

Mapping and Strengthening Water and Sanitation Service Regulation in Argentina: from Diagnosis to Policy Recommendations

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This article draws on a broader work on water governance in Argentina led by the OECD jointly with the Secretariat of Infrastructure and Water Policy of Argentina. It builds upon a one-year policy dialogue with 200+ stakeholders from public, private, non-profit sectors and representatives from across all levels of government in Argentina, which concluded with the publication of a report on [Water Governance in Argentina](#) (2019).

Water and sanitation services (WSS) regulation in Argentina has been analysed using the [OECD Water Governance Principles](#) (Figure 1) as a reading template which provides a framework to understand whether water governance arrangements are performing optimally and help to adjust them where necessary.

The legal and institutional framework for water and sanitation services in Argentina

The present legal and institutional setting

The current legal and institutional setting for WSS in Argentina is rooted in decades of decentralisation and constitutional reforms. In 1980, with the decentralisation of the state-owned Obras Sanitarias de la Nación (ONS) the provision of drinking water and

sanitation services was transferred to the 23 provinces of Argentina. In 1994, Argentina underwent a constitutional reform that introduced an environmental provision (Article 124) acknowledging the historical right whereby the 23 provinces and the autonomous city of Buenos Aires own their water and have jurisdiction over it. From then on, they were therefore responsible for the provision of water services within their own boundaries. Article 41 states that the national state may dictate minimum standards of quality and protection, which can be supplemented by the provinces. This means that the national government can establish a national water policy, strategy, programme or plan, but needs the support of the provinces to implement it (Figure 2). In practice, there is no national water law, and each of the 23 provinces and the city of Buenos Aires have their own water legislation, both for resources management and for WSS.

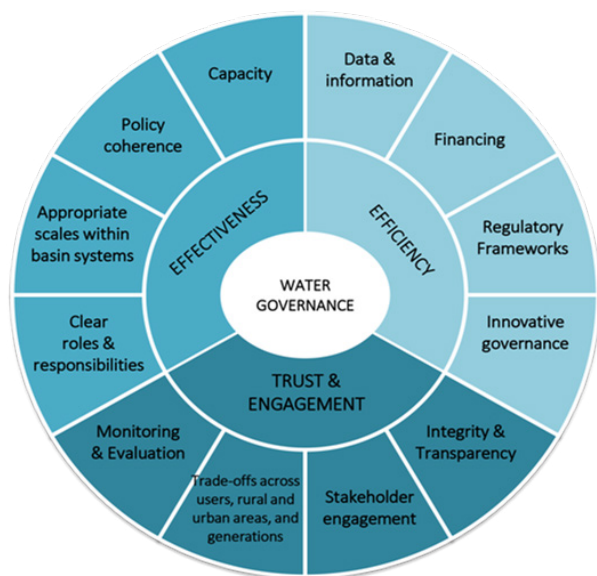


Figure 1. OECD Principles on Water Governance
Source: OECD (2015d)

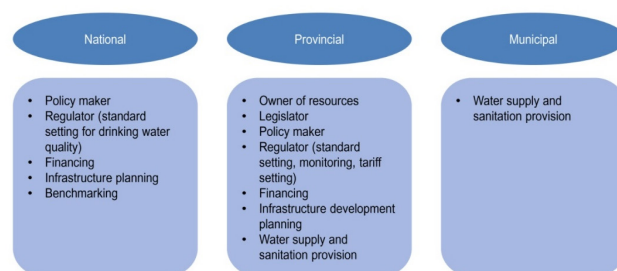


Figure 2. The allocation of responsibilities regarding water and sanitation services, Argentina
Source: OECD (2019b)

* The Water Governance Programme advises governments at all levels on how to design and implement better water policies for better lives. Water governance, defined as the set of rules, practices, and processes through which decisions for the management of water resources and services are taken and implemented, and decision-makers are held accountable, plays a key role in contributing to the design and implementation of such policies. OECD Water Governance Programme corresponding author: aziz.akhmouch@oecd.org

The national level

Since the recent elections held in Argentina in October 2019, the Ministry of Public Works has the sectoral competence for WSS policy at the national level. Within this ministry, the Secretariat for Infrastructure and Water Policy (SIPH) establishes the national policy and planning for water and sanitation services and decides the national financial resource allocation to and within the sector.

In particular, the SIPH is the enforcement authority for the regulatory framework for water and sewer services provided by Agua y Saneamientos Argentinos SA (AySA), which is a public limited company owned by the state (90%) and by the employees' union (10%). Currently AySA provides services to the capital of Buenos Aires and 26 municipalities in Greater Buenos Aires.

Two further self-governing bodies, the Water and Sanitation Regulatory Entity (Ente Regulador de Agua y Saneamiento, ERAS) and the Planning Agency (Agencia de Planificación, APLA) respectively have the functions of service provision control (including pollution control of water discharge) and review/validation of investment planning by liaising with the municipalities and concessionaires, and monitoring the execution of works.

| | Yes (Name) | No |
|---|---|---|
| Public water supply and sanitation operators | C.A.B.A. y 26 Partidos de la Provincia de Buenos Aires (ERAS-APLA) Buenos Aires (ADA) Catamarca (ENRE) Chaco ¹ (APA) Formosa (EROSP) Jujuy (SUSEPU) La Rioja (EUCOP) Mendoza (EPAS) Rio Negro ¹ (DPA) Salta (ERSP) Santa Fe (ENRESS) Tucumán (ERSPT) | Entre Ríos ¹ La Pampa ¹ Neuquén San Juan San Luis Santa Cruz Tierra del Fuego |
| Private water supply and sanitation operators | Córdoba ² (ERSEP) Corrientes (AOSC) Misiones (EPRAC) Santiago del Estero (ERSAC) | Chubut ³ |

Table 1. The existence of provincial regulatory authorities, Argentina

Source: SIPH (2016)

Notes: 1. Predominantly municipal. 2. Only the Córdoba drinking water service; other water and sanitation services are operated by municipalities and/or cooperatives.

3. Predominantly co-operatives, with one regulator for the city of Trelew. 4. Regulatory functions exercised by water directorates.

The subnational level

The most frequent institutional organisation structure at the provincial level consists of a body responsible for sector-based planning and revenue collection (provincial ministry, secretariat or undersecretary) and a regulatory body for WSS. When there is no economic regulator, as is the case in eight provinces (Table 1), the regulatory functions are exercised by provincial water administrations.

Economic regulators are generally responsible for regulating all the water and sanitation operators within a province or territory, including municipal operators and cooperatives, and generally apply the same regulatory framework across all the operators. However, the regulatory frameworks provide limited economic efficiency incentives to operators as financial operating cost recovery is generally sought through tariff increases, not efficiency gains. Furthermore, other financial and institutional incentives generally focus on short-term investment and solutions which can close gaps in access to services – there is no longer-term focus.

WSS are generally provided by provincial companies which cover the main cities in the provinces (except for the provinces of Chubut, Entre Ríos and La Pampa, where services in the main cities are provided by municipal entities and cooperatives). In many small localities and local communities, services are provided by the municipal administration, user cooperatives or community entities (Table 2).

Regulatory functions in water and sanitation services in Argentina

Regulatory functions in WSS encompass economic, environmental and social aspects. They can be shared among

| Water supply and sanitation providers | Geographical scope of the service provider | |
|--|--|-----------|
| | Provincial/regional | Municipal |
| Legal type of water supply and sanitation provider | | |
| Public operator | 15 | 13 |
| Private operator | 4 | 8 |
| Municipal centralised operator | 4 | 377 |
| Co-operatives | | 1 407 |
| Total | 23 | 1 805 |
| Population served (as a share of total population connected) | 70% | 30% |

Table 2. Scale and number of water supply and sanitation providers, Argentina

Source: SIPH (2016)

¹ Prior to the October 2019 elections in Argentina, the SIPH used to be within the Ministry of the Interior, Public Works and Housing which has now been split into two ministries: the Ministry of the Interior and the Ministry of Public Works.

several institutions but need to be clearly allocated to avoid overlaps and incoherence. Table 3 provides a list of regulatory functions WSS and the level and institution to which they are allocated in Argentina.

Regulatory functions in water and sanitation services in Argentina

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Quality and reliability standards

Whereas provincial regulatory authorities are in charge of drinking water and wastewater quality control, the national level defines compliance with bacteriological and chemical parameters and thresholds. While there have been no serious and widespread water quality breaches, many operators face specific compliance problems. Some are resolved within reasonable timeframes, but this is often not the case due to ineffective management or lack of resources. With regard to service continuity, some unscheduled service cuts or low-pressure issues can occur in the summer due to peak

consumption. In order to mitigate these problems, storage tanks are common, but they can generate drinking water quality issues. Likewise, in the outskirts of large cities, there are risks of poor water quality and pollution due to poor maintenance of networks and the precarious state of septic tanks. In addition, it is difficult to set a clear and sound diagnosis of the quality levels of water provided throughout the country due to very limited information being available. Large operators have quality-monitoring programmes, which sometimes involve the use of contracted specialised laboratory services which can guarantee the quality of the testing. While regulators are entitled to carry out additional verification inspections, they often only check the water quality information provided by operators.

Tariff regulation

Tariffs are proposed by operators to provincial or municipal authorities for approval before being reviewed and cleared by subnational regulatory authorities. In the case of AySA, the company proposes tariff increases to the SIPH, the authority responsible for tariff-setting. In Argentina tariffs are commonly set below cost recovery level for a large number of utilities. This reflects the trade-off made by public operators and local authorities between economic and affordability objectives. However, it has been ob-

| Regulatory function | Level in charge of exercising the function | Type of institution in charge of exercising the function |
|---|--|---|
| Tariff regulation | Subnational* | Regulator or provincial/municipal administration |
| Quality standards for drinking water | National and subnational | National Food Commission and regulator or provincial administration |
| Quality standards for wastewater treatment | Subnational | Regulator or provincial administration |
| Defining public service obligations | Subnational | Provincial administration |
| Defining technical/industry and service standards | Subnational | Regulator |
| Setting incentives for efficient use of water resources | Subnational* | Regulator or provincial administration |
| Setting incentives for efficient investment | Subnational* | Regulator or provincial administration |
| Information and data gathering | Subnational | Regulator |
| Monitoring of service delivery performance | Subnational | Regulator |
| Customer engagement | Subnational | Regulator or provincial administration |
| Consumer protection and dispute resolution | Subnational | Regulator or provincial administration |
| Licensing of water operators | Subnational | Provincial/municipal administration |
| Supervision of contracts with utilities/private actors | Subnational* | Regulator or provincial/municipal administration |
| Analysing water utilities' investment/business plans | Subnational | Regulator or provincial/municipal administration |

* For the Metropolitan Area of Buenos Aires, these functions are jointly exercised by a subnational and a national (SIPH) entity.

Table 3. Allocation of regulatory functions in water and sanitation, Argentina

Source: OECD (2019b) based on OECD (2015c)

² Food code and regulatory standards.

served that for some private operators (in Córdoba, Corrientes, Misiones, Santiago del Estero) higher tariffs and/or operating cost coverage ratios have been established as compared to public operators.

When there is no provincial dedicated regulatory authority, prices are directly approved by provincial or municipal authorities. The ‘*canilla libre*’ system⁹ completely disconnects tariff-setting from production costs and local conditions of service delivery, which prevents regulators from assessing efficiency and setting tariffs accordingly. This, in turn, fails to drive behavioural change towards lower water consumption and a reduction in operational costs.

Currently, periodic or ordinary tariff reviews are rare, especially in state-owned companies. In general, rates are increased on an annual or semester basis due to cost increases or extraordinary modifications.

Incentives for an efficient use of resources and spending

Water service providers are subject to the provisions of the General Environment Law No. 25.675 regarding environmental impact assessment, and to the requirements of Law 25.688 regarding water use permits for extraction and wastewater discharges. Nevertheless, there are currently neither systematic nor standardised *ex ante* economic and social assessment processes for proposed infrastructure development, with the exception of investment projects funded by donors, which usually include a cost-benefit analysis. As a result, most projects funded by the provinces are neither routinely appraised nor selected according to a cost-effectiveness, cost-benefit or multi-criteria analysis.

It is worth mentioning that for national projects financed by the national government the Public Investment Project Bank (BAPIN) verifies that investment projects to be incorporated in the BAPIN comply with certain standardisation criteria in order to allow comparability and prioritisation of their eventual inclusion in the national budget.

Nevertheless, due to the federal structure of the country and depending on the province, the limited scrutiny of resource use and spending is done either by a regulatory authority, the provincial administrative authority or a dedicated agency.

Social obligations

Given the multiplicity of subsidy systems in the different provincial and municipal jurisdictions – including direct, crossed and social schemes – it is difficult and complex to

compare situations and plans among providers. Nevertheless, the information regarding social obligations is only available at the operator level.

Participation by users and consumers

At the national level, there are legal guarantees for consumer access to information. Decree 1.172/2003 on Access to Public Information was promulgated in 2003. This decree contains five bylaws dealing with public participation in the drafting of regulations and access to public information. Also in 2003, the Law on Free Access to Environmental Public Information (Law 25.831) was passed. This law, which is applicable at the national, provincial and municipal levels, guarantees the right of access to environmental public information provided by the national government. In 2016, a Law on the Right to Access Public Information (Law 27.275) was passed establishing “the possibility to search, access, request, receive, copy, analyse, reprocess, reuse and redistribute freely information in custody” (Article 2). Article 42 of the National Constitution establishes that consumers and users of goods and services have the right to the protection of their health, security and economic interests; to adequate and truthful information; to freedom of choice; and to conditions of fair and dignified treatment. The protection of economic interests and the right to adequate and truthful information can be exercised by users against the service provider and before the regulatory authority.

In addition to these national, generic and overarching legal provisions, a few regulators and operators disclose information and data to the public through annual reports freely accessible on their websites. Furthermore, public hearings in the tariff adjustment process exist in several provinces (for example, Buenos Aires, Córdoba, Salta, Santa Fe, among others).

Handling consumer complaints and disputes

Each provincial regulatory framework stipulates specific mechanisms for consumer complaints and dispute-handling. In provinces where there is a regulatory authority, it generally exercises this function.

Collection of information

Despite recent efforts of the National Directorate for Water Supply and Sanitation (DNAPyS) to set up a national standardised data system, there is currently no unified col-

⁹ In the ‘*canilla libre*’ (free tap) system, a fixed rate is charged regardless of the water volume consumed, thus providing no incentives for the efficient use of water. This ‘free tap’ system is based on an old presumed consumption criterion taking into account the location, surface covered, quality and age of the property. These variables are supposed to reflect users’ income levels and therefore their ability to pay. However, the ‘*canilla libre*’ system appears somewhat outdated and would need to be modernised to ensure cross-subsidies between wealthy and vulnerable customers are still effective.

lection or monitoring system regarding the performance of WSS in Argentina. In each province, operators report information to their regulatory or administrative authority, and the nature and content of reporting varies between operators and provinces.

Regarding affordability, the National Institute of Statistics and Censuses (INDEC) is currently the main source of information at the national level, as it is in charge of preparing the National Household Expenditure Survey (ENGhO).

Regarding infrastructure maintenance data, there is no national or provincial information available. Two surveys are presently being carried out by the DNAPyS to identify the status of drinking water treatment plants and wastewater treatment plants.

Performance monitoring of service provision

There is currently no comprehensive performance-monitoring of service provision at the national level due to a lack of standardised data and indicator collection systems (see above). Nevertheless, as part of the NWSSP, the DNAPyS is implementing a performance-monitoring system using synthetic performance indicators encompassing technical and economic efficiency.

In the provinces, regulatory authorities publish reports on the performance of regulated providers. However, these reports remain largely descriptive and include neither regulatory recommendations nor targets. While only a few regulators publish reports regarding their yearly operations (including information such as financial execution, administrative compliance, activities undertaken, etc.), the publication of performance indicators measuring progress in achieving the regulator's policy objectives is not common practice.

Ways forward to enhance the regulation of water and sanitation services in Argentina

Implement continual and uniform information collection and performance-monitoring

The continual, consistent and standardised collection of information and data on the performance and efficiency of WSS across the country would be a key asset for the development and improvement of the sector. It could be used both to support the definition of public policies and to evaluate the service actually provided to society to convey a reliable and regularly updated overview of the sector. Such an information system would be useful for the DNAPyS to design relevant WSS policy targets, produce mid-term reviews and monitor achievements. It could also be used to

implement result-based funding allocation for investment projects and be a central element in incentive mechanisms.

An information system on the performance of WSS could also be used at the utility level to routinely report key performance indicators to the provincial regulatory entity in a uniform easy-to-interpret manner. For this purpose, performance evaluation should be done according to the underlying policy objectives targeted by the regulator. Finally, these key performance indicators could also be used as steering tools by utilities themselves to monitor and gradually improve their performance.

The set of indicators defined by the DNAPyS (based on 91 variables) could be supplemented with additional indicators to better reflect the overall quality and performance of utilities: continuity of service, collection period and ratio, metering level, sewer blockages, pipe breaks, average revenue per cubic metre produced and sold. In addition, a synthetic performance index could be built to give a quick and clear outlook on the performance of a utility compared to the rest of the sector.

Strengthen the independence of subnational regulators to lower the risk of political interference

In a fragmented, decentralised and politicised sector such as WSS, a certain degree of independence (or distance from political appointees) helps to overcome political interference in key decisions, such as tariff regulation. However, the extent to which a subnational body would manage to achieve the necessary level of independence is not clear. *De jure* independence is achieved through explicit reference in the law. *De facto* independence of regulators is ensured through a mix of governance features and operational modalities. These involve: independent decision-making, i.e. decisions that are taken without being subject to government assessment; staffing based on technical grounds rather than political criteria; protection of the board and top management from political interference; and a budget which does not depend primarily on the government (Figure 3).

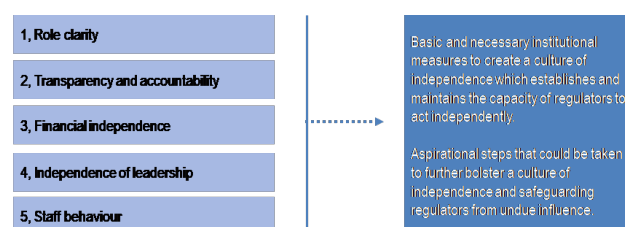


Figure 3. The five dimensions of independence of regulators

Source: OECD (2017)

Corporatisation for autonomous water and sanitation service operators

Decentralisation shifts the control rights of WSS to local government. With the limited political contestability of local elections, political interference may serve to slacken efforts to improve public services. Overcoming political interference requires strengthening the trend to make water utilities more efficient, self-sustained and performance-oriented. The corporate governance of utilities should ensure a clear separation of functions and responsibilities between utilities and local governments. This would help promote transparency and accountability, and avoid political interference. *“State-owned enterprises should observe high standards of transparency and be subject to the same high-quality accounting, disclosure, compliance and auditing standards as listed companies.”* (OECD (2015a).

In this regard, it is worth mentioning Administrative Decision 85/2018 of the Office of the Cabinet of Ministers of the National Government that approved the “Guidelines for Good Governance of Companies with Majority State Participation in Argentina” and Decree PEN 202/17 stating the procedure to be carried out in the case of conflict of interests of any person in charge of public procurement or licenses, permits, or authorization-granting over a public or private domain. Both regulations follow the guidelines established by the Inter-American Convention against Corruption and the United Nations Convention against Corruption, together with standards set by the OECD.

Accountability and stakeholder engagement

Accountability and transparency are the foundations of trust for economic regulators, but also a mechanism to align expectations between regulators and stakeholders. The main message is that compulsory or self-imposed practices in accountability and transparency promote the decision-making process and provide elements to lower the risk of regulatory capture.

Despite the existence of several national laws on access to information in Argentina, there is low/insufficient engagement between WSS users and operators. Strengthening users’ participation in water utility consultative bodies and in water decision-making is a necessary step and an essential accountability mechanism to ensure effective and efficient public services. There are various possibilities of engagement processes between customers and service providers, ranging from communication to co-decision and co-production (Figure 4).

Addressing financial sustainability

Revenues from water tariffs do not cover the costs of the water sector in Argentina. This is partly due to non-cost-reflective tariffs, a large amount of non-revenue water (NRW) and in some cases low staff efficiency. Nevertheless, financial sustainability of WSS crucially depends on revenue raised through tariffs (in addition to subsidies) to cover operation and maintenance costs. The politicisation of tariff-setting is an important barrier to more effective

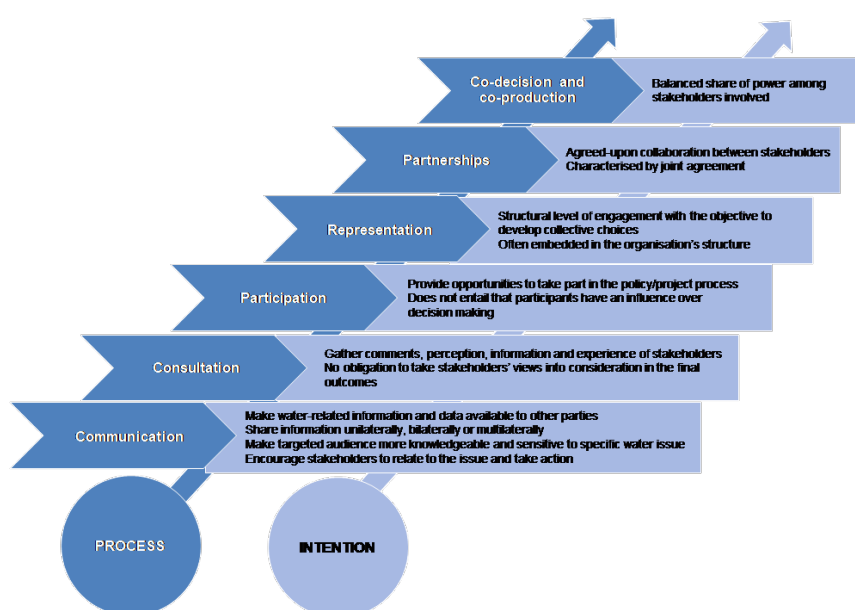


Figure 4. Level of stakeholder engagement
Source: OECD (2015b)

use of tariffs to promote financial sustainability. For instance, making tariff-regulation transparent and disclosing information and technical reports on the use of revenue would help to build a more consensual understanding of the link between tariffs and sustainability of service provision. In addition, operators should not only approach cost recovery through tariff increases but they should also as a priority seek efficiency gains, as there are many areas for improvement (staff efficiency, NRW, metering level, energy costs, etc.). Moreover, a sound accounting system should be put in place to enable optimal accounting management and documented tariff calculation. As the metering level increases, the '*canilla libre*' system should be progressively abandoned as it prevents tariffs from reflecting the real costs of service-provision and does not incentivise operators to be more efficient. In addition, improvement of providers' financial sustainability should go along with a fine-tuning of the subsidy system to target efficiency-vulnerable and disfavoured populations. This subsidy system should be designed carefully to avoid or at least minimize errors of exclusion and inclusion.

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