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

**Report to the 75th session of the UN General Assembly in 2020**

**Questionnaire - non-State actors**

**Esval and Aguas del Valle, Chile**

**1.** **Briefly describe the role and responsibilities of your organization in the water and sanitation sector, particularly in relation to the evaluation or promotion of private provision. Current situation and trends.**

Esval S.A. (Esval) is a corporation that provides, as a concessionaire, drinking water and sanitation services in urban areas of the Valparaíso Region and, through its subsidiary Aguas de Valle S.A. (Aguas del Valle), in the Coquimbo Region, in the latter case through a contract for the exploitation of concessions owned by the State of Chile. Both companies are located in the central area of Chile and are controlled by the Canadian institution Ontario Teachers' Pension Plan (OTPP).

These private companies, providers of public sanitation services, do not have direct and general evaluation or promotion roles for the private provision of sanitation services, except for participating in the National Association of Water Utility Companies (ANDESS), and meeting the objectives of the regulatory framework on universality, quality and continuity, fair and efficient prices, affordability, transparency, non-arbitrarily discriminatory treatment of users, developers, works contractors and suppliers, refraining from participating in real estate businesses or other public utility services and using privileged information, environmental conservation; and social responsibility.

Current situation

According to the Sanitation Sector Management Report 2018, prepared by the Superintendent of Sanitation Services (SISS), “as of December 2018, the urban sanitation sector, to which this report refers, is composed of 58 concessionaires, of which 53 of them are effectively in operation and serve exclusive concession areas in the 16 regions of the country, covering a universe of more than five million residential customers (households) in 397 locations.”.

The “28 main companies, […] provide drinking water distribution and wastewater collection (sewerage) services as of December 2018, and […] together serve 99.6% of customers in urban areas of the country".

96.2% of customers in the sector are served by privately owned operating companies, while 3.8% corresponds to users of concessionaires from municipalities, cooperatives or the State.

According to the percentage of regulated clients (with a tariff set by decree of the Ministry of Economics) that they represent within the national total, the companies make up the following categories:

• Largest (equal to or higher than 15% of the total number of customers in the country): Aguas Andinas and ESSBIO.

• Medium (equal to or higher than 4% and less than 15% of the total number of customers): ESVAL, Nuevosur, ESSAL and Aguas del Valle.

• Smallest (less than 4% of the total): Aguas Araucanía, Servicio Municipal de Agua Potable de Maipú, Aguas de Antofagasta, Aguas Cordillera, Aguas del Altiplano, Aguas Chañar, Aguas Magallanes, Aguas Patagonia and other (39) smaller companies.

Between 1998 and 1999, the sanitation companies Aguas Andinas, Essbio, Esval and Essal incorporated private capital through a tender process. The remaining companies are currently owned by the State through the company Empresa de Concesiones Sanitarias SA, ECONSSA, in which were merged, in the year 2004, the nine state regional companies that between 2001 and 2004 ceded the right to exploitation to private companies of their concessions for 30 years.

The same Management Report indicates that the “urban coverage of drinking water at the national level in the concessioned territories is maintained above 99.9% and that of sewerage is maintained at 97.1%. Likewise, the urban wastewater treatment coverage, as of December 2018, is 99.98%, with respect to the population that has sewers”.

As of December 2018, the total number of customers registered by the sanitation companies operating in urban areas reaches 5,496,121, of which 99.6% is served by one of the 28 main companies in the sector. The aforementioned involves 128,482 new customers compared to the previous year, with a growth of 2.39%.

For 2018, the average monthly consumption per customer was 18.3 cubic meters (m3), while the total consumption of drinking water in the country's urban centres was 1,201 million m3, up 3.04% compared to that of 2017.

For its part, the average consumption in 2018 was 172.2 liters of drinking water per inhabitant per day, producing a variation of 1% compared to the previous year.

At a national level, the maximum production capacity of drinking water is 98,932 liters per second, of which 54.7% corresponds to underground water sources and 44.3% to surface sources. A particular case of source of supply is seawater, which corresponds to 1.0%, which is desalinated in the Antofagasta Region.

Water captured from natural sources does not necessarily meet all the requirements established for drinking water and, therefore, requires treatment prior to distribution to the population, with a total of 265 plants existing in the country.

As for the networks, for 2018, they reach a length longer than 72 thousand kilometres, where 41,459 km correspond to the drinking water networks, and 31,517 km to the sewerage networks.

Finally, as of December 2018, there are a total of 299 wastewater treatment systems operating, including two new systems, which began operation during 2018.

According to the official report referred to, “during 2018 the sanitation companies achieved 86.2% fulfilment with respect to the investments committed to in their development plans, reducing the degree of fulfilment with respect to the same indicator for 2017, by 5 points approximately”.

Regarding total investments, these reached CLP $ 362,348 million during 2018, equivalent to 521 million dollars, observing an increase of 13.4% compared to the previous year. The investment per customer in 2018 reached CLP $ 66,202.

Likewise, “in network replacement rates, there is a slight decrease compared to 2017. In drinking water networks, the replacement percentage decreased from 2017 to 2018, from 0.49% to 0.42%, while that, for sewerage networks, the decrease goes from 0.22% to 0.19%. The analysis of the materials used in these networks, which allows them to approximate their age, suggests that there may be significant replacement needs in the coming years.”

With regards to the operational performance, the Management Report indicates that “during 2018, water not invoiced at the country level represented 33.8% of the volume of water produced, 1 point above the value observed in 2017. This value includes, among others, the physical losses of water that occur in company networks”.[[1]](#footnote-1)

Another relevant indicator is the productivity of sanitation companies, which corresponds to 343 customers and 73,668 cubic meters per year for each employee, including contractors and external workers.

Trends

The achievement of the objectives related to the human right to drinking water and sanitation through the privatization of sanitation services in the urban area is very close to being fully achieved, given the coverage and other achievements in the quality, continuity and access that the sanitation sector presents. However, it is necessary to make greater efforts in the country for its full realization in urban sectors which lag behind, such as extreme poverty slums, and in the rural areas, in which more than 1.5 million people are supplied very precariously in the best of cases. In this regard, we believe that the express recognition in the national legal system of the human right to drinking water will strengthen the progress made and give priority to the use of water for such purposes.

**A sanitation sector that looks to the future**

From the perspective of the regulator, in the words of the Superintendent of Sanitation Services:

“When we are about to achieve 30 years of the current framework that regulates sanitation services in the urban areas of the country, we can look at everything we have achieved and feel legitimately proud of the high levels of coverage of water and sanitation services in concessioned areas and quality standards comparable to the many developed countries in most areas of these services.

“But at the same time that we look at these achievements with satisfaction, we cannot close our eyes to the important challenges that are presented to us, and to address them we must redouble our efforts and also focus on the implementation of the transformations which the sector requires and that the citizenship demands.

“Climate change, which is already clearly manifested in our country, puts us in a scenario of lower water availability for all uses and a greater occurrence of extreme events, which reinforces the need to act jointly with the different related actors in the management of water resources for the achievement of secure supply systems, with reasonable levels of risk, affordable prices, in short, sustainable over time.

“On the other hand, we should not put aside the work to maintain and increase our service coverage. This will involve a special effort in urban sectors that do not have a concession, both for the population currently living in these areas and for the feasibility of new housing projects, which are necessary and, in many cases, urgent.

“In rural areas, the enactment of a new law that regulates the water services of these areas and the next issuance of the respective regulations, entails a greater challenge for all actors, with an essential role of the new Rural Sanitation Services Sub-Directorate of MOP (Ministry of Public Works), and also with important tasks to be undertaken by the SISS. We hope to accompany this process, which must address the great number of challenges the country has to strengthen and improve water and rural sanitation services, such as increased coverage, infrastructure improvement, water quality assurance and other aspects of service quality, the massive incorporation of sanitation and, with high relevance, the strengthening of the capacities of the Committees and Cooperatives which operate these systems.

“At the same time, we have a new citizenship that demands from us not only our best efforts but also high ethical and transparency standards, timely and useful information and greater participation in the important decisions which affect them.

“In this context of changes, the Superintendence has set its sights on the future and on these challenges by developing a series of concrete actions.

“First of all, we are reviewing our supervision model in order to reinforce and innovate in the preventive aspects that allow to ensure the quality and continuity of the services. This forces us to look not only at the results that the concessionaires have in terms of quality of service, but also to observe in a more systematic way the risks and how they are addressed, and to establish a minimum framework of action in which the actions of sanitation companies, both in terms of operation and planning and investment. At the same time, we must innovate to have more and more timely information, including real-time information, of those key aspects of services, which will allow us to implement a good part of this new supervision scheme.

“Secondly, the Superintendence is actively collaborating in the process of reviewing the legal framework of the sector being carried out by the Ministry of Public Works. After 30 years of the current framework there are many improvements and adjustments that these laws require to give a more effective response to current needs and challenges.

“For this review, the Ministry of Public Works has proposed four core themes: institutional strengthening, citizen participation, adaptation to climate change and the modernization of the tariff setting process.

“All these changes seek to bring the sector in tune with the new and large challenges that we face, strengthen supervision, improve security of supply in the face of climate change, address citizen demands and correct the difficulties and problems that have been detected in the framework.

“We hope that this update of the legal framework of the sanitation sector will allow to enhance and improve what has been achieved to date, through a public-private alliance, and to better drive the sector towards the future.

“Finally, I would like to highlight the work of the Superintendence to address an agenda of concrete actions from now until 2030, which allows a substantial advance in the medium and long-term challenges facing the sector. This agenda currently has twelve specific projects that address the main challenges identified in a participatory manner since the end of 2017 and that are summarised in three areas of action: climate change and the efficient use of hydrological resources, the city and the territory, and the citizen of the 21st century.

“This agenda has aroused great interest in various actors that relate to the water and sanitation sector in Chile, and in its preparation, planning and monitoring, we have wanted to maintain a participatory scheme, incorporating actors from civil society, from the public and private world, and of the academy and, at the same time, to be in tune with the global objectives that inspire water management in the world, which are summarized in the Sustainable Development Goals promoted by the United Nations Organization.

“In presenting this report, I would like to highlight the path that we are taking and that we hope, with the collaboration of the sanitation services concessionaires and the different actors that are related to the sector, allow us to have water and sanitation services in the future according to the levels of economic, social and environmental development to which we aspire as a country.”[[2]](#footnote-2)

In our opinion, the following are the priority matters to address in order to achieve even greater improvements in our services:

**Climate Change**. It is clearly a threat to the fulfilment of the obligations to guarantee coverage, quality and continuity, and a systemic view of present and future risks is required, to increase the hydrological security of the systems and the resilience of the infrastructure, which implies incorporating large-scale reserve works, duplicating strategic systems, seeking new sources such as direct or indirect reuse of treated wastewater, increasing the desalination of seawater and reducing water losses, among other challenges.

**Reuse of treated wastewater.** Treated wastewater (AST) is a safe and stable guarantee for the supply of drinking water and other uses, especially in scenarios of hydrological scarcity and climate change.

The possibilities of use are multiple, through the exchange of raw water or transfer of the right of use to those interested in purified water for agricultural irrigation or for green areas, industrial uses or other purposes, for the recharge of aquifers, including reuse once drinkable, either in order to overcome the increasingly recurring and severe turbidity excesses at the sources or to meet future drinking water demands. These possibilities, after secondary treatment, extend to wastewater that is currently discharged by submarine outfalls in bounded areas beyond the coastal sea protection zone, in regions where water is very scarce, from the First to the Fifth Regions of the country. In this regard, the authority must respect the rights granted to sanitation services in relation to the use of water.

**Losses.** The Superintendent of Sanitation Services states that “during 2018 non-invoiced water at country level represented 33.8% of the volume of water produced”.

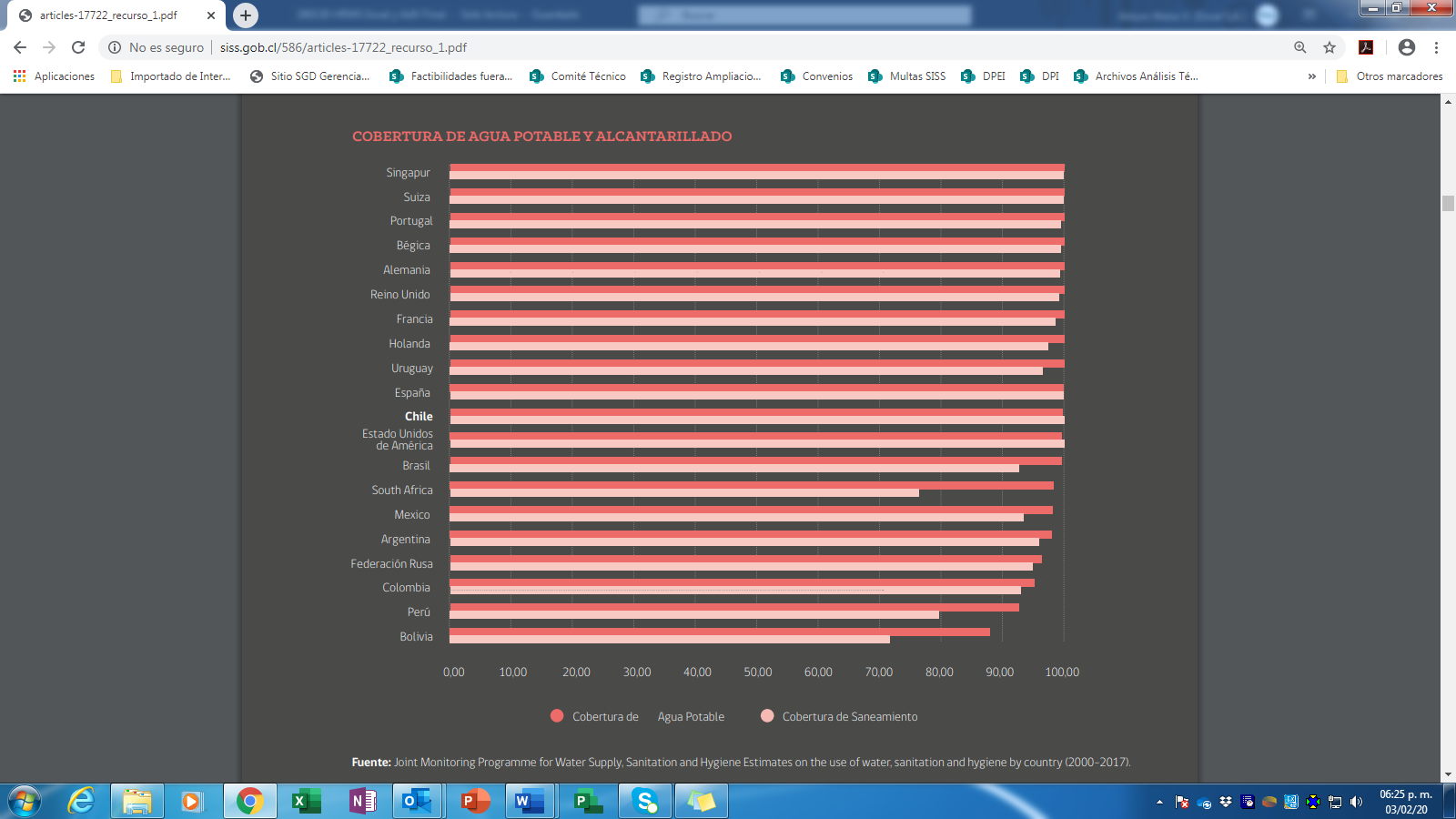
The values of the non-invoiced water indicators that would be the most appropriate for the Esval case, in terms of efficient operational standard, according to IWA and IBRD criteria, would be between 24% and 26%, considering the special conditions of the area in which they operate.

The approaches to losses in water supply systems have had a significant evolution in the last 20 years, in conceptual, regulatory and managerial terms, a process that is still under development, as evidenced by the various Seminars and Congresses held on the subject in the world , in addition to specific considerations on the subject by business risk assessment agencies.

The search to apply these approaches, in a way that is compatible with regional and local realities, "seems like a sustainable way to achieve what everyone wants, sanitation companies providing quality services to customers, with operational and financial efficiency."[[3]](#footnote-3)

**2. In your opinion, what role has the private sector played in the provision of water and sanitation in the countries where your organization works (or worldwide)? How has this role evolved in recent decades? Please provide examples.**

The case of Chile is remarkable, as the figures show, for having reached levels of coverage, quality and continuity comparable very favourably worldwide, without exorbitant costs for the users and for the State, except for consumer subsidies, as well as for the innovations incorporated in the regulatory framework.



As of December 1989, 96.4% of the sanitation services in the urban areas of the country were owned by the State or its agencies. There were thirteen state-owned corporations created in 1990 from the National Service of Sanitation Works (SENDOS), which was deconcentrated in eleven Regional Directorates, except in the Metropolitan and Valparaíso regions where the Metropolitan Sanitation Works Company (EMOS) and the Municipal Company of Maipú provided services, and the company Esval, respectively, which were transformed in mid-1989 into state-owned corporations, except the municipal company mentioned which retains its legal status until today.

In 1988 the General Law of Sanitation Services, the Tariffs Law and the Law of the Superintendence of Sanitation Services were enacted, in force in their essential bases until now, without prejudice to the reforms introduced later, some important and necessary.

In 1989, the Superintendence of Sanitation Services was created, which came to replace the National Directorate of SENDOS, and which brought together the functions of planning and control of the regional directorates of its dependence and, on paper, the supervision of state-owned enterprises and private concession companies.

The Superintendent of Sanitation Services was created as a public, decentralized body, with regulatory powers restricted to the interpretation of the legislation and regulations of the sector and the proposal of technical standards (the fundamental regulation is a matter of law and its regulation is exercised through the Ministry of Public Works and must be approved by the President of the Republic), supervisors, control and sanctions, issuance of bases and carrying out of tariff studies, maintenance of an integrated and updated information system regarding sanitation service providers and compliance with current regulations, and the control of liquid industrial waste that is discharged into sewer systems.

From 1998, an intense privatization process began, and as of September 2005, 94.8% of the services became controlled or operated by private corporations, 0.6% by another class of private companies, 4.5 % by a municipal company and 0.1% by cooperatives[[4]](#footnote-4).

The reasons that prompted the government of the time to privatize are known: improving the management, the gap between potable water coverage (98%) and that of sewerage coverage, somewhat lagging (89%), avoid over-indebtedness to the country and, at the same time, finance the treatment of wastewater, almost non-existent (14%) at the time, allocate resources from the sale of up to 65% of the property of state companies in priority areas such as health and education, and the consequent decrease in extreme poverty that by then (1997) was over 23%[[5]](#footnote-5), and deepen the regulatory role leaving behind the entrepreneurial State.[[6]](#footnote-6)

In just three years, the Treasury received more than 1.5 billion dollars, as a result of the sale of shares of state sanitation companies. And if the investment committed by the new private controllers is considered, the impact represents more than 3,500 million dollars.[[7]](#footnote-7)

The results in 2018 were these:

Total number of users: 5,496,121 (2.39% annual growth)

Number of regulated urban customers: 5,404,093 (2.36% annual growth)

Number of regulated urban customers - 28 main companies: 5,382,167 (2.36% annual growth)

Consumption in thousands of m3/year - 28 main companies: 1,201,603 (3.04% annual growth)

Consumption per customer m3/month - 28 main companies: 18.3 (0.55% annual growth)

Urban population supplied - 28 main companies: 14.345.151 (2.23% annual growth)

Amount in litres per inhabitant per day - 28 main companies: 172.20 (0.88% annual growth)

Total coverage of drinking water country: 99.93% (-0.04% annual growth)

Total coverage of sewerage country: 97.17% (0.02% annual growth)

Coverage treatment of wastewater with regards to population which has sewers – country total: 99.98% (0.01% annual growth)

Number of treatment systems in operation – country total: 299 (0.67% annual growth)

The World Health Organization makes estimates of urban drinking water and sewerage coverage using the concept of population that has improved sources of drinking water and improved sanitation services.

This refers not only to services obtained through public networks, but also includes water obtained from improved and protected sources and, in the case of sanitation, it also includes other sewage systems such as septic tanks, improved latrines or composting toilets in the case of sanitation systems.

According to the criteria described, according to the latest information available, the WHO estimates for Chile a 100% coverage in both drinking water and sanitation.

Regarding wastewater treatment, the latest data available for OECD member countries show that Chile has reached comparable levels of treatment coverage in relation to this group of countries.[[8]](#footnote-8)

The tariffs of the privatized sanitation companies compared objectively with those of other cities in the world are not higher, considering the comprehensive provision of the services and levels of comparable quality and continuity, without taxes and which are self-financing.

The International Benchmarking Network for Water and Sanitation Utilities (IBNET), in its database of tariffs for these services, compares the cost of the first 15 m3 consumed, including fixed charges, variables, taxes and other charges, for various cities in the world. In this context, if the tariffs of large cities are compared with those paid by customers of Greater Santiago, Aguas Andinas, (which serves approximately 43% of the urban population of the country), the latter appear in the group of the most economical (1.31 USD/m3).

Notwithstanding the foregoing, the tariffs throughout the country present a significant variability, being the highest for 2018, at the level of regional capitals, that which the inhabitants of Coyhaique pay.[[9]](#footnote-9)

In the case of the cities of Valparaíso and La Serena, the most populated in the regions where Esval and Aguas del Valle provide services, the values are 2.05 USD/m3 and 1.93 USD/m3, respectively.

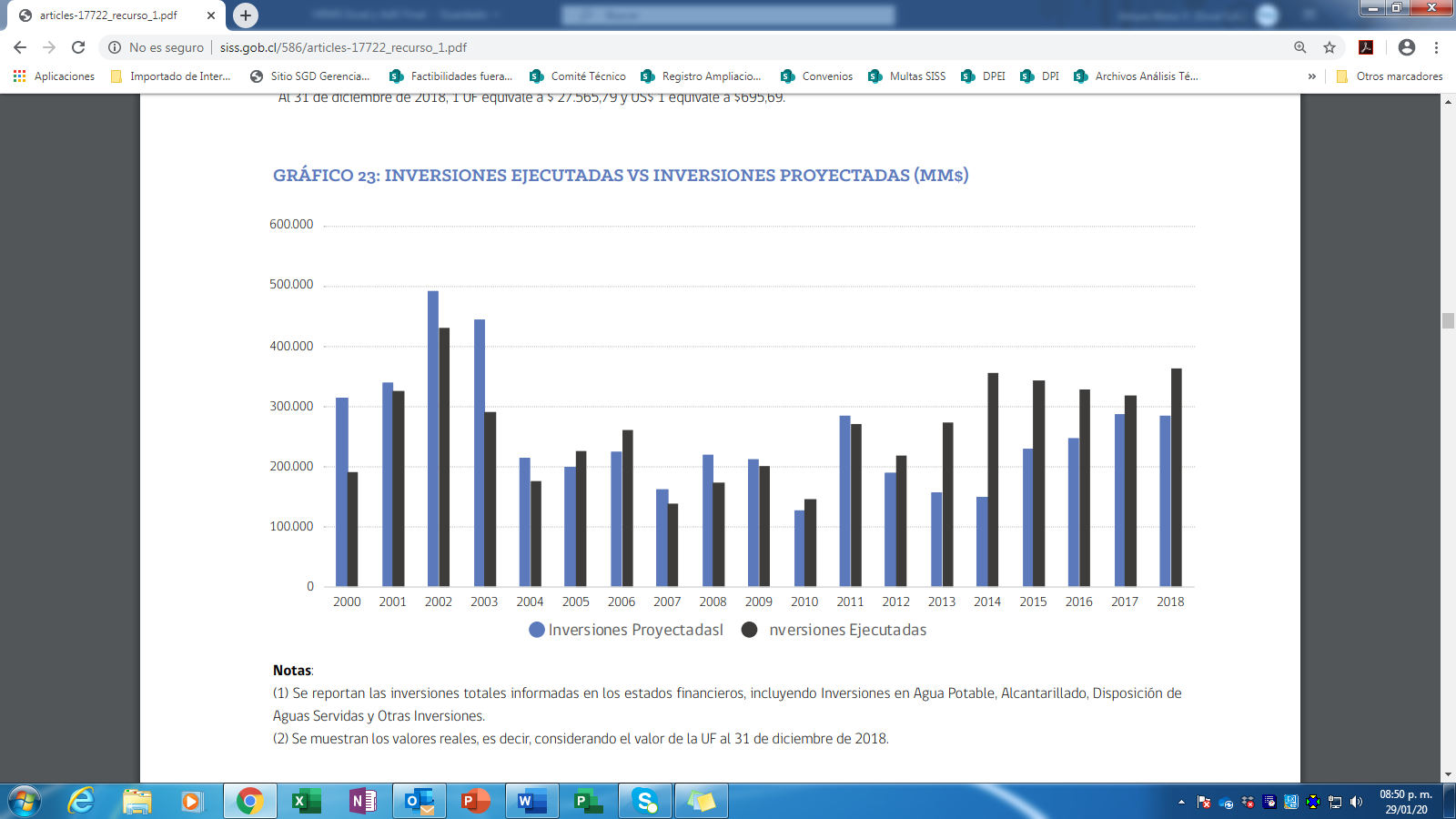
The Chilean sanitation sector shows an average value of CLP 1,060 per cubic meter, equivalent to 1.5 dollars per m3. In turn, sales revenue per customer is equivalent to CLP 19,401 per month.

During 2018, the productivity of sanitation companies is maintained at levels of 336 customers per employee and 74 thousand cubic meters per employee, including contractors and external workers.[[10]](#footnote-10)

It should be noted that operational costs present a large disparity between companies. The cost per cubic meter in most of the Metropolitan Region (Aguas Andinas) is CLP 443, while in Aguas Chañar it is CLP 1,595, in Antofagasta it is CLP 1,729, in Aguas Patagonia it is CLP 1,162, and in COSSBO of CLP 2,126, since it includes a hot water service.[[11]](#footnote-11)

Regarding total investments, these reached CLP 362,348 million during 2018, equivalent to 521 million dollars, observing an increase of 13.4% compared to the previous year. The investment per customer in 2018 reached CLP 66,202.

Projected and executed investments between 2000 and 2018 are shown in the following graph:



Notes:

(1) The total investments reported in the financial statements are reported, including Investments in Drinking Water, Sewers, Wastewater Disposal and Other Investments.

(2) Actual values are shown, that is, considering the value of the UF as of December 31, 2018. (equivalent to CLP 27,565.79 and 1 USD equals CLP 695.69).

The projected investments 2020-2024 amount to CLP 578,615 million, equivalent at December 2018 to USD 832 million.

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

Before answering, it is necessary to agree that the results that the authority should pursue can be summarized in universal coverage, sanitation quality according to WHO standards, permanent and regular continuity, security, tariffs at efficiency costs, subsidies for people with limited resources, no arbitrary discrimination and efficiency in the management of services.

These aims, as shown by the case of Chile, can be achieved progressively and rapidly within a reasonable period of time depending on an objective, robust and balanced regulatory framework on the basis that these are scarce economic assets, essential for the subsistence and health of the population, and of monopolistic nature.

The design of a regulatory framework capable of effectively reconciling the nature of these services with the ability to manage and search for profits by private companies should consider criteria of efficiency and economic commutability (equivalence of benefits), competition for new areas and services, forced subsidiary expansion of concessions for urbanization and social housing projects, prohibitions of concentration, participation in other public utility services, and use of privileged information, restrictions on businesses between related companies, transparency and ample obligation to deliver information to state regulatory bodies, requirement of public tenders with award criteria pre-established objectives for the contracting of works and acquisition of goods over 5000 UF[[12]](#footnote-12), mandatory service to those who request it within the concession area, standards of continuity, quality and resilience except force majeure, restoration of the service in cases of emergencies and catastrophes in the shortest time technically and administratively possible at the expense of the concessionaire, all of this under threat of expiration of the concession in cases of serious, repeated and insurmountable breaches, and sanctions in accordance with the impairment and effects of the infraction, and effective and sufficient subsidies in favour of lower income families.

The institutional design must also consider a robust organization capable of supervising, controlling and sanctioning concessionaires, of an eminently technical nature, impervious to political-demagogic pressures, and setting tariffs on objective bases with a controversial procedure that considers the resolution of disputes by a technically competent and impartial body.

In this sense, it is essential the categorical separation of the regulatory powers to which operators must submit regarding the planning and management of services, as well as the clear separation of regulatory powers from issuing regulations and preventatively supervising or sanctioning.

The results of the experience in this developing country, located at the south of the world, indicate that it is possible to carry out the HRWS even when there are economic deficiencies that belong to the third world, provided that the conditions noted are met, and there is an agreed political will in a state of democratic law, on rational economic grounds that prevent abuse, protect users and guarantee access to drinking water and sanitation.

In principle, without the technical and financial capacity to increase the supply of drinking water and sanitation, and absence of the preferential duty of the State to guarantee the execution, control and coordination of these health actions, whether they are provided by their own bodies or individuals , the realization of HRWS will not be possible.

Unlike traditional concession contracts, in which the State delivers to a private individual the provision of a public service for a defined period of time, subject to a list of conditions defined unilaterally by the Administration and subject to revocation due to public utility, the sanitation concessions in Chile do not originate from a contract between the State and individuals but in an authorization granted by order of the State so that any person, public or private, can install, build and operate these services in accordance with a legal statute established by the law in its fundamental bases, taking into account that these are scarce economic assets, essential for the health of the population and of a monopolistic nature.

Hence, these services, whether of state or private property, are legally referred to as sanitation public services, and are subject to a regime of public law concessions that seeks to reconcile the competition of entry for new areas and services of production and treatment of wastewater, self-financing, autonomy of planning and management of the providing companies with strict legal regulation of their obligations, prohibitions, self-control, delivery of information, contracting through open public tenders for objective adjudication, supervision and penalties that include fines of up to 20,000 UF[[13]](#footnote-13) and the termination in case of repeated infringements, of serious and insurmountable consequences, or non-fulfilment of the investment plan, its provisional administration at the expense of the offender and subsequent public tender.

Likewise, the law provides for the operation of the Superintendence of Sanitation Services, a functionally decentralized public service, territorially decentralized through regional offices, and subject to the supervision of the President of the Republic through the Ministry of Public Works.

The Superintendent is provided with sufficient means and very wide powers to request from the concessionaires and public bodies all kinds of information, reports, inspect the services, require the corresponding designs for the projects incorporated in the development programme, review or audit their accounting and, in general, adopt the necessary measures to ensure compliance with the legal and regulatory provisions in force. It can even take the necessary measures to guarantee the safety of the public and protect the rights of users of sanitation services, and can require the help of the public force to comply with its resolutions (faculty that it has never had to exercise), and may order the provider to modify its development programme when there are substantial reasons for important changes in the underlying assumptions to which it was determined. In any case, such modification cannot represent consequential damages to the provider. Likewise, for well-founded reasons, the provider may request the modification of its development programme.

Any impartial observer can observe that the level of inspection, controls and reports to which the concessionaires are subjected is broad, intense and highly detailed, in accordance with the legal responsibility to permanently guarantee the coverage, quality and continuity of essential services, even when the necessary investments are not covered by the development programme committed to the authority. It is, therefore, an obligation of result at any event, except force majeure.

The dilemma between state services or private companies well deserves to be avoided, and to focus on institutionally establishing the maximum legally possible and enforceable obligation to any provider, state or private, with or without profit, it is worth reiterating, the obligation to guarantee the coverage, quality and continuity of public sanitation services, except for an unforeseen event or force majeure, since no one can be forced into the impossible, without prejudice to the duty to normalize the service at its expense in the shortest possible time, and timely attention to emergencies through alternative supplies and protocols previously defined and coordinated with local, regional and national authorities, as appropriate.

In the coexistence of objective and stable rules (not unmodifiable), commutative efficiency prices, determined objectively and impartially, enforceable high standards, under the threat of expiration of the property of the irresponsibly provider in contempt, is the ultimate reason for preferring to assign rights of ownership over the infrastructure of the public sanitation service because private property, in fact, becomes a secondary issue since it concerns goods affected or linked indefinitely to the concession, including their replacement by others of equal or better quality, and because the risks, earthquakes, floods, floods, deterioration or obsolescence, etc., will always be borne by their owner, (not the State in this case). Add to this, that the provider has the duty to submit to the rules and abide by the legitimate instructions of the State issued through its agencies, and that it has no more rights than to demand a fair tariff compensation for the services provided and the right to be judged by a fair and rational procedure.

In any case, the privatization process, to become successful, should consider exogenous factors, mainly the strength of institutions, fiscal discipline, the absence of corruption in government decision-making, social peace, the internalization of habits of payment of public utility services by the population, and the prevalence of the rule of law.

In Chile, the gradual application of the sharp increase in the tariffs calculated to efficient costs of the services prior to privatization was very important, and the implementation of subsidies to people who cannot access the services due to lack of financial resources, something essential for the realization of the HRWS, independent of the legal nature, public or private, of whoever owns the services.

If, in addition to the aforementioned purposes, there is a stable and democratic agreement, and the country does not have sufficient resources for the large outstanding investments, or if it has other even more urgent priorities or deficits in its management capacity, private participation in its various alternatives, including private ownership of infrastructure, seems to be the best and least expensive path, provided it is done through serious, competitive and transparent public tenders.

An ethical imperative as important as the urgent realization of HRWS cannot be left to inspiration alone or abandoned to ideological prejudices and must seriously consider technical knowledge and successful experiences.

**4. In your opinion, have international financial institutions (IFI) recently encouraged privatization? Could you give concrete examples?**

Not in Chile.

**5.** **In case of economic crises, has the promotion of privatization increased?**

Not in Chile.

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

Covered in answers 2 and 3.

**7.** **How could the authorities use the characteristics of private providers to encourage the realization of HRtWS? Is the private provision positive for the progressive realization of the HRtWS? If yes, under what circumstances?**

We believe that, in order to promote the realization of HRWS through private providers in a system of public service concessions such as the one in force in Chile, it is essential:

1. A State that effectively assumes the preferential duty of guaranteeing to all persons the execution, coordination and control of the actions for the provision of sanitation services, whether provided by their agencies or by individuals.

2. The implementation of a regulatory framework for public services with objective, non-discretionary and common standards for state or private providers, which guarantee the commutativity of the compensations (between services provided and prices) impartially determined through a bilateral and discussed procedure.

3. The existence of an appropriate, honest, autonomous and robust government agency with broad powers of supervision and sanction.

Regarding the realization of the human right to drinking water and sanitation, in accordance with the United Nations definitions, these are the results in Chile after the privatization:

**“Sufficient.** The water supply per person must be sufficient and continuous for personal and domestic use. These uses generally include drinking water, personal sanitation, water for laundry, food preparation, household cleaning and personal hygiene. According to the World Health Organization (WHO), between 50 and 100 liters of water are needed per person per day to ensure that the most basic needs are met, and few health concerns arise.”

The private companies comply with this requirement of sufficiency: as of December 2018, the “urban drinking water coverage nationwide in the concessioned territories is maintained above 99.9% and that of sewerage is maintained at 97.1%. Likewise, urban wastewater treatment coverage, as of December 2018, is 99.98%, with respect to the population that has sewage systems” through home connections to public networks in all cases. Continuity, according to indicators of the national supervisory body (Superintendent of Sanitation Services) that consider the number of users affected by discontinuities and the associated times, reached in 2018 0.99608, higher than the previous year that obtained 0.99402, being 1 the maximum possible. The average consumption in liters per day per person reached 172.20.

In case of failures for any cause in the public network or home connections (drinking water connections and sewer unions) that interrupt the service or cause damage to the property, the sanitation services companies (ESS) must go to the place of the emergency within 2 hours of having known of its occurrence, the maximum time for the temporary solution is 5 hours and to give a final solution it is 2 days. In the case of failures in public networks and complementary elements, the maximum time for the temporary solution is 6 hours and for the others the same rules apply.

The ESS must have a permanent contact system 365 days a year and 24 hours a day. They must have a free telephone line with sufficient capacity, and all means of interaction where customers can demand emergency service efficiently (website, mobile application, contact platforms through social networks, etc.).

In case of disasters, whatever their cause, the ESS must consider an alternative supply system for the population in the face of cuts in drinking water supply, by installing portable tanks located in the territory and the use of the tanker trucks necessary for their recharge with drinking water in the shortest possible time, usually within six hours of the interruption of the service.

**“Healthy.** The water needed, both for personal and domestic use, must be healthy; that is, free of microorganisms, chemical substances and radiological hazards that constitute a threat to human health. Drinking water safety measures are normally defined by national and / or local standards of drinking water quality. The Guidelines for the quality of drinking water of the World Health Organization (WHO) provide the basis for the development of national standards that, properly implemented, will guarantee the safety of drinking water.”

Chile fully complies with the duty to provide healthy or potable water, according to standards approved by the Ministry of Health that are homologated with the essential recommendations of the WHO, before and after privatization. The health quality of the water is subject to a strict surveillance from the mandatory self-control by the providers, according to statistically representative samples and procedures regulated by the aforementioned Ministry and rigorously inspected by the regional health authority[[14]](#footnote-14) and the sectoral authority (SISS) on the basis of approximately one million samples, certified by qualified and supervised agencies, per year, for 41,459 km of network, also selectively controlled by the Superintendent and regional health authorities.

The Drinking Water Quality Indicator is calculated based on the degree of compliance with the requirements established in the regulations, both in terms of the quality that the water must have, and the sampling that must be performed to verify it.

According to the results of the year 2018, compliance at national level in all sampling attributes and drinking water quality was 99.36%, higher than the same indicator obtained the previous year (98.76%).

Regarding the regulatory requirements related to sampling, the level of compliance during 2018 was 99.63% (98.31% in 2017).

With regards to the microbiological, chemical and physical quality requirements established for drinking water, an indicator of 99.10% was obtained nationwide (99.22% in 2017).[[15]](#footnote-15)

**“Acceptable.** Water must have an acceptable colour, smell and taste for both personal and domestic uses. […] All water facilities and services must be culturally appropriate and gender sensitive, life cycle and privacy requirements.”

The aspects related to colour, smell and taste in Chile are considered in the quality indicator referred to above, and, although they are not critical to the population's health, they have a greater incidence in the said indicator. Likewise, the hardness of water in cities in the centre of the country, particularly the Metropolitan Region that concentrates about half of the population of the country, whose sources near the Andes Mountains have high concentrations of calcium carbonates which produce scaling that affects the lifespan of artefacts and utensils to boil water.

The facilities and services are culturally appropriate and gender-sensitive (separation of hygienic services in schools, offices, and other public places), the life cycle and the requirements of privacy according to appropriate regulations (Home Facilities Regulation and General Urban Planning Ordinance and Constructions), which are generally complied with and are supervised by the health and housing authorities.

**“Physically accessible.** Everyone has the right to water and sanitation services physically accessible within or located in the immediate vicinity of the home, academic institutions, in the workplace or health institutions. According to WHO, the water source must be less than 1,000 meters from the home and the travel time for collection should not exceed 30 minutes.”

In Chile, a home cannot be inhabited without the provision of urban drinking water and sewerage services through physical home connections to the existing public network, and the ESS are obliged to provide services within their concession area to whoever requests it within the shortest technically feasible period, and in case of discrepancies with the interested party, resolved in summary and administrative proceedings by the regulator.

0.1% of the population of the concessioned areas that do not have regular service is mainly due to the existence of very precarious housing slums originating in irregular “takings of land” of wastelands located on the margins of large cities, and where people in extreme poverty live who, unfortunately, have not been regularized or reinstated by the competent state authorities, and for which the ESS have the duty to install water standpipes at the request and charge of the respective municipalities. Hence, by WHO standards the country registers 100% coverage.

Regarding the 2.9% of the population that lacks the sewerage service, it should be added that most of them are urban sectors that have potable water but that, because the sewer service was installed afterwards, they were left without a developer who he took responsibility and without the authority to replace that absence. However, successive laws have been enacted to regularize incomplete urbanizations with state subsidies through programs of the Ministry of Housing, in which the ESS actively participate. It is allowed to clean up and regularize the conditions of urbanization in existing lots, through a simple procedure. Originally a timescale of 5 years was given, from January 30, 2015, and a new law extended the period for another five years from January 31, 2020.

**“Affordable.** Water and water access services and facilities must be affordable for everyone. The United Nations Development Program (UNDP) suggests that the cost of water should not exceed 3% of household income.”

In 2018, the average expenditure of households destined for drinking water reaches 1.59% of the total expenditure, and for the lowest income quintile 2.6%[[16]](#footnote-16), this is 0.4% less than the recommendation of the UNDP.

In addition, the subsidy for drinking water with a monthly maximum of up to 15 m3, for people with limited resources, in 2018 “benefited more than 683,000 families, which correspond to 12.4% of the sanitation service customers of the country, representing 4.9% of the sales revenue of the sector.”[[17]](#footnote-17)

Last but not least, in terms of affordability, in 2018, according to the National Household Survey, drinking water and sanitation services represent an average of 1.59% of household spending, with a maximum of 2.6% of household expenditure corresponding to the first quintile that represents the highest level of poverty, and the least burdensome among public utility services. In this area, the government subsidy program benefits some 700,000 low-income families, which benefits 13% of the users.

For the permanent achievement of the HRWS, the regulatory framework should include, in summary, objective rules that reconcile the necessary stability and their timely adaptation in the face of demographic, environmental and technological changes[[18]](#footnote-18), preventive investment plans by system, proposed by the operators in charge of the service and approved by the authority, but essentially modifiable and subject to sanction, including expiration, depending on the actual requirements and the effective impact of the service, which in turn must be guaranteed independently of the assumptions considered when approved. This is another key element of the Chilean regulatory framework.

See also answer 3.

**8.** **How do the established instruments and mechanisms allow users (and non-users) to file complaints and obtain solutions from private providers?**

In addition to the right to resort to the courts of justice, including the petition for redress of constitutional violations before collegiate courts, the regulatory framework for sanitation services is designed on the basis of protecting people from the unwaiverable right to receive essential services for life and health, guaranteed by the Political Constitution, which are in turn scarce economic goods and that are provided in monopolistic conditions. The Superintendence of the sector was not created to defend the State but the ordinary people before a normally powerful monopoly. A simple review of the Concession Regulations, DS N ° 1199 of 2004, of Public Works, allows to verify how the regulatory framework gives an exhaustive and detailed account of the obligations of the providers, on all of which the user can exercise their rights to claim in administrative headquarters or in the courts, or even receive compensation assessed by the law of protection of consumer rights in case of undue interruptions of service for the costs and inconvenience caused, without prejudice to resorting to the judge for damages not covered.

The Superintendent has the power to resolve in administrative jurisdiction the claims that the interested parties send them by any means. There are also regional offices with a face-to-face service, which can sanction the suppliers and order, under warning, the correction of the proven actions or omissions. It may even require the help of the public force.

**9. Do the private providers advocate stronger regulation? If so, why?**

A priori, there are no distinct reasons why private or state providers advocate for stronger regulations regarding the obligations they are directly responsible for.

It would not be necessary to advocate for greater regulations when the level of requirements reaches the highest degree that can be assigned in a State of Law, such as guaranteeing coverage, continuity and quality of services, except for force majeure, which is always unforeseen and irresistible, and, even in these cases, the emergency must be addressed through alternative supplies (transportable tanks and tanker trucks) and rebuild or restore the service in the shortest possible time, in a country that is otherwise one of the most seismic and has suffered several cataclysms, without the State or users having to pay any amount.

However, there are aspects of the regulation whose reinforcement aligns public and private interests, for example, the sanctions that deter fraud, clandestine connections, etc., the constructive quality of the materials used by the builders when they are below the standards of other countries that face recurring earthquakes (such as Japan), provided that operators meet those same requirements.

On the other hand, there are situations in which stronger regulations are required in order to guarantee greater independence, impartiality and technical level of the decisions taken by the authority.

If by greater regulations it is understood to add to monopolistic services demands that are not socially justified, and that will end up being paid by the users or by the State, it would not be appropriate to adopt them. The same before the request to transfer to the State the direct planning of the services, because in this way the risks and responsibility of the supplier are diluted, this without prejudice to the duty of preventive control that cannot be waived by the authority.

In short, the problem is not finally in the one who asks for it, but in what is requested. Conscious suppliers, with a long-term view and corporate responsibility, should aim for a good regulation that is able to reasonably reconcile the interests at stake.

**10. How has the relationship between private providers and public authorities been at the local level? What are the possible concerns facing public authorities and users regarding private providers?**

In general, the relationship has been permanent, serious, transparent, respectful, frank, with each party in its role, although naturally there are more than a few disputes on some matters such as sanctions, development programs, new instructions and proposal of rules, study bases and tariff discrepancy, normally resolved by independent bodies such as the Comptroller General of the Republic in administrative headquarters or by the courts of justice, and dealing with tariff issues by a commission of experts. However, it must be said once again, the Comptroller General and the courts are reluctant to contradict the technical opinions of the administrative authority, hence the need to establish a permanent agency and regulated by law for this kind of controversy that gives guarantees to all the everyone of suitability, knowledge and independence.

One aspect that, from the perspective of those regulated, it is necessary to improve, refers to the independence of the national regulator from undue political pressures, particularly in the case of serious service interruptions, whatever their causes, and a certain predisposition to encourage the population to denounce and claim accompanied by a reluctance to inform the authorities and publicly disseminate with the same presence the positive aspects of the performance of the ESS, so that their impartiality and technical rigor prevail.

From the viewpoint of the supervisory agency, we refer to what is expressed by the Superintendent of Sanitation Services, and which has been transcribed in answer 1.

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

Covered in previous answers, especially 7.

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

The information on the provision of services is completely public and effectively available to the general public, usually through digital media. There is a transparency law, Law No. 20,285, which regulates this matter, to which all authorities must submit, and covers response deadlines, effects of the silence of the authority and the procedures of claim and rule for compliance with the resolutions of the body in charge.

The Superintendent has the legal duty to keep databases on the real and model company costs used in the tariff procedures, it must record the concession decrees, and the complementary information, technical background sheets with the relevant information such as development programmes (investment plans), maps of the concession areas, water sources and rights, wastewater receiving bodies and discharge points, etc.

A revealing exercise is to go through the institutional website of the Superintendent ([www.siss.gob.cl](http://www.siss.gob.cl)) to examine the quantity and clarity of freely available digital information. The annual management reports, the collection of instructions and administrative jurisprudence issued by it deserve special mention.

Private providers have the obligation to inform everything that the Superintendent requests for the fulfilment of its purposes, for which the Superintendent has established many official, permanent and exhaustive protocols, in the most diverse matters, such as a regulatory accounting system, information on sources, flows and natural water quality, coverage controls, drinking water quality, pressures and continuity (interruptions, affected customers and duration), related services, etc. There is practically no aspect, matter or service that is not considered in these protocols.

There is also the obligation to inform any client who requests it and to resolve with reasons, in a 10-day period, the claims that are submitted, with a copy to the authority.

However, it is possible to improve the public accountability of the authority and providers, public and private, for which the enactment of a law is not necessary. The information is there and is accessible to the public, but it needs to be systematically integrated and published in public hearings or other equivalent or similar means.

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

The performance of private providers with respect to the normative content of the HRWS is carried out by the Superintendence of Sanitation Services through the inspection and permanent control of drinking water and sanitation services, and the application of sanctions in case of non-compliance, which may lead to the expiration of the concession in case of serious, repeated and insurmountable infractions. In case of a single infraction that endangers or seriously affects the health of the population, or that affects the generality of the users, a fine equivalent to 1000 annual tax units, approximately CLP 350 million, can be applied, which can be doubled in case of recurrence.

With regards to human rights in general, at the administrative headquarters, the National Institute of Human Rights, an autonomous public law corporation, created by Law No. 20,405, intervenes. Its purpose is the promotion and protection of the human rights of people living in Chile, in accordance with the Constitution and current international treaties signed by our country.

Also intervenes when there are risks of human rights violations through the exercise of its functions, including:

- Initiate (within the scope of its competence) legal actions before the Courts of Justice, which may be complaints for crimes such as against humanity, torture, disappearance of persons, etc.

- Present writ of protection or appeal on the grounds of unconstitutionality.

-Prepare an annual report on their activities, the national human rights situation and make recommendations for their due protection and respect. Said report must be presented to the President of the Republic, the National Congress and the President of the Supreme Court. Additionally, it can be sent to the UN, the OAS and human rights organizations.

-Communicate to the Government and to different State bodies their opinion on situations related to human rights that occur in our country. To do this, they can request reports from the relevant agency.

-Propose to the State organs measures to favour the promotion and protection of human rights.

**14. What are the main challenges faced by public authorities with regards to availability, accessibility, quality and affordability when private actors provide water and sanitation services? Please give examples.**

Refer to answers 1 and 2.

**15.** **Do you know of any case of corruption that involves the private provision of water and sanitation services? Please provide the necessary details.**

No case has been known or reported since 2000 to date.

**16. Has the private sector demonstrated more capacity to mobilize funds than the public sector? Could you please give concrete examples?**

It does not apply to the case of Chile. One of the great benefits of privatization has been to free the State from debt for the provision of drinking water and sanitation services.

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

In Chile there is no public-private "association" in the area of sanitation services. There is a relationship of subordination of the private to the public, governed by public law rules that presents positive and negative aspects as set forth in previous responses. As far as possible, there is entry competition for new services, and these are awarded to the natural or legal entity who, meeting certain elementary requirements, offers the lowest tariff to be charged to users, and in exceptional cases the shortest time to put into exploitation the services.

**18. When there is private participation in the water and sanitation sector, to what extent does the private actor contribute its own financial resources to the service?**

100%, and all infrastructure costs and risks are borne by the private operator.

**19. Have you studied any case of remunicipalisation? Why and how has it happened? What types of difficulties has the public authority faced in establishing the new municipal provider? Please provide details of those processes.**

It is not the case in Chile.

1. The methodology used by the SISS to calculate losses does not meet the recommendations of the International Water Association (IWA) and the World Bank and overestimates the losses. [↑](#footnote-ref-1)
2. [www.siss.gob.cl](http://www.siss.gob.cl) Management Report Sanitation Sector 2018 [↑](#footnote-ref-2)
3. Cfr. Study of Efficient Losses. Collaboration Esval and Water DB. [↑](#footnote-ref-3)
4. Idem. [↑](#footnote-ref-4)
5. “…international studies conclude that for each dollar invested in the treatment of wastewater, 2.5 dollars are saved on health.” Eduardo Frei Ruiz-Tagle, Prologue to the Modernization of the Sanitation Sector in Chile, SEP, 2006. Evolution of poverty and destitution in Chile 1987-1996, Ministry of Planning and Cooperation, 1998. [↑](#footnote-ref-5)
6. Presidential message law number 19.545 [www.bcn.cl](http://www.bcn.cl) /History of the law. Also see observation above quote. [↑](#footnote-ref-6)
7. Idem note 13 [↑](#footnote-ref-7)
8. www.siss.gob.cl Management Report Sanitation Sector 2018. [↑](#footnote-ref-8)
9. Idem. [↑](#footnote-ref-9)
10. Idem. [↑](#footnote-ref-10)
11. Idem. [↑](#footnote-ref-11)
12. Equivalent to 198,118 USD. [↑](#footnote-ref-12)
13. Equivalent to 792,473 USD. [↑](#footnote-ref-13)
14. Regional Ministerial Secretariat in each of the 16 regions in which the country is administratively divided. [↑](#footnote-ref-14)
15. Idem [↑](#footnote-ref-15)
16. [↑](#footnote-ref-16)
17. SISS, Management Report of The Sanitation Sector 2018. [↑](#footnote-ref-17)
18. The case of Chile is notable in this sense. [↑](#footnote-ref-18)