SDG 6 for drinking water in urban areas will be met, however, this will not be the case for sanitation and rural areas. For the realization of target 6.2, PLANAPS proposes two strategies for both urban and rural areas: Improving and expanding sanitation infrastructure and improving the functioning of sanitation systems.

20. With regard to participation, PLANAPS cites several civil society groups and rural water boards that took part in its consultation process. As highlighted above, the Plan also proposes the creation of CONAPS, which will be composed of representatives of technical, political and citizen stakeholder groups. CONAPS will represent the Government in all areas involving this subsector, both at the national and international levels, and will have the mandate to implement PLANAPS. The Government noted in its response that in March 2018 a Special Commission was created to work on the proposal for the political, technical and economic agenda for CONAPS.

21. The Special Rapporteur welcomes the progress made by the Government in aiming to ensure the human rights to water and sanitation, in adopting efforts to ensure SDG 6, and in involving water and sanitation stakeholders in the preparation and implementation of PLANAPS. While PLANAPS sets some objectives towards the realization of the human rights to water and sanitation, it does not develop the content of those rights and therefore does not foresee specific and targeted measures ensuring the realisation of these rights under a human rights framework. The Special Rapporteur also highlights that the lack of reference to SDG target 6.1 on achieving universal and equitable access to water for all undermines the implementation of the human right to water. Furthermore, the Special Rapporteur points out that the CONAPS has not yet been created.

GOOD PROGRESS: The Special Rapporteur commends the Government for completing PLANAPS and encourages it to pursue its efforts in adopting its objectives, calling on it to strengthen the human rights perspective within such actions in order to ensure that the normative substance of human rights is at the core of all its assessments, proposals and recommendations. He further encourages the Government to put special emphasis on SDG target 6.1, not reflected in PLANAPS, and to ensure a better alignment of the Plan with SDG target 6.2.

E. Recommendation on climate change

RECOMMENDATION 5: “Strengthen the national strategy to cope with climate change, which should include the establishment of an effective mechanism to provide a timely response to future droughts and to their impact on the most vulnerable population, including the rural population.” (A/HRC/33/49/Add.1, para. 96(a)).

22. With regard to water scarce regions, the Special Rapporteur underlined that persons deprived of their liberty, rural populations, persons living in situations of poverty or in street situations, persons with disabilities, older persons and persons living in areas

controlled by gangs sometimes out of bounds to suppliers, are specially affected during crisis situations (A/HRC/33/49/Add.1, paras. 7 and 10).

23. The National Climate Change Plan (updated in 2017) details measures to ensure availability of water for human consumption and for other uses, including agricultural uses. The programme proposes the “development of the First National Inventory of Critical Investments in strategic public infrastructure (drinking water and sanitation) and essential ecosystems for service provision, conservation of natural resources, [and] risk reduction in communities in conditions of extreme risk to disaster.” It further states that “[t]he State will use this inventory to allocate resources from the national budget or external sources to reduce economic costs and social damage in the short term from climate variability or climate change-related disasters.” Regarding the protection of specially affected populations the programme aims to identify and incorporate cost-effective measures to strengthen the universal social protection policy regarding the impacts of climate change; or to develop social networks for securing timely actions against climate risks and to minimize associated losses and damages, particularly for communities and population groups in vulnerable situations.

24. In addition to these measures, the MARN addresses the effects of climate change on water balance scenarios in the National Plan on Integrated Water Resources Management, and includes actions to promote and extend water supply through contingency plans for rural populations and through rural drinking water systems. Projects have also been adopted to, inter alia, construct water reservoirs, conduct water conservation or harvesting works, and construct latrines adapted to floods. Additionally, the Environmental Health Directorate and the MINSAL proposed the “Health-Climate Change Policy” which aims to protect and preserve natural resources through strategies to help reduce water consumption and for the safe disposal of wastewater. The Government noted that groups in situations of vulnerability, including the rural population, benefit from rapid responses in cases of drought, in accordance with the commitment of the top level of the Government to comply with the National Climate Change Plan and to allocate resources for its implementation. This is considered feasible on the basis of the commitment of the most developed countries to the UN Framework Convention on Climate Change, including the technical and financial assistance to developing countries.

25. The Special Rapporteur welcomes the efforts made by the Government, included in the updated National Climate Change Plan, to identify water sources for populations especially affected by climate change and droughts, and the measures and plans designed to address such negative impacts. In order to set effective contingency plans and measures addressing the impacts of climate change on the access to water and sanitation by people in El Salvador, it is crucial to assess the infrastructure and water and sanitation access of communities. Monitoring the infrastructure and drinking water and sanitation capacities of communities, will enable the Government to identify challenges and risks caused by climate change and address them.

GOOD PROGRESS: The Special Rapporteur congratulates the Government on the adoption of the updated National Climate Change Plan and its efforts to address challenges and issues related to accessing water and sanitation in the context of climate change and droughts. He encourages the Government to continue developing contingency plans to address climate change and droughts more effectively.

F. Recommendation on a regulatory agency on the water resources policy

RECOMMENDATION 6: “Set up an agency to regulate the water resources policy introduced by this law [the general law on water resources]; the agency should be transparent and participatory, and the State should play a leading role in the management of water resources, with the participation of the sector’s main stakeholders, giving priority to that of civil society and of those groups most disadvantaged as regards access to water” (A/HRC/33/49/Add.1, para. 96(b)(iii)).

26. A key goal of PLANAPS is to establish regulation of “drinking water and sanitation services through an adequate legal and institutional framework”. PLANAPS proposes the creation of a Regulation and Social Control Council involving municipalities, providers, users, technical entities, civil society and consumer protection organizations, among others. According to the initiative for a general law on water resources presented by the UCA and the Office of the Human Rights Advocate, ANA will be provided with an advisory body with broad representation and participation of the water and sanitation sector, which will be known as the National Water Council. The National Water Council will support the analysis, deliberation and decision making of ANA.⁷ On 16 January 2018, the Environment and Climate Change Commission decided to create ANA as an executive entity that is responsible for regulating water resources.⁸ The Environment and Climate Change Commission is currently discussing the creation of a directive board that will act as authority and regulator for water issues.

27. The Special Rapporteur welcomes the efforts and plans adopted by the Government to create a centralised authority to regulate water resources and to include the participation of stakeholders from the water and sanitation sector, as well as of other entities to provide the required institutional framework. He also welcomes initiatives to involve stakeholders in governing or consulting bodies regulating water resources, such as the Regulation and Social Control Council included within PLANAPS, or other bodies proposed within the works of the Climate Change Commission. A body that has autonomy and independence, and that is representative of the relevant stakeholders, may help ensure that water for human consumption is prioritised in water management. The body should be clearly oriented by the framework of the human rights to water and sanitation (A/HRC/33/49/Add.1 paras. 29 to 31). However, the Special Rapporteur remains concerned that no concrete actions have yet been taken to create such body and therefore calls the Government and relevant authorities to intensify its efforts in that direction.

PROGRESS ON-GOING: The Special Rapporteur urges the Government and relevant authorities to adopt the necessary measures to create and implement ANA and other proposed initiatives such as the Regulation and Social Control Council, and to ensure transparency, participation, and that the operations of such organs are clearly aligned with the framework of the human rights to water and sanitation.

G. Recommendation on regulatory body for water and sanitation services

RECOMMENDATION 7: “Set up an independent regulatory body to ensure that those who supply water comply with human rights. Such an agency should ensure genuine participation by the public in decision-making by disseminating appropriate information and guarantee that water and sanitation are affordable for all.” (A/HRC/33/49/Add.1, para. 96(d)).

28. The Special Rapporteur noted during his country visit that no independent regulatory mechanism existed to monitor the performance of either ANDA or the local authorities and agencies providing water and sanitation services (A/HRC/33/49/Add.1, para 35).

29. PLANAPS proposes the creation of the Regulation and Social Control Council, however, an independent regulatory body has not yet been created. In its response, the Government noted it had plans for the creation of a water and sanitation regulatory public entity in the future, and stated that this entity will be independent from any other operator, will be attached to the Presidency, and will be responsible for regulation and oversight of water and sanitation service providers. According to the Government, the Regulation and

⁷ Legislative Assembly of El Salvador, “Diputados conocen nueva propuesta de régimen administrativo nacional para una ley General de Aguas”, 27 June 2017, available at <https://www.asamblea.gob.sv/node/3646>.

⁸ Legislative Assembly of El Salvador, “Continúa estudio del proyecto de Ley General de Agua”, 16 January 2018, available at <https://www.asamblea.gob.sv/node/6688>.

Social Control Council will be in charge of intersectoral coordination among all members of the councils and CONAPS will be responsible for subsidies and the establishment of tariffs for all system operators.

30. The Special Rapporteur welcomes efforts and plans adopted by the Government to create a water and sanitation regulatory public entity that will be independent from providers and that will have competency to regulate and oversee water and sanitation service providers. In particular, he welcomes the initiatives to create CONAPS and the Regulation and Social Control Council. Nevertheless, such bodies should be bound by policy and legal frameworks aligned with the elements of the human rights to water and sanitation. The Special Rapporteur notes that no actions have yet been adopted to create both bodies that would coordinate actors in the water and sanitation sector and calls on the Government to reinforce their actions to achieve this.

PROGRESS ON-GOING: The Special Rapporteur urges the Government to take measures to create and implement CONAPS and the Regulation and Social Control Council. He further recommends the Government establish a framework to ensure that both entities will comply with human rights, guarantee public participation in decision-making, provide appropriate information and provide that water and sanitation are affordable for all.

III. Human rights to water and sanitation

A. Recommendation on access to water and sanitation in schools

RECOMMENDATION 8: “Improve access to water, sanitation and hygiene in schools by adopting a policy that guarantees access in all educational establishments, in both rural and urban areas.” (A/HRC/33/49/Add.1, para. 96(f)).

31. The Special Rapporteur noted during his country visit that in 2014 more than 1,100 schools (or 10 per cent of all educational establishments) had no piped drinking water and that this problem is more acute in rural schools where public policy does not indicate how to ensure access to water and sanitation. (A/HRC/33/49/Add.1, paras 46 and 47).

32. The Government confirmed that there is no specific policy ensuring access to water and sanitation facilities in schools. In rural communities with supply systems, the managing councils are responsible for providing water, in many cases for free. The Government also noted that the Ministry of Education guides the education sector through institutional memos containing advice on efforts to avoid illnesses or outbreaks from spreading, as well as providing basic guidance and recommendations on personal hygiene and educational environment maintenance. Furthermore, the Ministry launched a project in rainwater collection under which 516 rainwater collection systems have been installed.

33. The Special Rapporteur is disappointed that no specific actions have been taken in order to improve access to water and sanitation and hygiene in schools apart from a rainwater collection system programme launched by the Ministry of Education.

PROGRESS NOT STARTED: The Special Rapporteur reiterates his previous recommendation and calls on the Government of El Salvador to improve access to water, sanitation and hygiene in schools by adopting a policy that guarantees access in all educational establishments, in both rural and urban areas.

B. Recommendation on water security

RECOMMENDATION 9: “Introduce policies to ensure water security and access to water on equal conditions, guaranteeing water supply 24 hours a day 7 days a week. The Government should also “reduce drastically the level of leakage so as to increase the

availability of water.” (A/HRC/33/49/Add.1, para. 96(g)).

34. The Special Rapporteur noted during his country visit that more than 1 million people had an inadequate water supply, with no guarantee as to quantity. Furthermore, he indicated that in 2014, 47.7 per cent of water provided throughout the country was non-revenue water (due to leaks and illegal connections) (A/HRC/33/49/Add.1 paras. 40, 52 and 96(g)).

35. ANDA reported that 51.9 per cent of water produced was non-revenue water in 2016, mainly due to leaks originating in old and damaged networks, theft of water in hydrants, fraudulent and illegal connections and inappropriate use of public streams, parks and cemeteries.⁹ PLANAPS foresees the creation of a policy for managing drinking water demand among urban and rural populations, the promotion and implementation of quality control programs for water supplied, and the execution of programs for sectorization and monitoring of pressures, fraudulent connections, losses and leaks. PLANAPS also provides for the development and implementation of operation and maintenance or water security plans. The National Climate Change Plan promotes scientific technical research focused on improving systems of wastewater treatment and drinking water treatment, as well as research on the design and promotion of rainwater collection and latrine-adapted systems.

36. The National Policy on Integrated Water Resources Management recognises and prioritizes the human rights to water and recognises that the water resources strategy implies water security. The Government also expressed that access to water for all the population is expected to be improved by the implementation of PLANAPS. With regard to the reduction of leak levels, in 2017 the Government implemented a pipe renewal programme in order to reduce non-revenue water through leak reduction and to provide more efficient access to drinking water.

37. The Special Rapporteur notes that PLANAPS foresees the promotion the execution of programs to address challenges and problems of water systems and provides for the development and implementation of operation and maintenance or water security plans. He finds that such measures are a good first step towards achieving an efficient water supply system, however, targeted measures need to be adopted to ensure that water leaks are reduced and that the most disadvantaged and unserved populations have access to adequate and quality drinking water and sanitation services. The Special Rapporteur notes that the National Climate Change Plan focuses on the research, design and promotion of rainwater collection and latrine-adapted systems. Nevertheless, he is concerned that no concrete effective actions have been adopted to guarantee water access and security and that the level of non-revenue water produced by ANDA is still considerable.

PROGRESS ON-GOING: The Special Rapporteur encourages the Government to effectively implement programmes to ensure a continuous water supply and to drastically reduce the level of water loss, so as to increase the availability of water.

C. Recommendation on complying with and monitoring water quality standards

RECOMMENDATION 10: “Invest in achieving compliance with drinking water requirements throughout the whole country and set up an efficient mechanism effectively to monitor the quality of water for human consumption by means of a transparent process involving user participation.” (A/HRC/33/49/Add.1, para. 96(h)).

38. MINSAL is responsible for testing water quality in rural areas and carries out analysis of water quality with regard to bacteriological, physical and chemical parameters, including heavy metals. The Special Rapporteur underlined in his country visit report that, in 2015, out of 8,410 analyses, 515 samples (i.e. 6.12 per cent) failed to meet the biological

⁹ ANDA, “*Memoria de Labores 2016*”.

standards (total faecal coliform bacteria or *Escherichia coli*). Regarding physical and chemical parameters, out of 727 samples, 55.6 per cent were outside the norm, especially regarding the lack of residual chlorine (A/HRC/33/49/Add.1 paras. 58, 59 and 62).

39. PLANAPS outlines a total investment matrix for measures to monitor the quality of all water sources used for human consumption (surface waters and ground water) and for monitoring household wastewater disposal. Furthermore, PLANAPS states that operators will be responsible for the establishment of monitoring and surveillance networks for this water, perimeters of protection for 1,200 wells, 6 deviation canals for water sources intended for human consumption, and for operating costs for the monitoring networks. Such measures have been included in the Service Provider Support and Strengthening Plan.

40. The Government referred to the 2018 regulation on “Water. Water for human consumption. Quality, and safety requirements”, which aims to establish permissible parameters which water for human consumption must fulfil and is applicable to any natural or legal person providing or managing a water provision system for human consumption. Furthermore, the regulation states that water providers shall conduct basic, intermediate and complete analysis according to the parameters and set and keep records for verification by health authorities. According to the Government, the drafting process of the aforementioned regulation included an international consultation and the participation of representatives of the institutions, private sector, water councils or municipal development associations, among others. Furthermore, MINSAL and ANDA are in charge of implementing the Water Safety Plans for Rural Systems, the objective of which is to ensure continuous access to safe water of sufficient quality. Water Safety Plans for Rural Systems are developed with the participation of the Management Councils of Rural Aqueducts, which are composed of residents and water users from communities. Finally, the Government mentioned that ANDA supports rural communities in performing bacteriological water testing and in ensuring water quality, and additionally, provides training to water system operators.

41. The Special Rapporteur welcomes efforts made by the Government to set water quality requirements and water safety plans, taking into account rural water systems specifically and that PLANAPS outlines an investment matrix to monitor the quality of all water sources used for human consumption. He also notes efforts made by the authorities to involve relevant stakeholders in the preparation of such instruments and the training provided to communities and operators in monitoring water quality. While plans to invest in water quality monitoring and to set participatory monitoring authorities are a solid basis for achieving compliance with drinking water quality requirements, specific measures to allocate resources to implement such plans need to be adopted. Most importantly, improvement of the quality of drinking water, protecting water sources and implementing adequate water treatment plants, are essential to ensure compliance with set standards. Accordingly, the Special Rapporteur encourages the Government to continue the positive developments it has taken and to invest and adopt measures for moving towards both a monitoring system and an improvement of drinking water quality, which will help ensure the protection of human health of all segments of the population.

GOOD PROGRESS: The Special Rapporteur encourages the Government to continue investing in the implementation of monitoring systems in order to ensure that these effectively guarantee that safe drinking water is provided to the whole population.

D. Recommendation on water quality assessment

RECOMMENDATION 11: “Conduct a critical assessment of the impact of environmental and agrochemical pollutants and of interruptions in water supply on the quality of water for human consumption and of the risks to health.” (A/HRC/33/49/Add.1, para. 96(i)).

42. The Special Rapporteur pointed out in his country visit report that a considerable proportion of surface waters were polluted, essentially from untreated urban wastewater and agriculture or industry runoffs. The Special Rapporteur quoted the example of The Acelguate River, which drains the metropolitan areas of the capital and was severely

polluted, meaning water from it could not be consumed even after conventional treatment (A/HRC/33/49/Add.1, para 50).

43. PLANAPS outlines the health impacts of insufficiently treated water that suffers contamination from, inter alia, agriculture, industry and wastewater. Specifically, PLANAPS mentions that, “the greater part of [surface waters]” are too contaminated to be considered a treatable source of drinking water.¹⁰ PLANAPS details a baseline study on human health covering a number of health indicators including handwashing with soap, inadequate sanitation and unsafe water sources. It notes that “[t]he results obtained confirm that there is still a long way to go in terms of drinking water and sanitation in El Salvador.”¹¹ In the light of the above, PLANAPS recommends that monitoring of ground water sources, consisting of periodic sampling, should be carried out, especially in those places that are preselected as possible sources of drinking water. PLANAPS’ strategy to monitor and improve the quality of water sources for human consumption and sanitation includes the program for the implementation of monitoring plans and monitoring of the water quality of the sources; the establishment of protection perimeters of water sources for population use; and the program for the implementation of monitoring plans of domestic wastewater.

44. The Government explained in its reply to the follow-up questionnaire that ANDA is in charge of providing water treatment services and conducting a strict quality control in water sources and in distribution systems it manages. Laboratories conducting quality controls are certified by various national and international standards. Furthermore, the Government recognised that intermittent water supply is one of the main problems for ANDA and rural systems throughout the country, due to obsolete water systems and their high leakage levels, as well as the decrease in the quantity of water at sources. The Government also referenced that the Technical Regulatory Agency (Organismo Salvadoreño de Reglamentación Técnica) is responsible for issuing regulations on water and sanitation that must be complied with by system operators. Such compliance is monitored by MINSAL’s Environmental Health Directorate. The Government indicated that MARN has implemented a water quality control system for surface water bodies through a water quality index which qualifies water quality as excellent, good, moderate, or bad. The information obtained is used to define the most suitable type of treatment to purify surface water and to determine the possible uses of water.

45. The Special Rapporteur notes that PLANAPS includes measures to ensure the reduction of environmental pollution by taking efforts such as analysing water quality, limiting socio-economic activities impacting water, and monitoring discharges of domestic wastewater. He also noted the efforts from MARN to implement a water quality control system for surface water in order to define the most suitable type of treatment to purify surface water and to determine the possible uses of water as well as the recovery programme for urban rivers. He is, however, concerned that the Government did not critically and specifically target and address the pollution of water by pesticides and that such measures will not be able to overcome existing pollution from water sources and irregularities in water supplies which deeply affect drinking water quality and availability. Taking into account the negative impacts that water sources suffered from agricultural activities, it is necessary to specifically target such risks within its policies and adopt both preventive and reparative measures to address contamination by pollutants.

LIMITED PROGRESS: The Special Rapporteur reiterates his recommendation and calls on the Government to conduct a critical assessment of the impact of environmental and agrochemical pollutants, and of interruptions in water supply, on the quality of water for human consumption and of the risks to health.

¹⁰ Government of El Salvador, “Plan Nacional de Agua Potable y Saneamiento, Resume Ejecutivo Septiembre 2017”, September 2017, at pg. 19.

¹¹ Ibid..

E. Recommendation on disconnection due to incapacity to pay

RECOMMENDATION 12: “Adopt a transparent and participatory approach to reviews of water rates, and ensure that the National Water Mains and Sewers Administration carries out research to determine whether progressive block tariffs actually ensure cross-subsidization involving a financial transfer from more affluent persons to the less affluent.” (A/HRC/33/49/Add.1, para. 96(j)).

46. The Special Rapporteur noted during his country visit that, in the years prior to the visit, ANDA has adjusted rates so as to adapt cross-subsidization to enable the agency to balance its budget, and that subsidies were granted according to the category of customer (industrial/commercial, residential/public) and by group of consumer. ANDA rates published in 2015 set the highest increases for households with the highest consumption in order to subsidise people with the lowest incomes. (A/HRC/33/49/Add.1, paras. 65 and 66).

47. One of PLANAPS’ main lines of action with regards to water resources is to raise awareness on the benefits of appropriate tariffs, carrying out promotion and capacity building to establish good practices on water use, water saving and the protection of water resources. PLANAPS recognizes that the current tariff structure “is not balanced, and does not generate enough revenue to recover costs, is poorly focused, benefiting predominantly the non-poor users in urban zones, and that consumers supplied by non-ANDA service providers, pay more than ANDA clients.”¹² PLANAPS proposes a financial strategy to adjust the tariff system taking into consideration the issues mentioned above. The strategy sets as financial and institutional strategy components the defining of a tariff and subsidy policy for the sector based on real costs and capacity to pay, and the development of mechanisms and indicators to monitor service provision. Furthermore, the strategy proposes among its short-term measures, the modification of the tariff model to attribute better focus to crossed subsidies and generate funds through systems expansion; the design of an accounting system to monitor tariffs; the creation of a fund for non-ANDA service providers; and the implementation of a transitional scheme for tariff auditing. However, the application of participatory approaches is not explicitly mentioned.

48. The Special Rapporteur notes the strategy proposed by PLANAPS to overcome the current challenges and inequalities identified in the current tariff and subsidy system. He is, however, disappointed that no specific information has been provided on the adoption of short-term measures contained in the strategy identified in PLANAPS. Furthermore, the Special Rapporteur is concerned that the financial system proposed and presented in PLANAPS does not incorporate the application of participatory approaches. Ensuring household participation in the designing of tariffs helps ensure that resources are distributed in order to improve access to water and sanitation services for populations lacking or having inadequate access to such services, and transparent budgeting enables advocacy and accountability within vulnerable or unserved communities. Therefore, despite efforts taken by the Government to tackle persisting inequalities in cross-subsidy, further measures to ensure the effective cross-subsidization, participation of the beneficiary population and transparency within the tariff system, are still necessary to implement the Special Rapporteur’s recommendation.

LIMITED PROGRESS: The Special Rapporteur reiterates that the Government adopt a transparent and participatory approach to reviewing water tariffs and assess whether the strategy proposed by PLANAPS is the best way to comply with the principle of affordability in the access to water and sanitation services, both for those supplied and not supplied by ANDA.

¹² Government of El Salvador, “Plan Nacional de Agua Potable y Saneamiento, Resumen Ejecutivo Septiembre 2017”, September 2017, at pg. 31.

F. Recommendation on programmes to mitigate financial impacts of expenditure on water and sanitation

RECOMMENDATION 13: “Establish ad hoc programmes to mitigate the financial impact of expenditure on water supply and sanitation by persons without access to collective systems, by setting up social protection measures to ensure that water is affordable.” (A/HRC/33/49/Add.1, para. 96(k)).

49. The Special Rapporteur pointed out in his country visit report that people who lived in areas where ANDA does not provide water and sanitation services tended to pay higher prices for those services. The Special Rapporteur was informed during his country visit that some people paid 4 dollars per week while they made only 22.5 dollars per week, meaning 18 per cent of their income was spent on water – a figure that is far higher than that spent by people who are connected to the national water and sanitation network (A/HRC/33/49/Add.1, para. 69).

50. PLANAPS calls for the creation of a tariff and subsidy policy for the sector that will take into account users’ capacity to pay. However, no further specific measures are detailed which might explain how ANDA will ensure that drinking water and sanitation services will be affordable for all users. The Government responded that since a regulatory entity of the water and sanitation sector does not exist, PLANAPS has been considered as one of the priority strategies to be promoted by the Government in its implementation phase. After the creation of CONAPS, it will be the body responsible for setting subsidies and tariffs for all system operators.

51. The Special Rapporteur notes PLANAPS’ call for the creation of a tariff and subsidy policy and the plans of the Government to create CONAPS. However, he remains concerned that no concrete actions have been taken to reduce the financial impact of access to water and sanitation for persons without access to collective systems, and that no concrete social protection measures have been adopted. Water and sanitation systems have operation and maintenance costs that usually require the collection of funds through fees charged to users. Nevertheless, such fees need to be charged according to the financial capacity and the ability of users to pay, and should not exceed such capacities. Social protection measures need to be adopted in order to ensure that water tariffs and the cost of investments do not disproportionately affect people in vulnerable situations and those on low incomes.

PROGRESS NOT STARTED: The Special Rapporteur reiterates his recommendation to the Government to establish specific programmes to mitigate the financial impact of expenditure on water supply and sanitation by persons without access to collective systems by setting up social protection measures.

G. Recommendation on the agricultural use of water

RECOMMENDATION 14: “Introduce clear national policies to rationalize agricultural use of water so as to increase its availability for human consumption, particularly in regions such as the Dry Corridor, where it is in short supply and which are more sensitive to climate change.” (A/HRC/33/49/Add.1, para. 96(l)).

52. The Special Rapporteur pointed out in his country visit report that FAO estimated that in 2005 agriculture used 68 per cent of water extracted in El Salvador. He also noted that wastage from this sector was high and proposed the introduction of clear national policies to rationalize use and make water more available for human consumption, especially in water scarce regions (A/HRC/33/49/Add.1, para. 74). The National Climate Change Plan (updated in 2017) details measures to ensure availability of water for human consumption and for other uses (including agricultural uses). Regarding the protection of specially affected populations the program aims to identify and incorporate cost-effective measures to strengthen the universal social protection policy with regard to the impacts of

climate change, and develop social networks for securing a timely response to climate risks and to minimize associated losses and damages, particularly for vulnerable communities.

53. According to the response provided by the Government to the follow-up questionnaire, the National Irrigation Policy, which seeks to promote the development of agricultural activity that demands water by ensuring the efficient and effective management of water resources, including during livestock rearing and aquaculture activities, was approved in July 2018. According to the Government, this policy includes guidelines for the efficient management of irrigable areas, resource sustainability, investment in research and infrastructure with efficient and environmentally friendly technology, and strengthening institutional irrigators' capacities on water management. Furthermore, the National Plan for the Integrated Management of Water Resources, includes the analysis of climatic scenarios to prepare water balances by hydrographic region and identifies current conflicts and those that could arise in the future due to the use of water for irrigation.

54. The Special Rapporteur notes the aim expressed in PLANAPS to monitor the uses of water for activities such as agriculture. He is, however, concerned that no specific measure has been put forward to prioritise water for human consumption and to rationalise the use of water for agriculture. While many uses of water such as food production are recognised in the international human rights framework, the human rights to water and sanitation require that priority shall be given to the use of water for drinking and domestic purposes. Taking into account the wide proportion of water used for agricultural uses in El Salvador, specific design, policies and measures should be implemented to prioritise domestic and drinking water uses of water over agricultural uses.

LIMITED PROGRESS: The Special Rapporteur welcomes the approval of the National Irrigation Policy that promotes the efficient use of water and encourages the Government to rationalize and promote the efficient use of water for agriculture in order to increase its availability for human consumption.

IV. Leaving no one behind

A. Recommendation on rural populations

RECOMMENDATION 15: "Where the rural population is concerned, the Special Rapporteur recommends that an assessment be made of the significant and successful efforts of the Social Investment Fund for Local Development, with the aim of replicating them, focusing on the adoption of appropriate and comprehensive solutions and sustainable management models that include both water supply and sanitation services." (A/HRC/33/49/Add.1, para. 96(e)(i)).

55. The Special Rapporteur compared access to water and sanitation for populations in rural and urban areas during his country visit report. While 618,000 inhabitants of rural areas lacked access to drinking water, only 6,000 inhabitants in urban areas faced such a challenge. In rural areas, less than 60 per cent of houses were connected to the water network, whilst in towns 85 per cent of the population was connected. With regard to sanitation, he pointed out that 82 per cent of the population in urban areas had access to improved sanitation, whereas in rural areas only 60 per cent of the population did. Furthermore, 7 per cent of rural population performed open defecation.

56. The goals and strategies of PLANAPS related to vulnerability focus more specifically on technical aspects of vulnerability in drinking water systems, rather than social and economic forms of vulnerability. Thus, any eventual benefits derived from its actions risk overlooking people in particular situations of vulnerability for whom attention is required at early stages of planning. The most relevant measure with regards to reducing vulnerabilities is the creation of a technical and financial support program to protect water systems from accidents and emergencies. For instance, in PLANAPS, the role of FISDL is outlined. The Government responded that the "Annual Measurement of Institutional Strategic Results" of the FISDL from January 2018 assesses the implications for the

population on the implementation of the projects improving water and/or sanitation in several rural areas and one urban area. According to the Annual Measurement, all beneficiaries received water services at home or received, at the minimum, a sanitary product from the project implemented by the FISDL.

57. The Special Rapporteur welcomes the efforts that the Government has made on monitoring the results of projects carried out by the FISDL in rural villages. He notes the benefits that such projects bring to the rural populations to access quality and affordable drinking water and sanitation. However, he is concerned that the Government has not yet introduced any specific focus in its policies to address inequalities between rural and urban populations, and that projects carried out by the FISDL remain restricted to the villages covered by the FISDL. There is room for a substantial expansion of the number of communities to benefit from projects carried out with a similar methodology to that applied by FISDL.

PROGRESS ON-GOING: The Special Rapporteur encourages the Government to pursue its efforts in implementing water and sanitation projects in rural communities, improving or providing sustainable and adequate water and sanitation services. He also recommends the Government to introduce a specific focus in its policies to address inequalities between rural and urban populations.

B. Recommendation on irregular settlements

RECOMMENDATION 16: “The ban prohibiting the national services provider from making water and sanitation services available to illegal settlements should be re-examined, with a view to enabling the inhabitants of these settlements to exercise their rights to use those services” (A/HRC/33/49/Add.1, para. 96(e)(ii)).

58. The Government indicated in its answers that ANDA’s Social Inclusion Unit coordinates efforts to serve as a link between the populations lacking drinking water and sanitation services and ANDA. According to the Government, in order to ensure that individuals with limited economic resources are exempt from paying for connections to the water network, the Government worked with communities based in illegal settlements, and supported them through affidavits certifying that they are based in such settlements and enabling connections to the water system. This enabled them to access the drinking water and sanitation services. Under this system the control over services provided and their payment was less efficient and many people, especially socially vulnerable populations and those in precarious housing situations, were excluded from drinking water provision. The Government noted that efforts were made in 2018 to create an alternative programme so that the services can be granted to specific persons. Furthermore, in 2017, 129 applications for connections were submitted to ANDA. Such applications were declared of social interest and communities were exonerated from connection costs.

59. The Special Rapporteur notes efforts made by the Government to support illegal settlements through affidavits. He is, however, concerned that the ban prohibiting the national services provider from supplying informal settlements with water and sanitation has not been lifted and that no specific measures or policies have been adopted to ensure water and sanitation services are provided within such settlements. While the Government has adopted measures to enable services to be granted to specific persons, in order to fully meet its human rights obligations towards all, including those living in informal settlements, the Government must implement such obligations through policies and specific measures target specifically at these settlements.

LIMITED PROGRESS: The Special Rapporteur notes efforts made by the Government to support the connection of illegal settlements to the water supply network but reiterates his recommendation to the Government to re-examine the ban prohibiting the national services provider from making water and sanitation services available to illegal settlements.

C. Recommendation on people living on the street

RECOMMENDATION 17: “People living in the street should be guaranteed free facilities providing access to water and toilets.” ([A/HRC/33/49/Add.1](#), para. 96(e)(iii)).

60. According to the Government’s reply, external actors provide cheap or free water and sanitation facilities and toilets in public spaces for people who are homeless, through supply and sewage services provided by ANDA. Furthermore, Article 5 of the Law creating the FISDL states that “[r]esources from Municipal Funds may be invested in [...] sewage treatment, construction of sanitary services, public toilets and laundries [...] [among others]”. The Government also incorporated as an obligatory measure the provision of complete sanitary services in each of the projects, so that the surrounding communities have access to services for hand washing and sanitation.

61. The Special Rapporteur notes efforts from the Government to provide sanitation services in certain projects. He is, however, disappointed that no specific measure or policy has been adopted to guarantee access to free water and sanitation to people who are homeless. In order to meet its human rights obligations and improve its realization of targets 6.1 and 6.2 of SDGs, the Government shall adopt concrete policies and measures to ensure access for all to safe drinking water, including for people in who are street homeless.

PROGRESS NOT STARTED: The Special Rapporteur reiterates his recommendation and calls the Government to guarantee to people living in the street free facilities providing access to water and toilets.

D. Recommendation on ensuring water and sanitation in prisons

RECOMMENDATION 18: “Ensure an uninterrupted supply of good quality water and satisfactory conditions of sanitation for persons deprived of their liberty in the country’s prisons and “bartolinas” (police jails) so as to guarantee compliance with the country’s obligations in respect of the human rights to water and sanitation.” ([A/HRC/33/49/Add.1](#), para. 96(m)).

62. During the visit to El Salvador, the Special Rapporteur visited a prison with capacity for 1,000 inmates, however, its actual population was 5,297 detainees. He also was informed that the prison’s water service was frequently interrupted meaning inmates had to go for several days without water, or forcing them to suck water from pipes. Inmates often relieved themselves in plastic bags and they had no privacy when fulfilling their sanitation needs ([A/HRC/33/49/Add.1](#), paras. 82 and 86).

63. Following the Special Rapporteur’s visit, the Human Rights Committee indicated in its 2016 Concluding Observation on El Salvador that, “[r]egarding hygiene conditions, improvements have been made to the supply of drinking water in prison facilities with the assistance of the International Committee of the Red Cross; and prevention campaigns, including general cleaning, fumigation, screening and talks on hygiene and health, are being operated through prison clinics” ([CCPR/C/SLV/7](#), para. 144). Equally, the CEDAW welcomed, in its 2017 Concluding Observations on El Salvador, the provision of health services to women in detention, however, it expressed its concern regarding their problems in gaining appropriate access to accommodation, health and sanitary facilities ([CEDAW/C/SLV/CO/8-9](#), para. 45).

64. The Government of El Salvador, in its reply to the follow-up questionnaire, mentioned that the Justice and Public Safety Ministry is undertaking various efforts in order to improve conditions for persons deprived of their liberty in El Salvador. Such efforts include providing new prison infrastructure, uninterrupted drinking water services for 24 hours a day, allocating approximately 100 litres of water per day per person, coming from diverse sources, mainly rivers and deep drilled wells, and guaranteeing the quantity, quality and safety of water likely to be suitable for human consumption. The quality of the water provided is ensured through the installation of direct injection chlorination systems or by

applying chlorine by drip methods to water contained in reservoirs. Furthermore, in order to minimize the spread of possible contagious diseases in the environment, sewage and grey waters are treated prior to their evacuation and discharge. According to the Government, the joint actions carried out by the institutions in charge of the technical part of water distribution (ANDA), the monitoring of the quality of drinking water (MINSAL) and the entity in charge of the administration of water resources (MARN) are enabling such efforts to produce positive results. Furthermore, the General Directorate of Penitentiary Facilities has taken various concrete actions to improve and repair water systems in various prisons in the country, such as acquiring and installing water purification filters, cleaning and sanitizing cisterns, constructing wastewater treatment systems with the purpose of improving water quality for prisoners and administrative and security staff, thus helping to avoid the proliferation of gastrointestinal diseases.

65. The Special Rapporteur notes efforts made by the Government to improve water availability and accessibility and to ensure water quality and wastewater treatment in various prisons around the country. He is however concerned about the lack of policies guaranteeing the human rights to water and sanitation for inmates, the lack of concrete and targeted measures to provide or improve sanitation facilities in prisons and the small or restricted scale of projects implemented. He also notes that efforts undertaken by the Justice and Public Safety Ministry only target new penitentiary facilities.

PROGRESS ON-GOING: The Special Rapporteur encourages the Government to adopt policies and legislative measures ensuring that all inmates have access to sufficient safe drinking water and to adequate sanitation facilities, and to continue undertaking projects in other penitentiary facilities around the country in order to implement his recommendation in the entire penitentiary system of El Salvador.

E. Recommendation on indigenous peoples

RECOMMENDATION 19: “Develop legislation under which the rights of indigenous peoples, including the rights to water and sanitation, may be better protected and implemented.” (A/HRC/33/49/Add.1, para. 96(n)).

66. The Special Rapporteur underlined in his country visit report that indigenous people likely represent between 10 and 12 per cent of the population. He further mentioned that according to the World Bank, in 2003 61.1 per cent of indigenous peoples lived in poverty and 38.3 percent in extreme poverty. Following the Special Rapporteur’s visit to El Salvador, the Human Rights Committee expressed in its 2016 Concluding Observations, concerns that legislation does not recognize the right of indigenous peoples to obtain title to land, and that there is no specific legislation to grant property titles to these peoples.

67. The Government indicated in its reply that it is developing a special legal framework to protect and implement the rights of indigenous peoples. The Government indicated that the 1961 Law of the National Administration of Aqueducts and Sewers establishes among ANDA’s obligations the concept of universalization, and not exclusion, of people from accessing drinking water. Furthermore, the Government noted that the establishment in 2011 of the Direction of Attention to Rural Systems and Communities (Gerencia de Atención a Sistemas y Comunidades Rurales), the main objective of which is to support the Administrative Boards of rural water systems, contributes to a large extent to the protection of the rights of indigenous peoples. The Government also referenced the National Health Policy for Indigenous Peoples, presented in November 2018 which highlights the importance of guaranteeing access to water for human consumption to indigenous peoples. Additionally, in November and December 2018, the Public Policy and the National Action Plan for Indigenous Peoples were launched. The Public Policy contains an Economic Development Strategy, which includes provisions for: indigenous peoples as beneficiaries of land transfer programs, collective land tenure, and legal aid for protection and regularization of indigenous land ownership. In its Social Development Strategy, the Public Policy includes a special programme for the installation and improvement of drinking water infrastructure in indigenous communities, and a technical programme for access to drinking

water from rivers and streams. In addition, the Public Policy's Environmental Sustainability Strategy promotes indigenous peoples' access to sustainable water management technologies and their public participation in policies related to access to and protection of water resources.

68. The Special Rapporteur notes ANDA's obligations to universalize access to safe drinking water and sanitation in urban and rural areas and the establishment of the Direction of Attention to Rural Systems and Communities that improved access to water and sanitation for rural communities directly, and indigenous communities indirectly. He also notes the establishment of the National Action Plan for Indigenous Peoples and the Public Policy for Indigenous Peoples. He is, however, disappointed that the policy framework and measures to improve the rights for indigenous peoples, in particular their right to property, were not adopted. The realisation of the right to property for indigenous peoples is likely to be crucial to improving their access to water and sanitation, given that the water provision system of El Salvador has traditionally been linked to land ownership. The Special Rapporteur also reminds the Government that his recommendation requires the development of a legal framework to protect the rights of indigenous peoples in order to ensure better implementation and enforcement of their human rights to water and sanitation. Therefore, the policy framework planned to be launched by the Government would not be sufficient, in and of itself, to ensure El Salvador's compliance with his recommendation.

PROGRESS NOT STARTED: The Special Rapporteur acknowledges establishment of the Direction of Attention to Rural Systems and Communities and the Government's plans to establish the National Action Plan for Indigenous Peoples and the Public Policy for Indigenous Peoples, but reiterates his recommendation to develop legislation under which the rights of indigenous peoples, including their rights to water and sanitation, may be legally guaranteed and implemented.
