



Fifth Framework Programme 1998-2002



European Commission

INCO2 - Research for Development

“Barriers to and conditions for the involvement of private capital  
and enterprise in water supply and sanitation  
in Latin America and Africa:  
Seeking economic, social, and environmental sustainability”



An Interdisciplinary Research Project

## **D22 Strategic Country Report Argentina**

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**August 2004**

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PRINWASS is supported by the European Commission under the Fifth Framework Programme 1998-2002 and contributing to the implementation of the Horizontal Programme “Confirming the International Role of Community Research”. The views and information in this document are the sole responsibility of the research consortium in charge of the project and do not represent the opinion of the European Commission. The Commission is not responsible for any use that might be made of data or other information appearing therein. Contract: PL ICA4-2001-10041

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## Acronyms

AASA	Aguas Argentinas S. A.
BAMA	Buenos Aires Metropolitan Area
D1-Dn	We refer to the different project reports (“deliverables” in the jargon of EC-funded research) as documents D1, D2, D3 ...Dn. We list them in the bibliography under the name of the document’s main author or co-ordinator, as it may correspond. When a reference is made in the text, we provide both the acronym and the author’s reference: D2 (Seppälä, 2002). A full list of the project’s deliverables can be consulted in the project’s web site: <a href="http://users.ox.ac.uk/~prinwass/">http://users.ox.ac.uk/~prinwass/</a> .
ENOHSA	National Entity for Water and Sanitation Works
ETOSS	Tripartite Entity of Sanitation Works and Services
IDB	Inter-American Development Bank
ICSID	International Centre for the Settlement of Investment Disputes
IFIs	International Financial Institutions
INCO-DEV	International Cooperation for Development, European Commission
MDGs	Millennium Development Goals
OECD	Organisation for Economic Cooperation and Development
OSN	Obras Sanitarias de la Nación
PMES	Service Enhancement and Expansion Programme
PSP	Private Sector Participation
WSS	Water and Sanitation Services

## **1. Introduction**

The aim of this report is to present some conclusions drawn from various studies carried out within the framework of the PRINWASS PROJECT, concerning the concession of the water and sanitation services in Argentina, and on this base, to outline some possible future scenarios for the sector. During the first half of the nineties, Argentina underwent a comprehensive and accelerated privatisation process of its main utility companies and of the main State-run industries. Telecommunications, oil, electricity, gas, petrochemicals, the national airline, the ports, the military defence industries, the steel companies, and the water and sanitation services (WSS) in various cities and urban centres of the country passed onto private hands with unprecedented celerity, except perhaps that experienced by the countries of the former socialist block in Central and Eastern Europe. This “privatising programme” unfolded due to the impulse of different factors, basically of a macroeconomic and political nature. This was so, because of the prevailing economic philosophy during this period and because of the type of problems it intended to solve.<sup>1</sup>

Regarding WSS, in 1980 under the last military dictatorship, the former Nation’s Sanitation Works (OSN), a state-owned company with national jurisdiction that had served the population since 1870, was broken down. OSN’s reach was limited to the Federal Capital and the 13 districts of the Great Buenos Aires, while WSS in the rest of the country were transferred to the provincial governments.<sup>2</sup> This resulted in the creation of 161 different WSS units across the country, which adopted a diversity of service management regimes in the hands of municipal and provincial bodies and regional co-operatives among other.

Within this context, during the nineties most of the provinces decided to privatise the public companies in charge of the main systems in their jurisdictions. The process began in 1991 with the transference of WSS in the province of Corrientes (in its Capital and in other nine cities and towns of the province). By 1999, according to the National Entity for Water and Sanitation Works (ENOHSA), 70% of the population

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<sup>1</sup> Solanes (1995), p 149.

<sup>2</sup> Joint Resolutions 9 and 1332 from the Interior Ministry and the Economy Ministry (December 1979) which sanctioned the transference of the services of electricity, natural gas, and water and sanitation to the Provinces, free of charge, starting on 1 January 1980.

from Argentina was served by private companies,<sup>3</sup> with only 30% remaining in the public sector.<sup>4</sup>

By assessing the results of private sector participation (PSP) in WSS during the 1990s in Argentina it is possible to draw a number of conclusions. On the one hand, the concession of WSS to the private sector took place in conditions which assured the private companies a monopoly of the services in their respective jurisdictions. The legal and institutional frameworks for the control of the suppliers' performance not only turned out to be precarious, improvised, and lacking transparency, but the process also weakened public sector capacities to exercise control over the private companies and ensure the access to safe WSS to the citizens. The privatisation process did not provide for citizen participation in the decision-making process or in the control of the companies' performance, and the overall political and institutional context transformed the state in a facilitator of the extraordinary profits (in dollars, at the international level) achieved by the private companies.

On the other hand, the introduction of PSP did not result in the expansion of the access to the services by the poorest social groups, which had been one of the stated goals in the concession contracts, and therefore one of the main arguments supporting the expansion of PSP in the sector proved to be a fallacy. In fact, in several cases it was observed that the private companies were interested in obtaining short-term and extraordinary profits in a context of growing social polarisation in terms of income and living conditions. This strategy was unsustainable both in social and political terms, not least because of the situation of increasing poverty affecting a large sector of the population which could not possibly afford to pay for the services. As a result, some of these initiatives resulted in the failure of PSP projects and the consequent rescission of their respective concession contracts after serious social and political conflicts, as shown by the experiences of Aguas del Aconquija S.A. in Tucumán –controlled by the Vivendi group– or Azurix S. A. in the Province of Buenos Aires, –owned by the US energy group Enron. In these cases, in addition to the problems already pointed out, the private operators showed a remarkable lack of capacity for quality control in the maintenance of infrastructure, environmental impact, and delivery of safe WSS.

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<sup>3</sup> Within the private sector, 10% corresponds to cooperatives.

<sup>4</sup> With the withdrawal of Azurix Company (Buenos Aires) and Aguas del Aconquija (Tucumán) from their concessions this relationship was altered. Still, at present 60% of the country's population is served by the private sector.

Nevertheless, in spite of the expansion of private participation during the 1990s in Argentina, there still exist highly heterogeneous management regimes in the WSS sector whether regarding the nature of the provider as well as their actual capacity to deliver the Millennium Development Goals (MDGs). Therefore, future developments at the national level are likely to be mediated by the unpredictable forces associated with such dissimilar and fragmented management systems, as well as by the results of the ongoing re-negotiation of the concession contracts with most of the private companies.<sup>5</sup>

Given the atomisation of the water and sanitation systems, in order to draw some valid inferences regarding possible future scenarios and challenges we have resorted to focus on one “leading case” to base our discussion. In this respect, we decided to focus the analysis on the example provided by the concession of WSS in the Buenos Aires Metropolitan Area (BAMA) assigned to the consortium Aguas Argentinas S.A. (AASA), whose main partner is the French group Suez-ONDEO. There are various reasons justifying this choice. In the first place, AASA is the largest WSS concession in the country and one of the largest in the world, serving over 9.2 million people, almost one third of country’s population. Second, the ongoing contract re-negotiation is considered to be a leading case that will influence the future of the remaining renegotiations taking place in other jurisdictions. Third, the international holding which controls most of AASA’s social capital also controls two of the most important privately-run WSS concessions in Argentina, Aguas Cordobesas S.A. –covering a population of just under 1.4 million people–, and Aguas Provinciales de Santa Fe S.A. – with around 1.8 million people. Therefore, although this report will also make reference to the other Argentinean cases covered in the project, including the already mentioned case of Tucumán, the participation of local entrepreneurs and co-operatives in the province of Corrientes, or the provincial water utility in Chaco, the emphasis will be centred on AASA because we consider that the future development of the sector will be strongly conditioned by the outcomes of the belated contract re-negotiation in the BAMA.

We are also convinced that the outcomes of the ongoing renegotiation will depend on the changing balance of forces between local, national and international political actors. Therefore, the possible future scenarios for the sector described here will be ultimately determined and conditioned by the actual strength of the actors

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<sup>5</sup> Sanctioned by Law 25.561, from January 2002.

involved to exert pressure and impose their agendas, and in correspondence to this, by the nature and intensity of the different political and social identities that may be adopted by the citizens during this confrontation.

## **2. Institutional policy**

The institutional policies that facilitated the privatisation process of the public utilities in Argentina, WSS included, established a new relationship between the state, the private companies and the citizens, at the same time that a new network of relations between the powers of the national state was been developed. In particular, there was U-turn in the active presence of the state in the national economy, which to a greater or lesser extent had prevailed for over sixty years through re-distributive policies and high interventionism in the regulation of private interests.<sup>6</sup> Since the reforms carried out in the 1990s through the concession of public utilities or the outright sale of public companies to the private sector, the state relinquished its historic role of provider of essential public services, and was formally relegated to the role of regulating and monitoring the performance of the privatised companies.<sup>7</sup> The celerity of the de-regulation of public utilities unfolded a number of processes closely interrelated and – apparently– mutually contradictory aimed at market liberalization, which resulted in a new institutional scenario.

In this regard, the privatisations prompted an increasing concentration of decision-making activities in the hands of the national executive power to the detriment of the Congress and the provincial governments. This was expressed, for instance, in the fact that many decisions involving the granting of concessions for the sale of public assets were arranged by “decrees of necessity and emergency” or special resolutions issued by the President without public consultation or debate. The fact that in most cases these executive decisions were taken during the period of ordinary sessions of the Congress contributed to the resulting institutional deterioration and severely restricted the possibility of exercising public control over the process.<sup>8</sup>

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<sup>6</sup> The 1930 world crisis prompted an increasing state intervention in the national economy in the production of both goods and services.

<sup>7</sup> In the case of the WSS, regulation was entrusted by Law 23.696 to the Tripartite Entity of Sanitation Works and Services (ETOSS), composed of two members from the national government, two from the municipality of the City of Buenos Aires, and two from the Province of Buenos Aires.

<sup>8</sup> Between 1989 and 1996 President Menem issued 398 decrees of this kind; 38% of these were passed during the period of ordinary sessions and the remaining 62% during the period of extraordinary sessions. To give a comparative perspective, during his period in office (1983-89) President Alfonsín issued a total of 10 decrees, and during the previous 130 years (1853-1983) a total of just 25 presidential decrees had been recorded (see *La Nación*, 24 November 1996, p. 14, “Menem: 398 decrees in 7 years”). Besides, the Executive Power counted with the support of the Supreme Court of Justice which had been reformed by President Menem and from the Parliamentary Bicameral Commission for the Follow-up of the Privatisations, which accompanied the initiatives of his programme.

In the case of the provinces, the federal executive imposed administrative reform and rationalisation on the provincial governments, privatising those areas that had been previously decentralized to the provincial administrations, and making the access to federal loan programmes, special funds from the National Treasury, and other financial benefits conditional to privatization. For instance, the province of Chaco, where the citizens rejected the privatisation of WSS in 1994, was punished with the restriction of access to federal resources for infrastructure. Overall, these special presidential decisions systematically turned the state into a facilitator of the valorisation process of private capital, which was revealed in several ways. In the case of the BAMA, the government gave in to the countless requests from the private company AASA to postpone investments, to delay the infrastructure works to which the company was committed by the concession contract, and to secure the continuity of extraordinary profits in hard currency.<sup>9</sup> In the end, the introduction of PSP in the WSS sector – although similar situations could be also observed in other areas most areas of the economy– was little more than the replacement of the existing state monopolies by private monopolies, in an apparent paradox, by state decision. These monopolies –and indeed oligopolies, given the terms of the contracts and the absence of public control–, have enjoyed extraordinary advantages and increased their investments with little or no managerial risk.<sup>10</sup>

From another angle, there was a progressive weakening of the state as an actor in charge of conciliating opposite interests due to the precariousness, improvisation, and opportunism with which the regulatory mechanisms and frameworks were established. Given the unitary and monopolistic nature of WSS, and the absence of anti-monopoly legislation or regulation, this institutional model worsened the defenselessness that historically affected the consumers, who now became part of a captive market in the hands of the private operator.<sup>11</sup> In short, the traditional alienation of the citizenry with

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<sup>9</sup> About the specificities of the case of AASA, see Azpiazu and Forcinito (2004).

<sup>10</sup> The state's weakness results from the policies carried out by successive governments in the previous three decades namely lack of investment and neglect of the public companies. This can be seen for example, in the lack of renovation, maintenance and high bureaucratisation of the service. This situation served the discourse and the strategy of privatisation in the nineties, because this appellation supports a criticism of the supposedly inefficient state management of public companies. In the case of "Obras Sanitarias de la Nación", the absence of renovation and maintenance of the equipment was specially noted. On the other hand, the company showed an important difference between the price of the water charged to the customers and the high inflation rates in the country between 1960 and 1990.

<sup>11</sup> This remarkable weakness of the state was in fact the result of more than three decades of underinvestment and progressive deterioration of the public companies, which lacked the necessary

regard to the governance of WSS, traditionally in the hands of a state bureaucracy that gave little room for social participation neither in the decision-making processes nor in the control of the WSS utilities, was further accentuated through the introduction of PSP in conditions where neither the public sector could exercise its traditional monitoring role nor the users made any progress in gaining some degree of control over the running of these essential services.

The consequence of these processes was the constitution of a management model whereby the regulatory body was subject to a pincer movement: a weak institution in the face of the far more powerful and resourceful private company that it was supposed to regulate, and lacking autonomy vis a vis the political power. Regarding the latter, it was made evident or instance when the technical and bureaucratic criteria for the appointment of the regulator's Board of Directors were replaced by political criteria, which turned ETOSS into a prey of political struggles.<sup>12</sup> From another angle, this management model did not provide any channels for the participation of the users in the control and regulation of the services.<sup>13</sup> Even when this participation was institutionalised many years into the concession, the lack of financial autonomy of the Users Committee in relation to the regulator and the non-binding nature of its judgements restricted users involvement only to procedural formalities. Similarly, autonomous consumer associations were systematically excluded from any type of participation in the successive re-negotiations of the services' concession contract, even from discussions involving new pricing schemes and the re-definition of the deadlines for the completion of infrastructure works as agreed in the concession contract, all issues directly affecting citizens' rights and living conditions. Only in June 2000, over seven years after the signature of the concession contract, did the users' organisations achieve a certain degree of participation, when the regulator called the first and so far only Public Hearing, although the meeting had only a consultative character and added little to the users' capacity to monitor the performance of the private operator.

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renewal and maintenance of assets and which became highly bureaucratised. This situation became a central element in the discursive strategies of the pro-privatization lobby during the 1990s, whose actors emphasised time after time the intrinsically inefficient nature of public sector management.

<sup>12</sup> Solanes (1999). For instance, there were opposing decisions between the ETOSS' Department of Legal Affairs and its Board, when this department produced a sentence in which it declared illegitimate [illegal?] for the company to continue invoicing for the services in cases of disconnection. However, the Board discarded the sentence and allowed the private company to continue invoicing the customers after being disconnected.

<sup>13</sup> See Azpiazu and Forcinito (2004).

This model of institutional management and regulation of WSS was replicated in most other PSP concessions in the country. As shown by studies carried out in other cases<sup>14</sup>, the weakness of the regulatory system has not been a random or circumstantial aspect restricted to this or that specific case of privatisation of WSS, but the evidence suggests that this was one of the manifestations of the systematic process of deepening social exclusion and polarization that took place in the country during the 1990s. In this connection, the lack of attention towards the user organisations' grievances, that went repeatedly unheard even at the 2000 Public Hearing, fuelled a sense of distance and alienation among the population with respect to the process of decision making in the hands of political officials that were ready to give in to the private companies' pressures rather than protecting the users' interests. In the case of Tucumán, to give another relevant example, the regulator was highly dependent on the provincial government, which took over control of the institution on repeated occasions despite the fact that it was formally autonomous. Like in most other cases, although the regulator was funded by a regulatory fee included in the water bills, there was no provision for user representation in the regulatory body as their involvement was seen by the provincial authorities as a potential source of conflict. It was only after organizing massive protests against tariff increases and service inefficiency that user organisations were taken more seriously.

However, the process of social exclusion and polarization mentioned here was not simply a matter of the state and some powerful organizations of the private sector coming together in the implementation of the privatisation programme, as the process had also the support of significant sectors of civil society. Instead, the process involved and vertically divided the whole society. For instance, in the cases of Buenos Aires and Tucumán some civil society organizations such as the water-sector trade unions participated actively in the privatisation process, in the selection and training of the staff for the concessionaire, and became shareholders of the private company. In Tucumán, after the collapse of the private concession they have become partners with the provincial state in the newly created concessionaire of WSS.<sup>15</sup> In the case of the province of Chaco, the plan to expand PSP in the water and sanitation sector had full support from the main political parties with representation in the local Congress,

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<sup>14</sup> See Crenzel (2004), and Rozé (2004).

<sup>15</sup> Crenzel (2004).

although the majority of the population was against and finally rejected the programme in the 1994 elections.<sup>16</sup>

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<sup>16</sup> Rozé (2003).

### **3. Financial and Economic Aspects**

According to estimates from the Inter-American Development Bank, the accomplishment of the MDGs for the year 2015 in Latin America alone would demand an average annual investment of slightly over 350 million dollars.<sup>17</sup> However, in Argentina the delayed and complex negotiations within the sector, after the political and economic crisis suffered in December 2001, have deeply altered the local conditions making it difficult to identify future trends. The conditions imposed since the approval in January 2002 of the Law of Public Emergency and the Reform of the Exchange Regime (Law 25,561), which included a U-turn from the peso-U.S. Dollar “convertibility” scheme, the peso devaluation<sup>18</sup>, the “de-indexation”, the “pesification”, the tariffs freeze, and the beginning of a long process of re-negotiation of the concession contract with AASA, radically altered the normative and operational context that the concessionaire had enjoyed since May 1993.

Within the new framework, the private operator has pointed out some problems that they consider difficult to solve, such as their indebtedness in foreign currency (according to the exchange rate in force, it equals three years of billing). Although in July 2004 the company managed to re-purchase part of its liabilities obtaining an average reduction of 35 percent on the borrowed capital and a certain reduction of the interests, the issue is still conditioning the financial and economic performance of the company, even in the current phase of transition until the definitive re-negotiation of the contract or its rescission (issue which will be dealt with later). From another angle, the current situation is the logical result that could have been expected by a private company developing the business strategy adopted by AASA during almost 10 years of concession, that of Project Finance.<sup>19</sup> In fact, during the period May 1993-December 2001, prior to the passing of the above-mentioned Law, the relative weight of the net increase of financing by a third party reached over 15% of total funding sources, while over the same period revenues from billing represented 78.1% of total funding and the partners’ contribution of capital was just 2.6% of the total.<sup>20</sup>

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<sup>17</sup> IDB (2003).

<sup>18</sup> Originally, the Law of Economic Emergency established the replacement of the convertibility (\$ 1.0 = U\$S 1.0) for another parity where \$ 1.4 = U\$S 1.0. A few months later, and in response to the strong pressures exerted mainly by the International Monetary Fund, the Duhalde administration established the free floating currency which led to a dramatic increase in the currency exchange rate.

<sup>19</sup> Lentini (2002).

<sup>20</sup> Ministry of Economy (2002).

In other words, AASA adopted a financial strategy almost exclusively based on the access to international sources of capital at interest rates much lower (around 7%) than those available in Argentina, which compromised one third of the returns on the company's assets (disregarding the implicit devaluation risk). Understandably, in the context of the depreciation of the national currency, this process led to an unbearable financial situation and then to the default of the company. By then, the foreign debt had climbed to almost 650 million dollars (almost twenty times the net value of the company's assets), with payment commitments of nearly 215 million dollars in 2002 and 109 million dollars in 2003, while in the post-devaluation period the total annual revenue of the company was reduced to around 220 million dollars.<sup>21</sup> Given the political and economic significance of this situation, it is worthwhile exploring the main concurring factors that could explain how it was possible for a monopolistic company subject to public regulation to reach such a complicated economic and financial position. Also, it is legitimate to ask whether the company will be fit –even in the short term– for delivering efficient WSS from a social perspective, which is not only related to the quality of the services supplied but mainly to its capacity to expand the water supply and sewerage networks. This is of the utmost relevance owing to the fact that the bulk of deficit in terms of network expansion affects mainly the population with the lowest income levels. To this we turn next by analysing the failure of AASA looking at certain economic and financial variables since the beginning of the concession (tariffs, profitability, investments, financing, impact of the private supply of the service on employment and competitiveness of the economy, etc.).

Regarding tariffs, AASA was benefited with several tariff increases sanctioned through a number of –hardly transparent– contract renegotiations: from the start of the concession in May 1993 until January 2002, prior to the passing of Law 25.561, the average domestic tariff increased by 88%, while in the same period the retail price index increased by just 7%.<sup>22</sup> This is particularly important for two main reasons. First, because the original contract clearly established that the tariffs could not be increased

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<sup>21</sup> In this context, as a consequence of the company's external borrowing policy, in the book-keeping corresponding to the year 2002 the losses mounted to over 800 million pesos (13% higher than the billing in that exercise).

<sup>22</sup> Moreover, in spite of the freezing of tariffs that has been in force since the contract re-negotiation process, the intensity of the previous increases has been such that when compared with the evolution of the Consumer Prices Index until June 2004 (it increased 55.5% since May 1993), the real increase of the average domestic tariff is still 58%.

within a ten-year period prior to the moment in which the first contract revision would take place. Second, due to the regressive impact in distributive terms derived from the tariffs' evolution.<sup>23</sup> Although the implementation of the social tariff in January 2001 (the concessionaire assigns four million pesos a year, via tariff reduction for the sectors of lower income) has attempted to mitigate the impact, its effective application has been too slow and equally insufficient to improve the situation of the poorest sectors, strongly affected by the growing number of fixed charges.

Also in connection with the tariffs, it is important to mention that in the area granted in concession to AASA there are two billing systems. For unmetered users (the majority), the basic rate is the result of pondering a “K” factor plus the coefficients according to building zone, indoor surface, plot size, and quality of the construction. In contrast, metered users must pay 50% of the basic tariff and a variable charge depending on consumption (these rates are set for each service –drinking water and sewerage– and are similar). Moreover, two categories of users are outlined (residential and non-residential) with identical criteria for price setting. Both billing systems involve the presence of cross subsidies among zones and types of building (taking into account the age of the building, the quality and the geographical area of the building) aiming at –in theory– facilitating the universalization of the service.

Regarding the already mentioned tariff evolution, the regulator ETOSS has pointed out that a good share of the increases in the water rates were officially authorised with the argument that they would be used to finance the expansion of the drinking water and sewerage networks. However, ETOSS has also indicated that during the first five-year period of the concession (1993-98) AASA repeatedly breached the contract in relation to its obligations regarding the PMES Service Enhancement and Expansion Programme (PMES), including the failure to complete the Fourth Sewerage Main Trunk and the Primary Treatment Plant in Berazategui. In short, the company only complied with 58% of the investments committed for the period. Regarding the second five-year period (1999-2003), it is worth differentiating two different stages. In the first

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<sup>23</sup> Concerning this last remark, in a recent study the conclusion is that the “remarkable inequity emanating from the current tariff structure of the concession, while the strong and growing influence of the various fixed charges which have been added in the different re-negotiations, make the real costs of the service to fall asymmetrically according to the income strata. Thus, for the 10% of the Great Buenos Aires population with the highest income, the distribution associated to the payment of the service represents only 1.3% of their income, while at the other end, for the 10% with the lowest income the WSS bills represent 9.0% of their income (when for the average user the proportion drops to 1.9%)”. See Azpiazu and Forcinito (2004).

one during 1999-2000, AASA made investments that were ex post approved by the First Five Year Tariff Revision that ended in January 2001, owing to the fact that the revision process had a two-year delay. However, in the second stage (2001-02) the company's compliance with the investments commitments has been only 37%, which prompted the regulator to state that

The intention of the official authorities to facilitate the re-composition of the economic and financial equation of the concession contract was evident on several occasions, through the processes of tariff revision and contract re-negotiation, which started during the first quinquennium, when part of the breaches of contract by AASA were admitted. In general, *these modifications responded to requests by the concessionaire and the re-composition of the concession took place through the mechanism of committing greater investments that would justify the tariff increases, but the investment commitment have not been fulfilled* [our emphasis].<sup>24</sup>

As a result of the breach of investment commitments by the year 2003 there were significant deficits in terms of the expected service expansion. Thus, while the water supply network should have been extended to cover 88% of the population according to the Concession Contract, the actual coverage was 79% (this means a deficit of about 800,000 people), while for sewerage the figures were 63% instead of the 74% programmed (a deficit of over one million people).<sup>25</sup> Moreover, the evidence included in the above mentioned ETOSS report indicates, on the one hand, the existence of important breaches concerning primary waste water treatment and, on the other, that the investments for the rehabilitation and renewal were not efficient in reducing the leakage levels and deriving in low pressure affecting approximately 70% of the drinking water network.<sup>26</sup>

However, the recurrent contract renegotiations and the lack of compliance with investment commitments enabled the company to yield high profitability rates. Thus, AASA obtained between 1994 and 2001 a 13% average return on revenues, a rate that increases to over 20% when considering the relationship between profits and net

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<sup>24</sup> ETOSS (2003).

<sup>25</sup> “Si bien se han incorporado un millón de habitantes al servicio de desagües cloacales, el déficit respecto de los compromisos contractuales equivalían, a fines del año 2002, a un nivel similar de habitantes, según el ETOSS”. See SUEZ, 2003, Aguas Argentinas S.A September 2003 and ETOSS, September 2003.

<sup>26</sup> Owing to these breaches the ETOSS applied several fines and sanctions to the supplier, which until July 2003 amounted to 40 million pesos (AASA paid just 42% of this amount). In this sense, it must be highlighted that in the recent Agreement Act signed with the company, the federal government has agreed to suspend the collection of fines.

value of assets.<sup>27</sup> In order to place these rates of return in the right context, it should be noted that during the same period the 200 largest companies in the Argentinean economy registered a combined average rate of return of 3.5% in terms of their annual sales. Also, the return rates obtained by AASA until the Law 25,561 was passed were well beyond the benefit levels considered acceptable or reasonable for the water industry in developed countries.<sup>28</sup>

From another perspective, it is important to highlight that the company has been reluctant to finance the investments through its own capital and developed a strategy of “levering”, to wit, using capital from third parties. This is why the relationship debt/ net value of assets has increased from 1.9 in 1994 to 2.1 in 2001, while according to the original offer the ratio could not go beyond 1.4. In that respect, the ETOSS has pointed out that

AASA opted for a capital structure with a debt higher than estimated in the offer, as well as higher levels of borrowing than those acceptable for this type of companies at the international level. In this sense, although this structure implied a lower capital cost for the company, it resulted in a different composition from the original offer, in which the contribution of capital via accumulation of results (performance) was superior to the one actually verified and, besides, the levels of indebtedness were remarkably inferior to the ones recorded during the contract period. The specific normative regulation was once again flexible in favour of the company in the 1997-99 re-negotiation, accepting debt levels superior to the offer by request of the company and in this way it avoided the contribution of its own capital to meet the financial requirements of the concession, which has led to a critical indebtedness since the year 2002.<sup>29</sup>

Regarding the main socio-economic impacts of the concession, the following aspects should be highlighted:

- a marked reduction of the labour force (started before the concession and continued afterwards) correlated with important increases in the average productivity of labour;
- a regressive impact of the evolution of the average WSS tariff rates on both the local retail index and the average salary;
- negative implications for the competitiveness of the domestic economy<sup>30</sup>;
- a positive fiscal impact associated to the corporate profits' tax;

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<sup>27</sup> For a more detailed analysis of AASA's performance since it began its activity in Argentina see Azpiazu y Forcinito (2004).

<sup>28</sup> See Phillips (1993).

<sup>29</sup> ETOSS (2003).

<sup>30</sup> See World Bank (1999).

- according to former suppliers of the public WSS utility, the degree of local integration of the concessionaire's purchases is very low compared with the transactions recorded between AASA and firms either controlled by, or connected to the company (in total, around 550 million dollars/pesos during the period 1993-2001).

Finally, coming back to the end of the Convertibility regime at the beginning of 2002 and the Law 25.561, these processes changed the normative and operational environment in which the privatised companies operate in the country prompting the ongoing contract re-negotiation in the case of AASA.

- Owing to the repeated and serious breaches of contract recorded, the possibility of cancellation of the concession contract has been discussed recently as one possible outcome of the negotiations;
- However, during President Duhalde's transitional government and to a large extent as a result of the pressures exerted by multiple actors including AASA, its shareholders, the International Monetary Fund, the G7 countries, the French government, and various think tanks linked to the local establishment among others, the re-negotiation process was delayed. In practice, the renegotiation has become very convoluted, not least because of the powerful interests at play and given the concession's peculiarities, and the outcome has become a pending assignment for the new administration that took office in May 2003<sup>31</sup>;
- In May 2004 the Kirchner Administration and AASA sealed an Agreement Act which turned to be favourable for the company, especially if we consider that the repeated breaches of contract would have provided enough reason for considering the cancellation of the concession contract.<sup>32</sup>

Among the main characteristics of this Agreement Act, which will be in force until the end of 2004, are worth highlighting:

- The tariff level and the fixed charges existing before 2003 remain the same;
- AASA accepts the temporary suspension of the trial against the Argentinean State before the International Centre for the Settlement of Investment Disputes (ICSID);
- The temporary suspension of the litigation before the ICSID does not relieve the parties from complying with the terms the concession with previous or subsequent date to the signature of this agreement;

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<sup>31</sup> An analysis of the main characteristics and impact of the re-negotiation of contracts with the private suppliers of public utilities during Duhalde's government can be consulted in Azpiazu and Schorr (2003).

<sup>32</sup> See Ministry of Economy (2003). The gravity of the situation can be illustrated by the following statement from the Ombudsman: "The National State must seriously define whether AASA is fit to continue with the supply of the service, bearing in mind the serious contract breaches, or whether it should think of other alternatives" (Defensor del Pueblo de la Nación, 2003).

- The government accepted to suspend “the execution of pecuniary penalties, the charging of its interests... and the execution of the guarantee of the Contract for regulatory reasons”;
- AASA accepted to implement a new investment plan for an estimated amount of 240 million pesos; much of the works included in the plan are part of the delayed investment commitments; the resources to fund the works will largely come from the revenue generated by the tariffs);
- The concessionaire accepts to submit during 2004 a review of its financing structure (debt/assets value) as a condition for entering a definitive re-negotiation<sup>33</sup>;
- the State promises to “respect” a loan requested by AASA to the Inter-American Development Bank (this will lead to a company’s liability in relation to the Bank) and to start a process of conciliation of the debt claimed by the operator for providing services to the public sector.

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<sup>33</sup> As it was mentioned, recently AASA managed to re-negotiate part of its debt.

#### 4. Future Scenarios

The future of the public utilities privatised during the 1990s in Argentina is largely unpredictable. The delayed contract re-negotiation with the (61) companies responsible for the service sanctioned in January 2002 by the Law 25,561, poses serious questions, even regarding the management models to be adopted. In particular, the strong pressures exerted by the private companies<sup>34</sup> and by the governments of their countries of origin<sup>35</sup> make it extremely difficult to venture any prognosis based on sound ground. The example of the WSS companies (both at the national level and in the BAMA) does not escape these general considerations. On the contrary, it emerges as one of the most conflictive and in certain aspects as a “leading case”.

According to this macro panorama, and without considering the results that could emanate from the law suits filed by most of the firms integrating the AASA consortium before the ICSID, there are three possible scenarios that could strongly influence the path of the remaining contract re-negotiations in other jurisdictions of the country, and –more importantly– the actual possibility of fulfilling the MDGs:

- the continuity of the current private management, under the figure of concession, probably with greater State interference (for example, as it was included in the recent transitory Agreement Act, through the constitution of specific fiduciary funds) regarding work planning (expansion, treatment, rehabilitation, etc.), degree of execution, and effective fulfilment of goals agreed in the original concession contract;
- the reformulation of the present concession contract within a system of private management, while infrastructure maintenance and, above all, the formulation and execution of the service expansion plans, remains in the public hands;
- and last and least likely, the rescission of the current concession contract, followed by a public debate on the type of management (public, private and or mixed) and eventually, the segmentation (horizontal and/or vertical) of the BAMA’s present water and sanitation system.

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<sup>34</sup> In most private consortiums involved in the negotiations there is an important participation of foreign companies, which have filed complaints to the ICSID.

<sup>35</sup> At the same, most of these governments also exert pressure on the Argentinean government through the IMF, in the context of the default declared towards the end of 2001, and the mounting re-negotiations with the suppliers of the privatised public utilities and the tariff increase.

The first scenario presents some difficult challenges:

- although AASA has managed to re-negotiate a large part of its foreign debt, the future financial situation of the company remains unclear;
- the expansion of the networks to comply with the targets set in the original concession contract will demand now higher investments than those originally programmed, which are highly unlikely to be financed through generalised tariff increases, owing the socio-economic impact that this would have on the population<sup>36</sup>;
- the environmental deterioration in the concession area demands the development of specific sanitation plans which go even beyond the original forecasts both in scope and financial requirements;
- even if the State assumes greater responsibility in the planning and implementation of the works (e.g. through the constitution of specific fiduciary funds for the investments required), raising the required funding will be one of the most difficult issues.<sup>37</sup>

The second scenario also presents difficulties, although these are of a different nature:

- The current government seems inclined to this option,<sup>38</sup> and it has been already suggested as a way forward between the options of continuing the present concession or its cancellation. One problem with this option, from a legal-formal perspective, is that it could hardly be proposed as a reformulation of the current contract because according to current legislation it would demand a new call for bids;
- This option would imply the delegation of the services under a “management” scheme, for a certain period, while the State would retain responsibility for the maintenance of the assets and, especially, for the formulation and execution of expansion plans. This would imply the shortening of the concession period and, in particular, to restrict the concessionaire’s free access to the resources;
- Another option could be, as determined by the recent Decree 878/03 from the Province of Buenos Aires, to include the maintenance of the facilities among the activities to be performed by the concessionaire. In this case, the resources collected by the concessionaire, after deducting its operational costs and a “fair” and “reasonable” return, would be deposited in a fiduciary fund which could be used for funding the works to be executed under the State’s responsibility.

These options of the second scenario rise important questions around tariff levels and structure, which are discussed later, as well as regarding a possible vertical and

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<sup>36</sup> In a social context where almost half of the population is officially living under the poverty line, and where the poorest sectors are the most affected by the lack of access to WSS.

<sup>37</sup> See Suez (2004).

<sup>38</sup> For instance, regarding a similar situation that was raised in the case of the privatized highways, towards the end of October 2003, once the contract deadlines with the concessionaires had expired, the State opted for the adoption of a management scheme after re-arranging the national routes into six new corridors (five of them must pay an annual fee, and the other is subsidized by the State).

horizontal disintegration of the system. In this case there would be additional challenges:

- From the regulatory perspective, the concessionaire's obligations and rights as well as the consequent business risk would be substantially reduced, as most of the burden will be taken over by the State. In the extreme, responsibilities might be blurred to the point that inefficiencies on the part of the private operator could be attributed to the State's non compliance with its obligations (for instance, delay in investments and expansion goals, could be blamed for lower than expected revenues by the concessionaire);
- Also, the state would take responsibility for most regulatory provisions including the environmental aspects. However, due to the dismantling of the technical capacity of the state over the last decade, it could have serious problems to have an acceptable performance;
- An addition regulatory weakness is related to the public sector's continued permeability to local and international economic lobbies, which have consistently succeeded in getting the State to facilitate their respective processes of capital accumulation and reproduction;
- From another angle, the reformulation of the investment plan under the new circumstances, which require the incorporation of social aspects in the equation, will require a very neat diagnosis and definition of works covering from environmental sanitation to network expansion in priority areas, which are very likely to substantially differ from the Enhancement and Expansion Plan originally devised by the concessionaire;
  - This reformulation would require a very precise planning in terms of works and costs, in correlation with the income flow to the fiduciary fund, and –in addition to the tariff level and structure to be adopted– and with the total income of the system.

Nevertheless, with the transference of responsibility for service expansion to the public sector, two different risks emerge. Firstly, as already mentioned the state's technical capacity was been seriously deteriorated in recent years through the dismantling of facilities and the dismissal of its technical staff. Secondly, as it has historically happened in very different areas, the need to attend fiscal emergencies alien to the specific needs of the WSS sector may reallocate the funds to other priorities.

The third scenario seemed to be, until 2003, the most likely, but recent developments –especially at the international level– have turned it a much more difficult option. This scenario would entail the cancellation of the concession contract with AASA followed by a political decision regarding the type of management to be implemented.<sup>39</sup> However, although as already discussed there would exist enough

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<sup>39</sup> A similar situation affected the concession contract for the Post Office, where the concessionaire had breached the contract leading to its cancellation in November 2003. The Kirchner administration then decided to place the service back in public hands for a temporary period of 180 days, which was later extended for an equal period. At the time of elaborating this briefing there is still no definitive decision

reasons for rescinding the contract, everything seems to indicate that this option tends to be left out of the government's agenda. It may well be that given the close interaction between the current contract renegotiations with most of the privatised companies and the negotiation of the public foreign debt –both with the IFIs and with the debt bond holders–, which seem to have increased the hostility between the parties, could lead to a radical change of the present negotiating position of the Argentinean government and therefore making the third scenario more plausible. Therefore, although this is the least likely scenario, it cannot be altogether dismissed. As it happened with the Post Office, this type of decision opens up several alternatives which at each end would tend to a) the re-statisation of the service or b) a new call for bids under conditions not very different from the original that granted the concession for a thirty-year period. In addition to this wide range of possibilities regarding the type of management, there are decisions about segmenting –horizontally or vertically– the current integrated system, as well as assigning a higher priority to environmental sanitation.

### Summing up

Whatever scenario finally takes place, we must include a few short final considerations related to the local impact of the objectives set by the MDGs, which would imply the universalization of the services in the BAMA currently served by AASA.

- In this jurisdiction, a large part of the population does not have access to this essential public service either due to lack of resources to afford the bills or to the fact that under private management expansion has not (and presumably will not) take place because this population does not constitute a profitable market in microeconomic terms.
- Also, in addition to the commercial, technical, and financial challenges involved in the universalization of WSS, it must be added the serious problem of environmental health and sanitation in the Buenos Aires basin, and in the concession area in particular. In this regard, the situation is critical given a number of factors, including the generalized lack of compliance with the regulations controlling the discharge of industrial effluents into the sewers, the inadequate treatment and disposal of sewage, the presence of illegal rubbish dumps with the consequent pollution of water resources, and the lack of integrated planning for the management of ground and surface water flows, which is urgently needed in the face of the recurrent floods and sewer flooding affecting a large area of the BAMA.

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regarding the future of the Post Office, and the federal authorities are deeply divided between those proposing the definitive statisation of the service and those suggesting its re-privatisation.

- Both aspects, the much-needed quantitative and qualitative expansion of the WSS coverage and the need for integrated management of water resources and environmental health policies, have a direct impact on issues of distributive equity and social solidarity, given that as already discussed the most disadvantaged are also the worst affected by these problems.

In the end, the crucial problem in all three scenarios is related to the financial aspect: where will the funding needed to meet the required investments come from? In this respect, and simplifying the analysis for the sake of clarity, there are five main instruments (not necessarily incompatible with each other) for financing the works needed to deliver socially efficient WSS: private investment, funds from international organisms, public resources, cross-subsidies, and a social tariff. On the basis of the above analyses, we conclude that in the Argentinean case the first three instruments have not led to the expected results, and that it would not be advisable to insist in programmes based on this instrument. There are several reasons for this, among which is worth highlighting a) the implementation of a WSS strategy based on private management –validated by action or omission by public regulation– prioritised the distribution of dividends among shareholders over the public interest and over contractual commitments; b) this strategy was associated with a highly discretionary policy of indebtedness in detriment of profit re-investment; c) the process contributed to worsening external dependence of the Argentinean economy since the 1990s; d) as shown before, the private operator has placed itself in a very complicated fiscal situation.

Thus, in our analysis the two instruments that would present the greatest potential both in terms of meeting the investment requirements and delivering the fairer results from a socio-economic and financial perspective would be the implementation of cross-subsidies and a social tariff to extend the coverage of WSS to present and future low-income users. However, we recognise that although a cross- subsidy system could result in an important palliative for a large number of poor users who are regularly disconnected by AASA because they cannot afford to pay for their bills, it is also clear that this measure alone would be insufficient for meeting the MDGs. This is why this cross-subsidy policy should necessarily be articulated with the implementation of a social tariff.<sup>40</sup> The joint implementation of both instruments would provide the funding

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<sup>40</sup> In order to meet the objectives of distributive equity and network expansion, as well as a more rational use of the water resources, the increase in the levels of micro measurement is presented as another important challenge to tackle.

for the expansion of WSS to the targeted population currently unserved or unable to afford the bills. This, ideally, should be implemented within the framework of a much-needed coherent policy for the integrated management of water resources, which would tackle some of the crucial problems related to environmental health and sanitation.

Nevertheless, in all three scenarios making up for the continued delay in investment and infrastructure improvement and expansion in order to meet the MDGs would be largely dependent on the intensity and quality of the role to be played by the public sector. This, in turn will require new efforts to recover the levels of institutional development and technical expertise required for enabling the public sector to take up the challenge.

## **6. Conclusions**

The Argentinean case study shows that the conventional argument about the need to introduce PSP to replace the inherently expensive and inefficient public sector management does not resist the empirical test. The introduction of PSP in the provision of WSS in the country has not brought about an effort to qualitatively change the role of the State that would have allowed it to concentrate on fulfilling the responsibilities assigned by the citizenry. Contrariwise, through the privatization policies of the 1990s the public sector delegated many of these responsibilities, such as the universal provision of essential WSS, to the private sector. What over the years had been consolidated as a basic right of the citizens granted by the state was transformed into a duty that the users of WSS have with the private operators, effectively transforming citizens into consumers and customers.

In this connection, although in the mainstream literature promoting the expansion of PSP the process has been often depicted as that of a partnership between the public sector, the private sector, and civil society, in practice the actual weight of each of these “partners” in the equation has been far from balanced. Moreover, the process is characterized by the differential intensity with which different social fractions participate in the achievement of their needs and the consolidation of their social identities, which is reflected in the predominance of the social sectors with the greatest social and economic power in all three spheres of the partnership. The evidence clearly shows that the poorest social sectors, those who are the most unprotected and threatened by the lack of essential services such as WSS, are simultaneously those who are excluded from meaningful participation in the processes of re-distribution of social power within and between the state, the private sector, and civil society. Therefore, universalizing the benefits of efficient WSS will demand a far reaching transformation of the current social and political processes of representation, which at present continue to constrain and de facto exclude the most disadvantaged social sectors.

At present, the forms of the State –in its various hierarchical schemes– and the entrepreneurial alternatives of PSP are presented with serious structural and financial difficulties for meeting the goals and demands that the international community has recognized as desirable and imperative through the adoption of the MDGs. Unless changes are rapidly introduced in the prevailing WSS programmes, it is difficult to see how the MDGs could be ever accomplished. In the mainstream WSS programmes, the introduction of PSP has demanded significant qualitative changes in the policies of the

national states, often promoting the restriction if not altogether withdrawal of the regulatory functions of the state, as the public sector has been conceptualized in these programmes as an obstacle to PSP development. In turn, public sector policies demand from the private sector an investment policy to match the costs that societies are facing for the provision of these essential services. As a trend, the relations between the national state and the private companies are characterized by legal and political confrontations in the international sphere, a struggle that is increasingly circumscribed to the spheres of public and private power at the highest level.

Another crucial aspect is the growing dissatisfaction with the policies of privatization that has sparked a number of social and political processes in regions like Latin America, involving a significant confrontation with the state and with the private companies in charge of the services. However, despite some extreme episodes of social confrontation around these issues, in general the long-standing deprivation and defenselessness affecting the most disadvantaged social sectors has not constituted yet a major factor of generalised social pressure. The state and the private companies do not consider that there is a serious threat emerging from this social situation, perhaps because the citizens at large seem to be passive and unconcerned, and certainly defenceless. However, this could be equivocal, as the current situation can be understood as the accumulation of highly contradictory social processes. Although the immediate development and potential outcome of these processes may be temporarily unpredictable, what can be predicted in the mid and long term is the scale and intensities of the potential conflicts that these cumulative processes can release.

In the case of Argentina, it was observed in the early 1990s that a large share of the citizenry corresponding to the high income sectors were part of a consensus that sought to transfer the traditional responsibilities of the state to the private sector, while most of the citizenry experienced the privatization policies as a process of expropriation of what they considered to be their natural rights as citizens. Then, the actual evolution of the tariff costs through the administrative reorganisation of the WSS as well as the recurrent problems experienced with the quality delivered by the private companies transformed the original perception among the high income sectors that originally supported the policies into what could be called a “defensive citizenry” regarding their demands for WSS. The same process impacted on the middle income sectors in ways that elicited their increasing transformation into a “self-limiting citizenry” in their

demands for improved WSS, as the rising costs for improved services became a threat, or even impossibility, for their economic interests. For the poorest sectors, the whole process led to what can be called a “disappointed citizenry” let down by both public and private promises of improvement in their living conditions.

In practice, important segments of citizens (self-limited and disappointed citizens) constitute an obstacle to the mainstream WSS programme. This is not just because of the financial limitations of these sectors to become reliable customers of the private sector, but also because of their attitude and behaviour with regard to public services which are related to their historical memory. Breaking the inertia among these sectors of the citizenry is a very complex task that goes well beyond the current tactics employed by the public and private sectors that reduce the problem to categorizing these citizens as dependent, free riders, or reluctant to accept the improvements offered to them. Also, unfortunately citizens have been only taken into account in their character of users, and belatedly as potential members of the regulatory system.

From another angle, the perception of the relative passivity and defenselessness of the citizenry must also be contextualized in relation to the process leading to the economic, political and social crisis affecting the country. In this regard, for instance, the non-payment of the tariffs has become a tool of social protest, and not just among the poorest sectors. Also, there is a political project towards introducing changes in the legislation that will ban disconnection of WSS for non payment, a measure that was recently sanctioned by a court in the Province of Buenos Aires. There is a growing perception about the illegitimate character of the policy of disconnection, and of the need for alternative policies such as a social tariff, not just for the low-income sectors.

At present, the majority of the population has little or no knowledge about the scale and complexity of the tasks involved in meeting the MDGs. It could be also argued that this lack of knowledge is the result of the fact that decisions taken at the international level like the adoption of the MDGs are seldom correlated with the corresponding political will –by international and national institutions and governments– to actually implement these programmes.<sup>41</sup> Regarding the MDGs, it is

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<sup>41</sup> Consideramos que se ha creado una situación equívoca semejante y análoga a la que sucedió ante la convocatoria de lucha contra el hambre convocada y realizada por la FAO (UNO) hace un par de años en su última reunión de Roma. Se partía del presupuesto de una preexistente voluntad política en el ámbito internacional dispuesta a crear las precondiciones financieras favorables a lograr las metas publicitadas y propuestas por FAO, en su lucha contra el hambre. La realidad demostró la falta de consenso internacional acerca de una determinación política en esa dirección.

worth highlighting that there seems to be no strategy for eliciting the political determination needed among the citizenry to elicit positive changes in the financial and political sectors at the international level. The evidence examined has shown that neither the global financial institutions nor the national states seem to be in a situation or to have the disposition needed for effectively meeting the MDGs in the absence of the mobilization of additional citizen forces that may be able to rationally intervene in the search for solutions. Finally, it is worth remarking the increasing relevance that the management of water resources, especially fresh water aquifers, has acquired at the global level to the extent that this has become a strategic issue concerning the internal security policies of the national states. There is a consolidation of the interlinks between the most powerful private corporations of the water sector and the most powerful national states, which increasingly assumes a political-strategic character –rather than purely economic– that goes beyond the short term interest of the private corporations and becomes integral to the political action of the states.

**6. Appendix – Scenario tables**

<b>Scenarios Argentina</b>	<b>SCENARIO 1</b>	<b>SCENARIO 2</b>	<b>SCENARIO 3</b>
<b>OVERALL BACKGROUND SCENARIO DESCRIPTION</b>	<p>“Strengthening of the State as a regulating actor” Shared Management 25-75 (State-Privatised Companies).The re-negotiating process with the privatised companies is still delayed and continues being a pending issue for the following administrations. However, the State achieves greater strength as a regulating actor of the water and sanitation services.</p>	<p>“Strengthening of the State as a planning and intervening actor” Shared Management 50-50 (State-Privatised companies).An agreement, with an “intermediate” level of conflict, is reached with the companies. The State manages in the re-negotiation with Argentinean Waters (AASA), to recover the power to plan the works using in the political sphere AASA’s proved breach of contract.</p>	<p>“State Monopoly” ( return to State monopoly with the risks and level of conflict involved) State Management 100% . The negotiation with AASA is over in a context of great conflict.</p>
<u><b>OVERALL BACKGROUND FOR ALL THE SCENARIOS</b></u>	<p>The future panorama (in the short, intermediate and long term ) in the field of the privatised private utilities during the nineties, is presented so far (July 2004) as highly uncertain . The delayed contract re-negotiation (61) with the companies in charge of the service (61), settled in January 2002 by the Law 25,561, poses serious questions, even in terms of the type of management on which the supply will rest in the coming years. In this regard, the strong pressure exerted by the suppliers (there is in their respective consortiums , a wide participation of foreign capital companies which have filed a complaint in the ICSID), besides the one exerted by the governments from the countries of origin of those capitals, who at the same time exert exert these pressures through the IMF (in the context of the default declared towards the end of 2001, and of the permanent -and growing- conditions imposed by it –including precisely, the summing up of the re-negotiations with suppliers of the privatised public utilities and the tariff increase-), make it difficult to venture any prognosis based on sound grounds.</p> <p>The example of the water and sanitation system (both at the national level and at the BAMA) does not escape these general considerations. On the contrary, it emerges as one of the most conflictive, and in certain aspects as a “leading case”. The Agreement Act signed between the National Government and Argentinean Waters Co. (AASA) is simply a temporary agreement that expires at the end of the current year.</p> <p>According to this macro panorama, and without considering the results that could emanate from the law suits filed by most of the firms integrating the Aguas Argentinas Consortium before the ICSID, there are three possible scenarios which, depending on the type of settlement, could greatly conditions: first, the remaining contract re-negotiations in other jurisdictions of the country, and second the true possibilities of fulfilling the goals set by the United Nations, those referred to the year 2015 and even more, those established for 2025 (universalization).</p>		

<p><i><u>OVERALL WATER SERVICES SECTOR DEVELOPMENT SCENARIO</u></i></p> <p><b>UN Goals</b></p>	<p>The continuity of the current private management, under the figure of concession, with a probable greater State interference (for example, as it was included in the recent transitory Agreement Act, through the constitution of specific fiduciary funds) regarding work planning (expansion, treatment, rehabilitation, etc. ), execution degree and effective fulfilment those which used to be the agreed goals in the original concession contract.</p> <p>Breach of contract due to lack of investment</p>	<p>The current political administration is inclined towards a reformulation of the present concession contracts within a system of private management, remaining in the hands of the State, the infrastructure maintenance and above all, the formulation and execution of the service expansion plans within the specific environment of the water and sanitation services from the BAMA</p> <p>This system is conceived as an intermediate situation between the continuity of the current concession (first scenario) and the rescission of the contract (third scenario).</p> <p>Breach of contract due to lack of financing.</p>	<p>The rescission of the current concession contract, and with the due political decision, the discussion of the type of management (public, private and/or shared) and eventually, the segmentation (horizontal and/or vertical) of the BAMA’s present water and sanitation system. (the least probable scenario)</p> <p>In a similar situation regarding the concessionaire’s breach of contract, in November 2003 , the present Administration, rescinded the contract with the company concessionaire of the post-office, and within that context, the passage –at first temporary for 180 days and later prorogued for a similar period – to the public management sphere. At the time of this briefing there is no definitive decision yet and, at the level of the highest national authorities there have been highly contrasting opinions.</p>
<p><b>DRIVERS</b> <b>POLICY-INSTITUTIONAL DIMENSION</b> <b>Institutional sphere</b> <b>Legal arrangements</b>  <b>Regulatory framework</b> <b>Administrative arrangements</b></p>	<p>Rearrangement and clarification of ETOSS’ missions and functions. Implementation of a strong monitoring device for the quality of the service supplied.</p> <p>Democratisation of the information.</p> <p>Increasing chances of regulating the services.</p> <p>No major problems.</p> <p>Dark institutional scheme with conclave features.</p>	<p>Rearrangement and Clearing of the ETOSS’ missions and functions, and re-structuring of the planning and execution management. Implementation of a strong monitoring device for the quality of the service supplied.</p> <p>Democratisation of the information and increase of the user/citizen’s protection.</p> <p>Shared regulation with participation of users and consumers.</p> <p>Greater difficulties and increase of possible new corruption devices.</p> <p>The dark institutional scheme with conclave features begins to vanish: increase of political clients (voter-consumer).</p> <p>The issues to be solved are by no means unimportant. Thus, for instance, in the legal-formal level, it could hardly be proposed as a</p>	<p>Re-structuring and rebuilding of the administrative management capacity.</p> <p>Democratisation of information and increased user/citizen’s protection.</p> <p>Maximum control and regulation of the service.</p> <p>Greater difficulties due to the lack of administrative staff. Greater chances of establishing new devices for generating political clients (voter-consumers) and greater risk of corruption.</p>

		<p>reformulation of the current contract because - at least- according to the effective legislation, it would demand a new call for bids (this would finally mean the shortening of the concession periods and , particularly the non-free availability of the resources on behalf of the concessionaire). It could also be included, as in the recent decree 878/03 from the Province of Buenos Aires, that among the activities to be performed by the concessionaire is the maintenance of the facilities.</p>	
<p style="text-align: center;"><b>DRIVERS</b> <b>ECONOMIC FINANCIAL DIMENSION</b> <b>Tariff policy</b> <b>Financial Resources &amp; available funding</b> <b>Budgeting Practices</b> <b>Fiscal aspects.</b></p>	<p>The whole of the previous analyses allows for the conclusion that in the Argentinean case, the first three of the above-mentioned tools have not led to the expected results, and/or would not be advisable for various reasons (for instance, the instrumentation of a private strategy –co-validated by action or omission, by public regulation- of prioritising the distribution of dividends among the shareholders, associated to a highly discretionary policy of indebtedness, in detriment of profit re-investment; the visible external dependence of the Argentinean economy; its very complicated fiscal situation; etc). Although AASA has managed to re-negotiate a large part of its foreign debt, the future situation of the company in the financial field is still difficult to solve.</p> <p>Even if the State assumes greater intervention (for example, through the constitution of specific fiduciary funds for the required investments) regarding work planning and execution, their funding in a social framework where almost half of the population is below the poverty line –being at the same time the most affected segment regarding the access to the services-, becomes one of the most</p>	<p>Within this framework, the resources collected by the concessionaire, prior subtraction of its operational costs and a “fair” and “reasonable” profitability, would be deposited in fiduciary fund that could be used for the funding of the works to be performed under the States responsibility.</p> <p>Possibility of setting a Social Tariff.</p> <p>Financing shared between the State and credit International organisms. No subsidies to the privatised companies.</p> <p>Public Funds + indebtedness. Constitution of fiduciary funds.</p>	<p>Thus, the two devices which present greater potential regarding the investment requirements , becoming at the same time the most equitable from a socio-economic –and even financial- perspective for the service expansion and for improving their supply, would be the implementation of crossed-subsidies and/or social tariffs for the consumers –present and potential- with the lowest income.</p> <p>Social Tariff and 100% State funding.</p> <p>Public Funds (which are not available)</p>

	<p>difficult problems to solve.</p> <p>Tariff increase to finance projects, subsidies for AASA. Possibility of establishing a Social Tariff..</p> <p>Private funds + State subsidy + tariff increase. Constitution of fiduciary funds.</p> <p>Local</p> <p>Increase of subsidies and fees.</p>	<p>Central and provincial.</p> <p>“Reasonable and average profitability”</p>	<p>Central and provincial.</p> <p>Budget Deficit.</p>
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<p style="text-align: center;"><b>DRIVERS SOCIO POLITICAL AND CULTURAL DIMENSION</b></p>	<p>Legal and political confrontations at a national/international level, State’s incapability to impose its will on the privatised companies. The presence of an “additional citizen’s force” is not achieved”</p> <p>Citizen’s defenselessness. Disappointed citizens. Increase of “non-payment” as a form of protest. Citizen’s pressure.</p> <p>No citizen’s participation in the control and regulation of the service.</p> <p>Water is still considered a commodity.</p> <p>The People’s Ombudsmen together with the various users’ organisations, as well as the neighbours’ and social organisations, continue demanding to the State other forms of management, due to serious breaches of contract on behalf of the concessionaire. They point out “The concessionaire –counting with the State’s contempt for many year - has unfulfilled most of its compromises , in spite of having enjoyed a series of privileges that went against what had been set in the original contract”</p>	<p>Legal and political confrontations at a national/international level.</p> <p>“Citizen’s re-composition” but self- limited citizenship. Pressure from lobbies.</p> <p>Increase of citizen participation in the control and regulation of the service.</p>	<p>High level of legal and political confrontations at a national and international level.</p> <p>“Non-payment” for the use of a product of basic need (hidden subsidy to the poorest sectors) Maximum pressure from lobbies.</p> <p>Increased citizen’s participation in the control and regulation of the service.</p> <p>The social objectives and needs are given priority. Water is no longer considered a commodity.</p> <p>Access to water is considered a citizen’s right.</p> <p>Resistance from certain sectors of the dominant classes to the State’s management of the service arguing a “retrocession”, a return to the “Entrepreneur State”.</p>
<p style="text-align: center;"><b>DRIVERS ENVIRONMENTAL DIMENSION</b></p>	<p>The environmental deterioration of the area under concession demands the development of specific sanitation plans which, go even beyond the original previsions.</p>		<p>This wide scope of possibilities –regarding the type of management- , is at the same time inscribed in the decision to segment – horizontally and /or vertically- the current water and sanitation system as well as highlighting the importance of the environmental issue.</p>

<p style="text-align: center;"><b>DRIVERS TECHNO-INFRA-STRUCTURAL DEVELOPMENT AND INNOVATION DIMENSION</b></p>		<p>The State proves to be incapable of attracting the necessary human resources (technical and scientific) for the planning and execution of the works.</p>	<p>Due to the salary levels and the working conditions offered, the State encounters great difficulties for attracting the necessary human resources (technical and scientific) for the management of the water and sanitation services. Bureaucracy and corruption hinder the change.</p>
<p style="text-align: center;"><b>DRIVERS DEMO- GEOGRAPHIC AND SOCIO- ECONOMIC DIMENSION</b></p>	<p>Present delays regarding the coverage degree of the services (in terms of what has been agreed in the original concession contract), demand for the coming years, higher investments than expected, which are very unlikely (due to its social and economic impact) to be financed through generalised tariff increases.</p>		

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