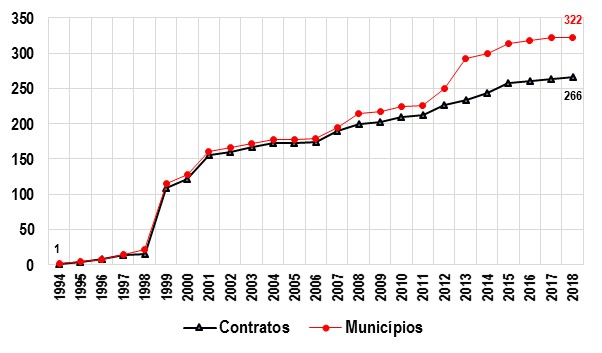
**Introduction**

1. **Please describe briefly the role and responsibilities of your organization in the water and sanitation sector, particularly concerning assessment or promotion of private provision.**
   1. Founded in 1996, the Brazilian Association of Private Concessionaires of Public Water and Sewage Services (ABCON) gathers all large and medium-sized companies that provide water supply and sewage services in Brazil, under rules set by Public Authorities. Currently, the association comprises 13 holding companies and 121 concessionaires;
   2. ABCON's mission is to support society and Public Authorities to ensure human rights to both current and future generations with efficient water and sewage services in Brazil, by promoting high performance management in line with the SDGs, especially number 6.1 and 6.2;
   3. Supported by the belief in good governance, ABCON has as values: **(i)** integrity and transparency; **(ii)** cooperation; **(iii)** sustainable resource management; and **(iv)** commitment to success fin basic sanitation;
   4. All ABCON activities are governed by a **Code of Conduct** in compliance to legislation and human rights parameters set by the State. It advocates minimum conditions of behaviour to direct its own activities, associated companies’ ones and also incorporating: **(i)** the body of directors; **(ii)** the management framework; **(iii)** the advisors and professionals who represent the associated companies and action the entity’s behalf. All involved persons have the obligation to comply with the determinations, based on Brazilian legislation, acting in a righteous and transparent way in their relations with each other, with Public Authorities, and civil society.

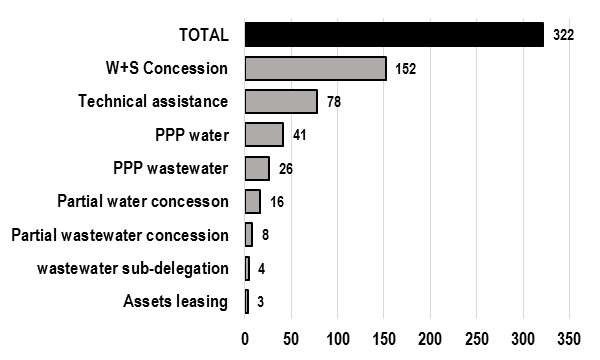
**Current Situation and Trends**

1. **In your view, what role has the private sector played in the water and sanitation provision in the countries your organization works in (or at the global level)? How has this role evolved in recent decades? Please provide examples.**
   1. From 1971 to 1986, the National Water and Sanitation Plan (PLANASA) implemented a State Basic Sanitation Company in each of the 27 states to be fully responsible for all water supply and sewage services in that State. Later, article 30, item V, from the new Federal Constitution, approved in 1988, established that it is up to municipalities to organize and provide W&S public services of local interest, directly or under concession or permission. Thus, the fullness in exercising their right and condition as Local Contracting Authority entitled to basic sanitation policy returned to municipalities. This determination was then ratified by Law No. 11,445 of January 5, 2007, establishing national guidelines for this segment infrastructure. Also based on Public Services Concession Law No. 8,987 of 2005, private companies were offered a legal-institutional and regulatory framework. So, the process of universalizing water and sewage services to population was developed and allowed the participation of the private sector, under decision by the Local Contracting Authority;

**2.2 A**fter the first contract for provision of specialized technical services in water supply and sanitary sewage was signed between a private company and Mairinque municipality (SP), in 1994, the private sector evolution is shown according to Graph 1, below. The PPPs Act no. 11,079/2004 became a major supporter in the participation of private companies, adding new solutions to the initial concession and/or permission models.



* 1. The details of contracts’ modalities signed between the public and the private sector, from 1994 to 2018, are posted in Graph 2, below:



1. **Why do public authorities allow or even attract privatization of water and sanitation services? What would be the alternatives for public authorities?**

**3.1** The major presence, currently around 75% in the market-share, of State Basic Sanitation Companies - CESB, created by the implementation of water and sewage services according to the aforementioned (in 2.1) – National Water and Sanitation Plan - PLANASA, from 1971 to 1986, limited local municipal services to fetch for financial resources that would allow the implementation of PLANASA locally;

* 1. After awarding Local Contracting Authority back to municipalities, and Law No. 11,445 of 2007 already mentioned, the existing service spectrum counted with State Companies, Municipalities and the Private Sector, via modalities signed with the latter. It is appropriate to mention that most of the insufficient public resources available for water and sewage services were more easily directed to public entities, resulting by 2018 in achievements far below needs. As a comparative basis, while during PLANASA, between 0.4 to 0.5% National GDP were annually invested, from 2000 to 2018 the largest annual investment reached 0.23% GDP only;

**3.3** The Authority responsible for the national basic sanitation policy at the three government levels (federal, state and municipal) recognize that the amount to be invested for service universalization, regardless of its origin, from 2019 to 2033, totals R$ 700 billion (USD 171 billion). Thus, it requires the formalization and approval of public policies compatible with a significant complementarity of resources to be contributed by the private sector. There is no way to work and implement the service universalization goal, without counting with other alternative financial sources.

1. **In your view, have International Financial Institutions (IFIs) recently encouraged privatization? Could you provide concrete examples?**

**4.1** The IDB – Interamerican Development Bank contracted credit transactions with private operating companies, totalling US$ 662.0 million, as follows: **(i)** In 2016, AEGEA, with the amount of US$ 320.0 million; **(ii)** In 2018, BRK Environmental, with the amount of US$ 442.0;

**4.2** AEGEA Sanitation & Participation S.A. has in its ownership composition the International Finance Corporation - IFC, the Sovereign Fund of Singapore (GIC) and the Global Infrastructure Fund, also operated by IFC;

**4.3** ÍGUÁ Sanitation received contributions of R$ 400 million from Alberta Investment Management Corporation – AIMCo, an investment fund based in Canada;

4.4. BRK Environmental, a company incorporated from the transfer of assets to the Canadian Brookfield Asset Management investment fund in association with the Brazilian FGTS Investment Fund (FI-FGTS).

**Obs. All described cases refer to Brazil.**

1. **In case of economic crises, have the promotion of privatization increased?**

**5.1** A recent World Bank study (March 2019) evaluating the period from 1971 to 2017 in Brazil, in relation to the percentage of GDP vis-à-vis investments made in basic sanitation, clearly demonstrates the "shocks" produced in the country's macroeconomics and, consequently, the investment reduction in the infrastructure segments, notably in water and sewage services.



**5.2** Reflections and consequences of global and regional economic crises were felt in all segments, mainly, in infrastructure forcing the participating players, to find new paths, alternatives and solutions that could contribute to the sustainability and feasibility of the enterprises, starting or, in progress, as it is the case of the National Basic Sanitation Plan implementation - PLANSAB, a reticent document in terms of sources of resource alternatives.

**Private Provision**

1. **In your experience, if the private sector is involved in provision of water and sanitation services, what process was undertaken prior to the decision to adopt this model of provision? What types of concerns have been considered in such decisions?**

**6.1** The Brazilian legislation is vast and full of by-laws regulating this matter, in order to ensure that the solution chosen is the one that best meets wishes and needs of the population to be benefited;

**6.2** The process begins with the mandatory elaboration of a document called "Municipal Basic Sanitation Plan - PMSB", developed in several stages, as follows:

* Social diagnosis
* Realization of technical-operational diagnosis of the water supply and sewage system
* Formalization of the plan objectives
* Creation of indicators and quantification of investments to be made
* Discussion with civil society
* Discussion and approval of the PMSB in the municipal legislature, mainly in relation to the selected contract modelling
* Bidding for the selection of a private company, if you choose to delegate or grant services, through a contract for the provision of specialized technical services establishing, clearly: **(i)** coverage goals and their deadlines; **(ii)** investments to be made and their deadlines; **(iii)** improvements in relation to control and operational management; **(iv)** implementation and monitoring of performance indicators; **(v)** unrestricted adoption of good compliance practices.

1. **How could public authorities use the features of private providers to foster the realization of the human rights to water and sanitation (HRtWS)? Is private provision positive for the progressive realization of the human rights to water and sanitation? If yes, in which circumstances?**

**7.1** Initially, it is necessary to clarify that public authorities, in line with HRtWS do not exclude provision of water and sewage services by a private operator;

**7.2** Private operators with accuracy and effectiveness, systematically run good practices of corporate governance, where their expertise, control and operational management are determining factors to achieve results established in service contracts;

**7.3** To the private operator a steady regulatory environment, will contain rules, duties and obligations of well-defined players, without any margin to dubious interpretations. That allows improvement and adequacy of relationships aiming at achieving objectives and goals provided in the contract;

**7.4** Updating of law no. 11,445 of 2007, in its final approval phase at Congress, encourages the implementation of HRtWS through the application of services by the private sector.

1. **How have instruments and mechanisms in place allowed the users (and non-users) to complaint and get remedy from private providers?**

**8.1** **Municipalities**, as a **Local Contracting Authority** ensure service access, under an appropriate regulatory environment, including: control and evaluation of institutional, operational and commercial performance, through indicators, systematic surveillance and complaint procedures established in the Consumer Protection Code, established by Law No. 8,078 of 11.09.1990, which prevents public and private operators from committing violations to human rights;

**8.2** The regulatory institution established in a service contract, makes available communication channels to consumers, without any burden, so that they can express their doubts, questions and violations of human rights by the operator.

1. **Do private providers advocate for stronger regulation? If so, why?**

**9.1** In Brazilian legislation, accountability of each player in the provision of water and sewage services is well defined. ABCON understands that strengthening and consolidating regulation are fundamental factors for service universalization, as described below:

* **Local Contracting Authority** - the Municipality formulates local public policies; prepares the Municipal Basic Sanitation Plan; sets targets for service universalisation and defines the modality of service delivery;
* **Private operator** - responsible for all investments; guarantees the human right to water and sanitation; aggregates technology aimed at improvement, efficiency and operational performance; charges, realistic tariffs, consistent with the benefited population affordability; develops technical studies on risk management and combating bouts of water scarcity;
* **Consumer** - requires good quality services; participates in social control regarding the operational performance by the operator; pays fees for the monthly consumption of the provided services;
* **Regulatory Institution** - harmonizes the institutional relationship between the mentioned players; complies with public policies approved within the municipal Institutions encourages efficiency in the provision of services; analyses the operator's tariff review requests emphasizing the aspects of both feasibility and economic and financial sustainability of the contract.

1. **How has been the relationship between private providers and public authorities at the local level? What are potential concerns public authorities and users face vis-à-vis private providers?** 
   1. ABCON's concept of cities with good W&S is firmly supported by several pillars which are:

* **Contractual security** 🡪 existence of contracts with: **(i)** expansion goals; **(ii)** deadlines for service universalization; **(iii)** investment commitments; and, **(iv)** economic and financial sustainability;
* **Governance of services** 🡪 supported by: **(i)** municipal basic sanitation plan (PMSB); **(ii)** regulation of services; **(iii)** social control; and, **(iv)** contractual security;
* **Transparency and consumer right** 🡪 best proposal for the provision of selected services based on both PMSB and economic and financial feasibility studies through a bidding process with equal conditions for all participants;
* **Fair tariffs** 🡪 to ensure: **(i)** adjustedtariff; **(ii)** universal access to services; **(iii)** sustainability of services; and **(iv)** investments for universalisation; **(v)** less speech, more action – adoption of effective actions to ensure the necessary investment and access to service universalisation;
* **Environment 🡪 consolidating**: **(i)** integrated management of water resources; **(ii)** investments in sewage collection, treatment and proper final disposal; **(iii)** policies and incentives for individual and collective practices

1. **How have private providers contributed to or harmed the realization of the HRtWS? Please give examples.**

**11.1** The evolution of private sector participation in Brazil (pls see 2.2), represented by various contractual modalities, investments made, increased coverage of services, operational improvements – reduction of losses, adoption of new technologies both in water and sewage – are irrefutable elements about how much the private sector contributed to the preservation of HRtWS. From 1994 to the present date, 322 Brazilian municipalities are good examples. It is worth noting that 3/4 of these municipalities have a population of less than 50,000 inhabitants, which demonstrates that the participation of the private sector in smaller (and lower purchasing power) towns is highly consistent with the realization of the HRtWS.

1. **What is the nature of the information available on service provision? Does it allow for the adequate accountability of private providers and public authorities?**

**12.1** By their websites all private operators make available numerous data and information that allows, not only to the Local Contracting Authority but also its consumers regularly monitoring the company’s development regarding its institutional aspects, economic-financial, technical-operational, as well as its principles as mission, vision and values.

1. **Who monitors the performance of private providers in respect to the normative content of the HRtWS and how? Who intervenes when there are risks of human rights violations and how is it done? Who imposes penalties in case violations occur?**

**13.1** In Brazil, the principle of water and sewage service provision is preceded by numerous legal-bureaucratic processes, not only from regulatory institutions, but also by Public Audit Institutions and Public Prosecutor’s Office that, by the Federal Constitution of 1988, art. 127, is defined as "a permanent institution, essential to the judicial function of the State, which has as its mission the defence of the legal order, the democratic regime and the unavailable social and individual interests";

1. **What are the main challenges public authorities face regarding availability, accessibility, quality and affordability when private actors provide water and sanitation services? Please give examples.**

**14.1** The natural good found in nature in various forms, called **water**, is finite and has economic and mainly social value. Its integrated management and use for human consumption requires the fulfilment of the following parameters: **(i)** to be in sufficient quantity to meet the basic needs of the population; **(ii)** to be with the necessary quality in order not to compromise the health of the benefited population; **(iii)** to allow coverage and access to all, regardless of social class; **(iv)** to keep the necessary continuity independent of water crises; **(v)** to transmit the beneficiary population the indispensable reliability as to water physical, chemical and bacteriological parameters for human intake; **(vi)** to compatibly cost with the income level of the benefited population; and, **(vii)** to preserve the HRtWS in relation to the desired level of service; distance from access; satisfaction of needs; and a level of health concern.

1. **Do you know any case of corruption involving private provision of water and sanitation services? Please give the necessary details.**
   1. N/A
2. **Has the private sector shown more capacity to mobilize funds than the public sector? Could you please give concrete examples?**

16.1 In Brazil, one of the main sources of financial resources for the Sanitation for All Programme, is the Service Time Guarantee Fund - FGTS

**16.2** An analysis upon investment occurred in 2003 to 2017 period, with FGTS resources, (R$ 32.4 billion) through 1,763 contracts, pointed out: **(i)** CESB – open capital 🡪 R$ 8.6 billion (27.0%); **(ii)** CESB – no open capital 🡪 R$ 7.60 billion (23.0%); **(iii)** Private companies 🡪 R$ 7.30 billion (22.0%); **(iv)** States 🡪 R$ 4.80 billion (15.0%); and, **(v)** Municipalities 🡪 R$ 4.10 billion (13.0%);

**16.3** It should be noted in water and sewage service management – private companies serve only 5.6% of the total market share. However, in the case of investments, private companies account for more than 20.0% of the total invested.

1. **In your opinion, is there power imbalance in a public-private partnership? Could you please give concrete examples of effects of this relationship?**

**17.1** There is often a clear confusion between privatization and PPPs when referring to these two forms of private sector participation. While in privatization there is a permanent transfer of assets to the private sector and its responsibility for the provision of services, in PPPs, it necessarily involves the continued participation of the public sector as a partner in a constant continuous relationship with the private sector;

**17.2** The following comparisons clearly and objectively characterize the differences between these two forms of contracting the private sector, as follows:

| **Privatisation / De-nationalization** | **PPP** |
| --- | --- |
| * The private sector has full ownership over the asset | * Typically, the legal owner of the asset is government and the asset must be reversed at the end of the contract |
| * There is no contract in the *strict sense*, but authorisations and conditions are established by regulating the respective market sector | * There is a detailed contract that specifically disciplines rights and obligations of each party |
| * The operating time of the asset is endless | * The deadline is set in a contract |
| * Privatization does not imply an exact alignment of objectives, as it generally means that government is not involved in specifying the outcome of the privatized entity. Obviously, private providers are to determine the quality and quantity of goods delivered, and also specify the project and set the price (possibly after negotiating with their customers (OECD 2008) | * Government specifies in detail both the required amount and quality of service |
| * The privatized entity will have much more freedom to determine the price to charge users | * The private company will receive the agreed price for the service (in PPPs with government payments) or user rate (in PPPs with user tariff collection), which will be defined by the government or agreed in contract without any flexibility or with very limited flexibility |

1. **When there is private participation in the water and sanitation sector, to what extent the private actor brings its own financial resources to the service?**
   1. See item 4.

**Re-Municipalisation**

1. **Have you studied any case of re-municipalisation? Why and how has it occurred? What types of difficulties has the public authority faced to establish the new municipal provider? Please, provide details of those processes.**

**19.1** In Brazil, the private sector has been actively participating, since 1994, in the implementation of public policies aimed at the expansion and/or improvement of public water supply and sewage systems;

**19.2** In Brazil, opponents to the presence of private operators in the provision of municipal water supply and sewage services, for ideological and political reasons, have created unjustified myths, which can directly be challenged in a pragmatic way by a consolidated reality as described below:

* **Privatisation** 🡪 in Brazilian legislation there is no such possibility in the case of public water supply and sewage services, the Federal Constitution, approved in 1988, in art. 30 – item V, establishes that it is up to municipalities to organise and provide, directly or under a concession or permission regime, public services of local interest;
* **Presence in small municipalities** 🡪 approximately 3/4 of the 322 municipalities under operation by private companies have a population of less than 50,000 inhabitants;
* **Collection of high tariffs** 🡪 the rates charged are compatible to the average in the sector and pay the cost of services, which are regulated, as provided for in the legislation, being this cost lower than other operators’ one;
* **“Ghost” of unemployment** 🡪 the presence of the private operator maintains productive jobs, generates new jobs and income, given the established increase in coverage, contractually, without compromising the company’s productivity rates;
* **Pursue of profitability** **only** 🡪 the mandatory positive operating results, in any segment of the provision of services, regardless the legal nature of the provider, is a current practice and decisively contributes to the preservation of the quality of the services provided. Remuneration of invested capital, in a highly demanding segment of large investments in the very short term, is the result of productivity gains, adequate corporate governance, strict control, operational management and the efficiency achieved by the good practices in business policy;
* **Lack of care for the needy population** 🡪 the inclusion of the social tariff intended to meet and benefit the low-income population is current and mandatory practice in the formalization of the contract between the Local Contracting Authority and private operator. According to the classification of the National Sanitation Information System - SNIS 2018, percentages in relation to the total active residential savings of water benefited by the social tariff are as follows:
  + State Owned Water and Sanitation Companies (RE): **(i)** total household water connections – 42,717,664; **(ii)** benefited household– 1,938,656; **(iii)** relation – 4.54%;
  + Municipal water and sanitation services (LPR): **(i)** total household water connections – 1,287,187; **(ii)** benefited household – 124,648; **(iii)** relation – 9.68%
  + **Private companies (LEP): (i) total household water connections – 3,257,201; (ii) benefited household – 117,487; (iii) relation – 3.61%**;
  + Others municipal water and sanitation services (LPU): **(i)** total household water connections– 11,038,526; **(ii)** benefited household – 272,182; **(iii)** relation – 2.47%
  + Micro-regional services (MR): **(i)** total household water connections – 389,421; **(ii)** benefited household – zero