Human Rights violations in Brazil: access to clean water and basic sanitation

Communication United Nations Resolutions A/RES/64/292, A/RES/70/169 and A/HRC/RES/15/9

To: Petitions Sector, Office of the High Commissioner for Human Rights, United Nations Office at Geneva, 1211 Geneva 10, Switzerland

March 2018

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1. Introduction

This document presents a formal complaint to the United Nations, more specifically to the Office of the High Commissioner for Human Rights, whereby claiming that the Brazilian State, represented by its different levels of government and federative entities, has historically and systematically violated the human right to access drinking water and sewage services.

Although the Federal Constitution of Brazil and other infra-constitutional norms ensure this right, and even with the recognition of sanitation as a human right by the international community in 2010 and 2015, the Brazilian State has been neglecting the fulfillment of its non-delegable responsibility by not applying and implementing all the resources it has at disposal.

Detailed below are the national and international legal provisions constituting the complaint, as well as the reality data that allow to prove the violation of this right.

2. UN resolutions and violated articles

Res. A/RES/64/292[1] violated articles

(2) – State action to implement financial, structural and technological resources to increase efforts to promote access to safe drinking water and sanitary sewage, ensuring availability, quality, accessibility and acceptability.

Res. A/RES/70/169[2] violated articles

(5a) – State's obligation to ensure a progressive improvement of accessibility to safe drinking water and sanitary sewage, in order to eliminate inequalities of access, taking into account mainly socially fragile groups, slum dwellers and inequalities between urban and rural environments.

(5b) – That States consider their commitments under the 2030 Agenda for Sustainable Development, and the necessary implementation of SDG 6.

(5d) – That the State protect and promote the human right to water and sanitation based on public policies that consider structural difficulties and also from the availability of budgetary resources so that the necessary investments are made.

(9) – State acknowledgment of basic responsibility of ensuring water and sanitation for all.

Res. A/HRC/RES/15/9[3] violated articles

(3) – Affirms the direct relationship between water and sanitation with housing conditions and the impacts on physical and mental health as well as the fundamental rights of dignified life and human dignity.

[1] https://undocs.org/A/RES/64/292
[2] https://undocs.org/A/RES/70/169
[3] http://undocs.org/A/HRC/RES/15/9

(6) – Reaffirms the non-delegable obligation of States to ensure and promote the human right to water and sanitation, regardless of the situations where services have been delegated to a third party.

(8a) - States need to develop appropriate tools, including financial ones, to progressively achieve universalization of sanitation.

Application to other international procedures

To date, this issue has not been the subject of any other international investigation or solution procedure.

Exhaustion of domestic remedies

Brazilian society, through academia, non-governmental organizations and the media, has historically warned the Brazilian State about the ills caused by the lack of sanitation and the needs arising from this scenario. The data presented in this petition shows that, despite these warnings, the sanitation situation is progressing extremely slowly, as a result of the absence of a clear and objective State policy to overcome this situation. These facts, coupled with the urgent measures needed to reverse the problem, leads to the need to appeal to international forums, of which Brazil is a part.

3. Facts of the complaint

a. Internal framework

The Federal Constitution of the Federative Republic of Brazil[4], enacted in 1988, establishes two fundamental aspects for understanding and analyzing critically the reality of sanitation in the country. In the chapter on fundamental rights and guarantees, it is established that, among others, health and housing are guaranteed social rights (Article 6). Given the close relationship between lack of sanitation and the impacts on collective public health and the guarantee of decent housing, the impact in terms of social rights is clear. The second important point for the sanitation context in the Constitution refers to the common competence of the Union, the States, the Federal District and the Municipalities to promote initiatives to improve basic sanitation (article 23, IX).

Only 19 years after the enactment of the Federal Constitution, Brazil approved its National Policy on Basic Sanitation, based on Federal Law No. 11.445[5], dated January 5, 2007, establishing the general bases and guidelines for a State policy to be developed. The first fundamental principle present in this Law is the universalization of access, as stated in its art. 2, item I. This principle establishes the obligation of the Public Power to ensure that all Brazilian society has access to drinking water supply, sewage, urban cleaning and solid waste management services, taking into account the basic conditions of public health and protection to the environment.

Specifically in relation to the role of the Union, Article 48 of Law 11.455/07 defines a set of guidelines, including the "application of the financial resources it administers in order to promote sustainable development, efficiency and effectiveness "(Item II).

The regulation of Law No. 11.445 / 07 was only approved three years after its promulgation, with the issuance of Federal Decree No. 7.217[6], dated June 21, 2010. It reaffirmed the basic premises regarding the essential nature of basic sanitation and the principle of universalization of

[4] http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm
[5] http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/lei/l11445.htm
[6] https://goo.gl/5Mx76t

access. Among the directives that the decree expressly reaffirms are the priority for actions promoting social and territorial equity in access to sanitation.

Finally, in 2013, with a delay of 25 years in relation to the promulgation of the Federal Constitution, the National Plan for Basic Sanitation (Plansab) was published, where the basic guidelines of the legislation were translated into goals and indicators. One of the main commitments of the Brazilian State established in this document was the goal of universal access to sanitation throughout the country until 2033.

Although national policy and its instruments are relatively recent, as a consequence of the evident lack of priority given to the question by the Brazilian State, this fact cannot justify the slowness in investing all available efforts and resources to make the universalization of the sanitation in the country is achieved as soon as possible.

In addition to the internal framework presented, there are several international commitments assumed by Brazil vis-à-vis the international community in the water and sanitation agenda, which will be presented in the following section.

b. International framework

The international community is gradually incorporating the importance of sanitation in its official documents. A brief redemption of the main decisions that directly and indirectly impact this agenda allows us to clarify the motivations in expressly recognizing access to sanitation as a fundamental human right issue and the fact that the Brazilian State clearly violates this right.

In an indirect way, it is possible to identify a series of devices agreed over the years that are related to sanitation, involving health, gender, housing and other issues.

Article 25 of the Universal Declaration of Human Rights, proclaimed by the UN General Assembly in 1948, states that "Everyone has the right to a standard of living adequate for his health and well-being, and food, clothing, housing, medical care and the necessary social services (...) ". Notably, the rights to well-being, housing and social services are related to the

sanitary conditions to which individuals are exposed, such as not having their sewage collected or having to live with water bodies that serve as a place of effluents eviction.

The International Covenant on Economic, Social and Cultural Rights, adopted by the UN General Assembly in 1966, emphasizes the obligation of States to implement measures that constantly improve the rights of all people to a minimum standard of living to enjoy well-being:

> "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent." (Article 11)

The Convention on the Elimination of Discrimination against Women (1979), more specifically in its article 14, requires States Parties to eliminate discrimination, inter alia, in the health of women living in the rural environment so that they can enjoy conditions health services. This convention was enacted and its provisions internalized in the legal system of Brazil as of Decree No. 4.377/2002.

The International Convention on the Rights of the Child, adopted in 1989, explicitly identifies in article 24 that children have the right to the best possible health status, especially in relation to sanitary conditions. It is noteworthy that this convention was incorporated into the legal framework of Brazil as of Decree No. 99.710 of 1990, which guides the execution and full compliance of its content.

Already in 2003, the UN Committee on Economic, Social and Cultural Rights (ESCR) released its "General Comment No. 15" (E/C.12/2002/11) on the human right to water. In this document, ESCR has recognized the limited nature of water and the fact that it is also a public good that is fundamental to life and health. Thus, ESCR reinforced the understanding that the human right to water is indispensable for the realization of a dignified life.

More directly, arrangements have recently been made within the United Nations (UN) that explicitly recognize access to sanitation services as a fundamental human right.

In July 2010, the UN General Assembly adopted Resolution 64/292 recognizing the human right of access to safe drinking water and sanitation as essential to the integral enjoyment of life and

other human rights. In its Resolution No. 2, the Resolution calls upon States and international organizations to provide financial, technical and technological resources to increase efforts and improve sanitation conditions:

> *"Calls upon States and international organizations to provide financial resources, capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all."*

In October of the same year, the UN Human Rights Council (HRC) adopted Resolution 15/9. In it, the HRC affirms that the human right to access to drinking water and sanitation derives from the right to adequate standards of living, linked to the conditions of mental and physical health, as well as the right to a dignified and humane life. In that same document, the HRC reaffirms the primary responsibility of States to fully guarantee the realization of all human rights and that the fact that the provision of sanitation services is subject to delegation does not exclude or limit such responsibility.

More recently, in December 2015, the UN General Assembly issued Resolution No. 70/169 reaffirming and distinguishing rights of access to drinking water and depletion as two distinct and complementary rights. The Resolution indicates the obligation of States to ensure that there is continuous progress in guaranteeing the human rights of all people to sanitation. Once again, the primary responsibility of States to guarantee this human right is highlighted.

In addition to all the documents presented previously, it is also necessary to consider the Sustainable Development Objectives (SDG), agreed by 193 member countries of the United Nations, including Brazil, at the Summit of Sustainable Development in September 2015. Specifically, SDG 6 foresees the need to "ensure the availability and sustainable management of water and sanitation for all" by 2030.

Finally, it is important to note that the UN General Assembly, through Resolution A/C.2/71/L.12/Rev.1 of November 2016, promulgated the "International Decade for Action - Water for Sustainable Development" for the period 2018 to 2028. This fact represents yet another commitment of the international community to the sustainable management of water.

4. Sanitation situation in Brazil and its consequences

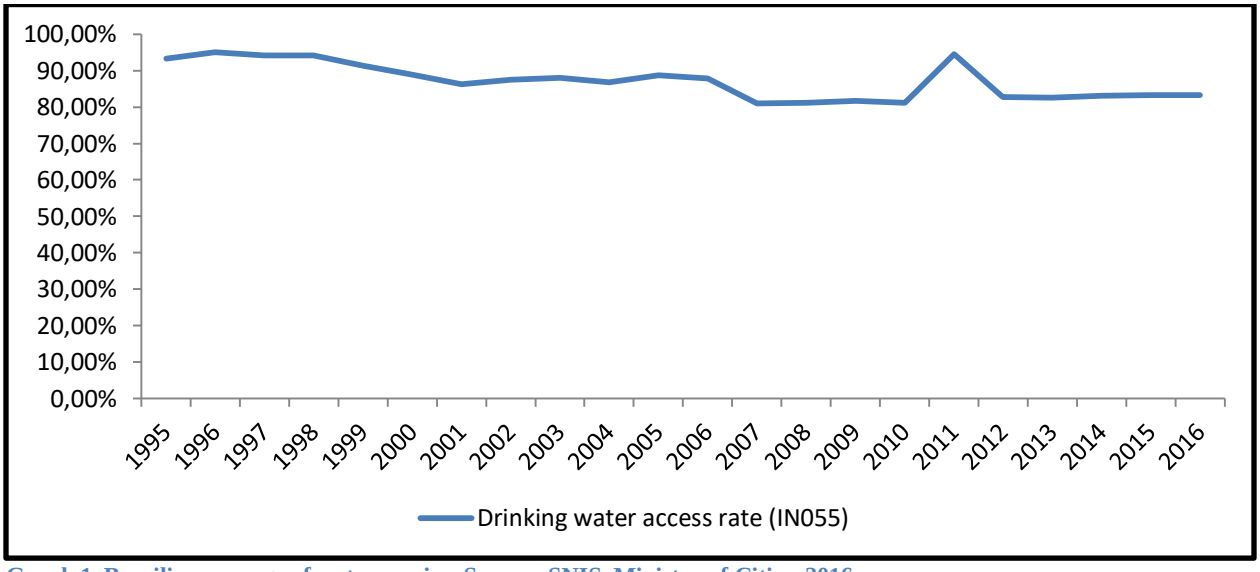
a. Low service levels

The indexes and official data available in the National Sanitation Information System (SNIS), prepared by the Federal Government's Ministry of Cities, during the period 1995 to 2016, demonstrate how access to drinking water and sewage services, as well as the conditions of efficiency of the service provided, have not evolved over the last 21 years in the country.

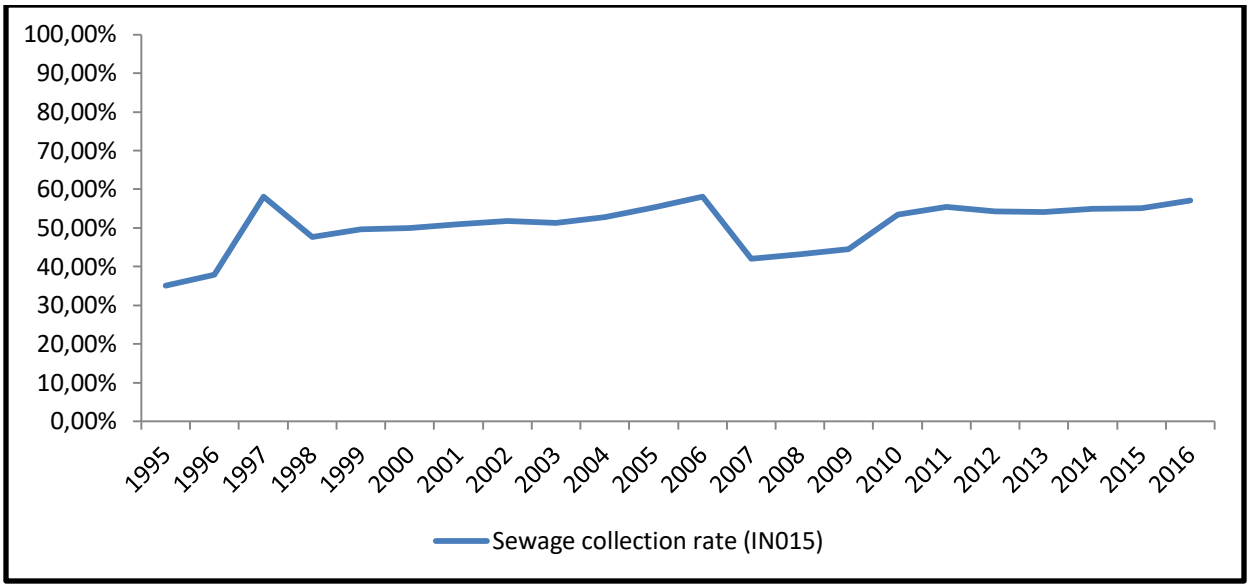
In terms of drinking water supply, there was a deterioration in the provision of this essential service, which resulted in the reduction of the population served from 93.3% in 1995 to 83.3% in 2016, as shown in chart 1 and table in the annex.

The evolution of the sewage collection rate is practically stagnated, having declined in the last 11 years, when it fell from 58.1% in 2006 to 57% in 2016 (figure 2 and table in the annex).

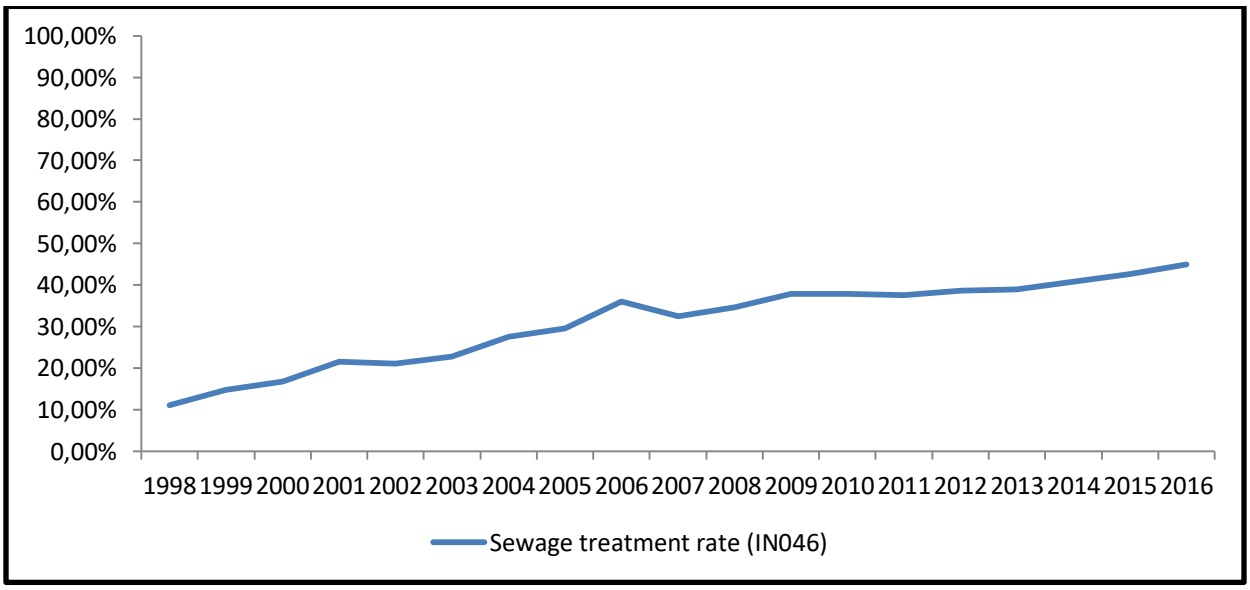
Sewage treatment, although it has evolved in the last 18 years, reached only 44.9% in relation to the total generated in the country in 2016 (figure 3 and table in the annex).



Graph 1. Brazilian average of water service. Source: SNIS, Ministry of Cities, 2016.



Graph 2. Brazilian mean of sewage collection. Source: SNIS, Ministry of Cities, 2016.



Graph 3. Brazilian mean of sewage treatment. Source: SNIS, Ministry of Cities, 2016.

The low levels of sanitation in the country, previously demonstrated, have a direct impact on the quality of life and health of Brazilians, specifically the 34 million who do not have access to treated water and the more than 100 million excluded from the sewage service in their households.

Further observations can be made regarding the data presented in the SNIS. Firstly, it is important to highlight that the data for the year 2016, were only released in February 2018. This fact gives an indication of the relevance and importance that the authorities involved in the processes of completion and systematization give to the national information system in sanitation.

The responsibility to send the information, so that it is then organized and presented on the page of the Ministry of Cities, is of the service providers themselves. That is, they are self-declaratory data, regardless of whether the service is provided by municipal authority, state company, and private company or any other model (consortia, regionalized rendering, PPP, or other model). In 409 of the 5570 Brazilian municipalities it is not possible to know the water supply index, and in 3083, corresponding to 55% of the total, it is not possible to know the rates of collection and treatment of sewage, because the data were not sent to the national system.

b. Municipalities and their responsibilities

The denunciation carried in this document is directed to the Brazilian State at all levels of government, including the municipalities, which are the holders of basic sanitation services in Brazil[7]. The legislation of the sector determined that the holders have the non-delegable competence to plan the execution of the service provision, which is conceived from the municipal sanitation plans[8].

Despite this responsibility, the current context demonstrates in many ways that a large number of municipalities are silent on basic sanitation. In 2017, ten years after the creation of the National Policy on Basic Sanitation, only 1693 municipalities, equivalent to a mere 30% of the total in Brazil, had their respective Municipal Sanitation Plans[9].

[7] In metropolitan regions, the Supreme Federal Court decided that the sanitation's ownership must be shared among the municipalities and the state.
[8] "O Município e a governança da água: Subsídios para a agenda municipal de cuidado com a água", 2017: https://www.aliancapelaagua.com.br/wp-content/uploads/2017/04/relatorio-municipios.pdf
[9] "Panorama dos Planos Municipais de Saneamento Básico", 2017: http://www.tratabrasil.org.br/datafiles/estudos/panorama-dos-pmbs/panorama-completo.pdf

In theory, the absence of a municipal plan would legally prevent all stages of the service execution, from regulation to contracting. In addition, municipalities without municipal plans, in theory again, would not have access to federal resources. However, in December 2017, with the Federal Decree No. 9.254/2017[10], the federal government extended the requirement for the third time, so the new term for the municipalities is until December 2019.

Finally, in general, there is still a relevant preponderance of state governments in actions in sanitation, in detriment of the necessary relevant role. In part, this situation is a consequence of a historical inheritance of the Brazilian sanitation system created in the 1970s from the National Sanitation Plan (PLANASA) by the military government. The fact is that a large number of local governments are omitted from sanitation issues, as was the case of the São Paulo municipal government during the region's water crisis in 2014 and 2015.

c. Regional inequality

The problem is aggravated by the social injustice represented by the close relationship between the socioeconomic development indexes and the conditions of basic sanitation in the different regions of the country. The most precarious sanitation conditions are concentrated mainly in the poorest regions. This is a clear affront to Article 48 of the National Policy on Basic Sanitation (Federal Law No. 11,445/2007), more specifically to its section I, which states: "The Union, in establishing its basic sanitation policy, shall observe the following guidelines: priority for actions that promote social and territorial equity in access to basic sanitation. "

It is possible to observe that on average, according to official data released by the Brazilian government, Brazil has very low rates of basic sanitation, with 83.3% access to drinking water, 57% of sewage collection and only 44.9% of sewage treatment (SNIS, 2016). Therefore, in a position far removed from the legal obligation assumed to reach the universalization until 2033, embodied in Plansab. Even less than desirable, these averages at the national level hide the reality observed along the Brazilian territory of continental dimensions, with more than 8.5 million km².

[10] http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2017/Decreto/D9254.htm

In this sense, the table below shows a regional inequality in terms of access to these services, which is at the same time the cause and consequence of other development indices. The northern region, where there is the highest per capita water availability in Brazil, where the Amazon River is also located - the largest river in the world in terms of size and volume - has the worst indices in relation to the three aspects (water, collection and treatment). The Northeast region, in turn, occupies the penultimate place in all three aspects. Both regions have the greatest socioeconomic vulnerabilities, and the lack of sanitation, therefore, is the cause and consequence of this reality.

The Southeast region, with the highest population concentration and the highest rates of development, presents the best rates for drinking water and sewage collection. In relation to water, the index is close to 100%, even if leaving the current 91.24% and achieving universalization represents a major challenge. In terms of collection, even occupying the first position, the Southeast still has a bad index, with only 67.91% of sewage collection.

In fact, the scariest index is the treatment of total sewage generated. In this case, the Central-West region occupies the first position, not worthy of celebrations, with 52.62% of treatment of sewage.

Region	Drinking water access rate (%)
Southeast	91,24
Midwest	89,67
South	89,36
Northeast	73,63
North	55,37

Region	Sewage collection rate (%)
Southeast	67,91
Midwest	57,06
South	45,72
Northeast	39,71
North	20,17

Region	Sewage treatment rate (%)
Midwest	52,62
Southeast	48,8
South	43,87
Northeast	36,22
North	18,3

Table 1. Sanitation index by region. Source: Snis, Ministry of Cities, 2016.

d. Socioeconomic impact

The existing sanitation deficit in Brazil generates negative impacts on other areas of society's daily life, harming the quality of life of the entire population. The damages caused to collective health are enormous and their order of magnitude can be evaluated when considering the hospitalization rate due to waterborne diseases. According to the data presented in a study by the

Ministry of Health (2015)[11], in 2013, every 100 thousand inhabitants Brazil presented an average of 300 hospitalizations.

A recent study by the Trata Brasil Institute (2017)[12] revealed that the lack of sanitation reduces the productivity of children and young people and increases the number of school absences, generating an estimated cost of R$ 16.6 billion in 2015. The same study data that reinforce the understanding that investing in sanitation, besides positively impacting the health and physical and intellectual development of the population, brings other important benefits such as the reduction of health expenses, where there is potential for the next 20 years to be able to stop running expenditures in the order of R$ 7.2 billion, considering the economy on days away from work and hospitalization expenses, among others. Other benefits are considered in this study, such as real estate valuation linked to improvements in sanitation conditions, tourism appreciation due to the improvement of the environment and job creation resulting from investments and sanitation works.

e. Public investment reduction

The situation of investments in the sanitation sector in Brazil reflects an extremely contradictory reality in relation to the commitments assumed with its universalization. A report published in 2016 by Trata Brasil Institute (2016)[13] analyzes the evolution of the Federal Government's Growth Acceleration Program (CAP) for sanitation, called PAC Sanitation. In the period from 2009 to 2015, two stages, called PAC 1 and PAC 2, were carried out, with the execution of 340 constructions at a cost of around R$ 22.07 billion. Of the total invested, 24.8% came from the General Budget of the Union, 55.3% from Caixa Econômica Federal and 19.8% from BNDES. Most of the constructions, 41%, were implemented in the Southeast region, reinforcing the distortions and needs of the different regions of Brazil, as discussed above.

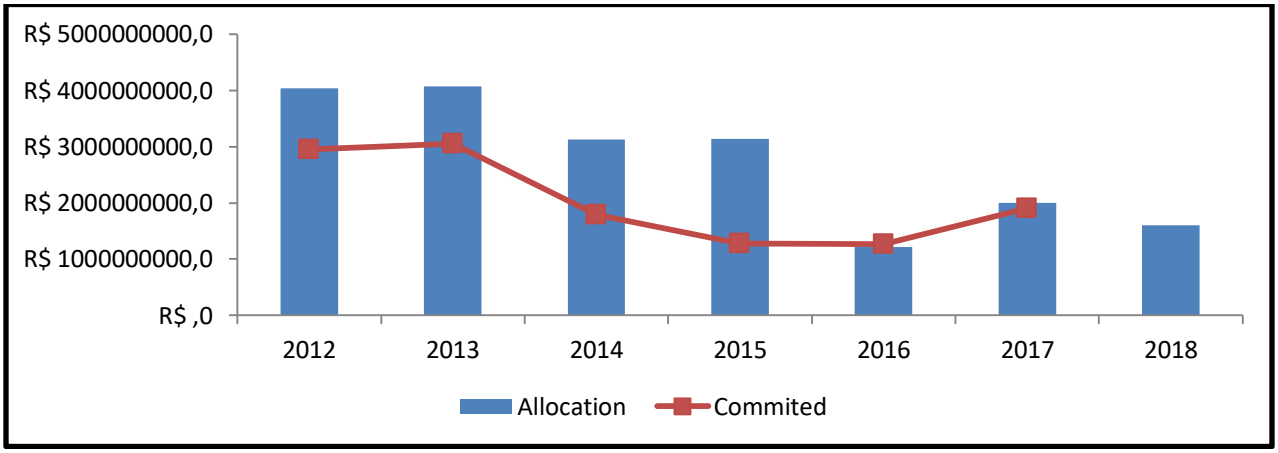
[11] "Análise de indicadores relacionados à água para consumo humano e doenças de veiculação hídrica no Brasil, ano 2013, utilizando a metodologia da matriz de indicadores da Organização Mundial da Saúde (OMS)": http://portalarquivos.saude.gov.br/images/pdf/2015/marco/10/analise-indicadores-agua-10mar15-web.pdf

[12] "Benefícios econômicos e sociais da expansão do saneamento no Brasil": http://www.tratabrasil.org.br/datafiles/estudos/beneficios-ecosocio/relatorio-completo.pdf

[13] "Relatório – 7 anos de acompanhamento do PAC Saneamento (2009 a 2015)": http://www.tratabrasil.org.br/datafiles/de-olho-no-pac/2016/relatorio.pdf

Considering specifically the heading of the thematic program of sanitation, of the Annual Budgetary Law (LOA) of the Union of 2018, presented by the Executive Power and endorsed by the Legislative Power, it is possible to identify a clear tendency of a constant decrease over the years of investments in this area. These resources are intended to promote structural and structural measures in rural areas and traditional communities, actions to increase the supply and access to sanitation services in small municipalities (up to 50,000 inhabitants), and improvement of management and provision of services, carried out mainly by Ministries of Health and Cities.

Figure 4 shows the significant drop in federal investments in basic sanitation in Brazil between 2012, when the amount committed to these actions was in the order of R$ 2.9 billion, and 2018. For the current year, the allocation for federal resources in basic sanitation in every country is R$ 1.6 billion, decreasing more than 50% in 7 years.



Graph 4. Union annual budget. Thematic program on basic sanitation. Source: Ministry of Planning, Development and Management.

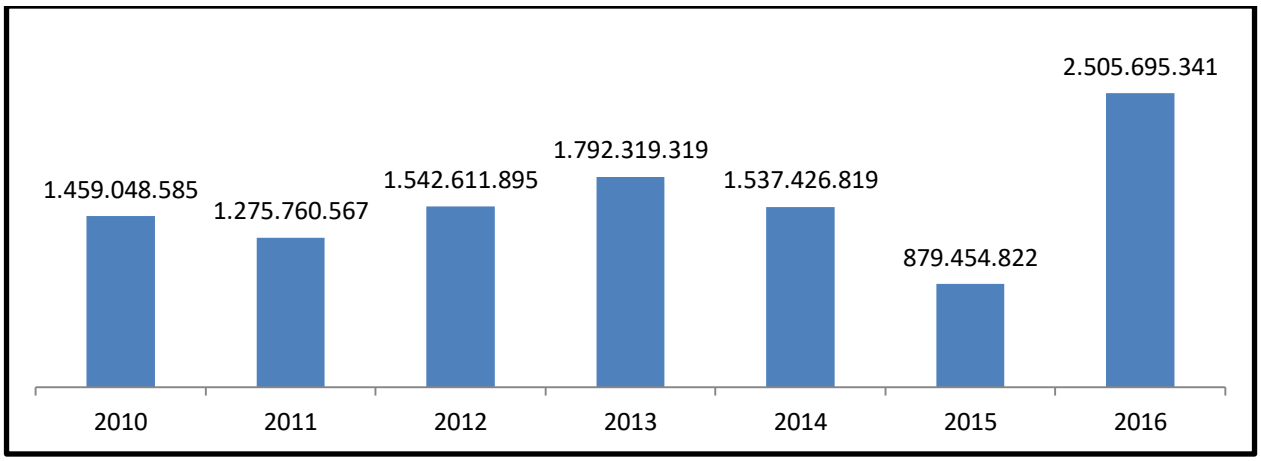
These financial data clearly violate the guidelines established in the National Policy on Basic Sanitation, Federal Law No. 11,445/2007, regarding the role of the federal government. Article 48, section II, determines the application of Union financial resources with the aim of promoting sustainable development, efficiency and effectiveness. As shown in Figure 4, there is a visible trend, a drastic and constant fall in the resources available for various investments in basic sanitation.

f. Sanitation resources withdrawal by the Public Power

Considering the operating structure of the system and the reduced values made available by the public sector, most of the resources invested in improvements in sanitation come from the fees paid by consumers to service providers. This fact creates a contradiction that aggravates the problem of financing the sector. The reason for this is, in addition to systematically reducing investments, the Public Authorities annually withdraw from the concessionaires that operated the water supply, sewage collection and treatment systems, large amounts of financial resources in the form of Income Tax, social contribution, Contribution to (PIS/PASEP) and Contribution for Social Security Financing (COFINS), which are federal taxes. In addition to the taxes collected, the Government also withdraws financial resources from the sanitation sector when it receives the dividends for the state's shareholding in state sanitation companies.

As an example, Sabesp, the São Paulo sanitation company, the largest in Brazil, paid R$ 1.1 billion to the federal government as Income Tax and social contribution and about R$ 360 million to the government of the state of São Paulo in dividends, only in 2016.

Considering the universe of the 27 states and district companies operating in the country, the collection of Income Tax and Social Contribution withdrew R$ 10.9 billion from the sanitation sector in the country in the last six years, from 2010 to 2016 (figure 5).



Graph 5. Income and social contribution taxes paid by state sanitation companies. Source: Financial statements of the respective companies.

The subtraction of large resources from the sanitation concessionaires before reaching the universalization of services deserves deep questioning, especially in a scenario of strong reduction of public investments.

In a quest to partially reverse this problem, the National Congress approved in 2016 the Law 13,329, which would allow increased investments by sanitation companies, through the receipt of credits from PIS/Pasep and Cofins contributions, for a period of five years extendable. According to forecasts made at the time, about R$ 10 billion over five years would be added in investments for the universalization of water and sewage service in the country. The law, meanwhile, received a partial veto by the President of the Republic, which eventually disfigured its purpose, on the grounds of the loss of revenue without the indication of another source for compensation.

It is clear that, in addition to the State not complying with its obligation to provide the basic public sanitation service and not putting all the efforts available to achieve universalization, it withdraws relevant financial amounts from the system, reducing the capacity of investments.

Given the scenario of the investments that have been made, a recent study by the National Confederation of Industries (2017)[14] indicates that, if the budget allocation of the last years is maintained, Brazil will only fully reach the universalization of sanitation in 2054. This projection demonstrates a true affront to all the internal and international commitments that the Brazilian State has taken to the society and the international community, since Plansab stipulates the horizon of 2033 and the SDGs of 2030, to reach the universalization until 2030.

Recent developments in Brazil regarding sanitation indicate that the Brazilian State is going against all the content previously exposed. Regardless of ideological nuances, there is a strong movement, coordinated by the federal government, to privatize about 15 of the 27 state sanitation companies. What reinforces the argument of this complaint is that this process is apparently not being conducted with the main objective of seeing improvements in sanitation conditions and access to this basic service. The calculations and choices made are simply based on economic considerations, removing the responsibility of the State to carry out these services. Again, this is

[14] "Burocracias e entraves ao setor do saneamento": http://arquivos.portaldaindustria.com.br/app/conteudo_18/2016/01/11/10388/1101-BurocraciaeEntravessaneamento.pdf

not a rational choice that considers the needs of Brazilian society, considering the strengths and weaknesses of public, mixed or private models for the realization of services. The privatization process of Cedae, a state-owned sanitation company in Rio de Janeiro, is the most advanced case and explains the lack of commitment to solutions that contribute to improving sanitation rates in the country, mainly due to the fragility of the state government budget and need to cut costs.

Finally, it is important to note that there is no justification for the fact that sanitation data in Brazil have such low indexes. Emerging economies with a similar level of income have access to better sanitation. While Brazil has sewage coverage of 83%, Argentina has 96%, Chile 99%, Paraguay 89% and Uruguay 96%. Unfortunately, in the short and medium-term horizon there is no indication to Brazilian society of real possibilities for this scenario to advance to the satisfaction and, therefore, the need for society to manifest itself and to claim this human right, asking the Brazilian State for new positions that make it possible to reach universalization as soon as possible.

g. Lack of transparency and access to information

Brazil's situation regarding the right of access to safe water for sanitation can also be analyzed from the point of view of access to information and transparency of information. In addition, the SDG 6 already mentioned here foresees targets in this regard, especially in target 6.b which points to the need to "support and strengthen the participation of local communities in improving water and sanitation management."

In this aspect, Brazil also presents a reality that is not as desired, where institutions responsible for sanitation demonstrate a low level of transparency in their decision-making processes and in the availability of data to society. According to data produced by the NGO ARTICLE 19 and the University of São Paulo/GovAmb (2016)[15], in the period 2013-2015, sixteen of the twenty-six states and the Federal District (representing 61.6% of the country) presented a worsening in the Index of INTRAG Transparency. This index assesses, among other topics: transparency in

[15] "Transparência na Gestão dos Recursos Hídricos no Brasil": https://goo.gl/zoe4Hz

planning processes, transparency in the management of water resources and their uses, economic-financial transparency and transparency in contracts and bids.

Two cases serve as an example of lack of transparency: the management of the water crisis in the State of São Paulo (2014-2016) and the attempted decontamination of the Guanabara Bay (1994-2015) in Rio de Janeiro.

In the period of the most critical water crisis in the recent history of the Metropolitan Region of São Paulo, water governance was characterized by the secrecy of information in several federal, state and municipal bodies. Low transparency in management bodies was one of the main obstacles to reducing the damage caused by the water crisis and formulating solutions to the crisis. Of the fourteen agencies analyzed in the NGO research paper ARTICLE 19 (2016)[16], seven presented "low" or "no" transparency in 2016. To cite an example, in October 2015, data from the water and sewage system of one municipality (Including water distribution by location) were declared confidential by the state governor, preventing the population from knowing more precisely which districts were affected by water rationing.

The decontamination of Guanabara Bay in the city of Rio de Janeiro refers to a process started in 1994 and extending to the present. The lack of transparency of water and sewage governance bodies in Rio's state and municipality undermined social participation and control, making it almost impossible to monitor the public policies implemented in the region. According to ARTICLE 19's report (2016)[17], these bodies did not comply with the standards of active transparency (proactive official publication of public agency websites) established by the federal law on access to information (Law 12.527/2012[18]) nor did they respond adequately to most requests for information on the decontamination process.

These two cases demonstrate how, in general, the Brazilian State positions itself in terms of transparency of data central to water management in the country, and does not provide the information necessary for society to monitor public water and sanitation policies and indicators,

[16] "Sistema Cantareira e a Crise da Água em São Paulo – falta de transparência, um problema que persiste": https://goo.gl/wPqXv7

[17] "Águas turvas, informações opacas: uma análise sobre a transparência dos programas de despoluição da Baía de Guanabara": https://goo.gl/LGmwzC

[18] http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12527.htm

in addition to participate in its formulation, implementation or evaluation. Consequently, the right to water itself is objectively harmed.

h. Impact of infrastructure projects in sanitation

The National Council for Human Rights published a report analyzing the impact of seven large-scale infrastructure projects, during a period of four years, by which it concluded that these activities represent a driver of negative impacts in terms of the human rights of local communities. These analyses were confirmed by the UN Working Group on Business and Human Rights, who visited the country in December 2015[19].

In December 2013, Catarina de Albuquerque, Special Rapporteur of the United Nations on the human right to water and sanitation, emphasized after an official visit to Brazil the need for the Brazilian State to ensure that commercial interests do not override human rights law and also that the human right to water is not put at risk[20]. Nevertheless, recent examples reinforce the need for the State to be aware of the impacts that certain enterprises cause. Among the examples that we draw attention to in this report are the cases of the hydroelectric plant of Belo Monte and of the miner Hydro Alunorte, both in the state of Pará, of the mining company Samarco, in the state of Minas Gerais, and of Suape Port in Pernambuco.

The Belo Monte Power Plant is the third largest hydroelectric dam in the world, built in spite of strong opposition from local communities and civil society organizations. Currently, 13 of its 24 generating units are in operation and the full operation is scheduled for 2019. The compliance with social and environmental conditions, defined in the scope of the environmental licensing process, by Norte Energia S.A., the company responsible for the construction of the project, has been object of complaints. In a document prepared in 2016 by the UN Working Group on Business and Human Rights and sent to the UN Human Rights Council, the situation of local communities has been reported, which have had to survive in flooded places since the hydroelectric plant began operating, having to live with the accumulation of garbage and sewage.

[19] http://bit.ly/2FUDXVb
[20] http://bit.ly/2ICw8oQ

One of the conditions in this megaproject was the development of the entire sanitation system of the city of Altamira, the main urban area impacted by the construction. However, even two years after the beginning of the operation of the Belo Monte hydroelectric plant, the fulfillment of this obligation is still incomplete. According to the National Human Rights Council, "the noncompliance with the environmental condition of completion of basic sanitation works for the whole municipality, scheduled for September 2016, is detrimental to the dignity of the human person of the residents of Altamira, hurting the full enjoyment of rights access to health and the balanced environment"[21].

In addition to the sanitary sewage conditions, quality water supply capacity was also negatively impacted, since the waters of the Xingu River were also compromised due to the accumulation of organic material.

More recently, on February 17, 2018, all the Brazilian media covered the situation in the city of Barcarena, also in the state of Pará, where, after torrential rains, the tailings dam of the Norwegian miner Hydro Alunorte leaked. During the investigation, the Ministry of Health became aware of clandestine pipes that illegally played part of the tailings of the company's operation directly in nature. The company, in turn, assumed that leaks occurred because the refinery's treatment plant was under pressure from the rains.

High levels of aluminum and other contaminant residues were found in government-tested water samples, which provide strong evidence of correlating the company's leakage situation and the water quality of the site. Local communities are already suffering from the impacts of water contamination. The vast majority of people access water from underground wells, which are also being contaminated by overflowing rivers (which are contaminated). Several cases of health problems related to contact with contaminated water have already been reported in Barcarena, including skin diseases, gastrointestinal and respiratory diseases.

The case of the tailings dam at Samarco is another example of the impact that certain infrastructure projects have on social and environmental conditions and, therefore, hinder, among other factors, the right of access to quality water and to have a service of sewage. On November

[21] http://www.mdh.gov.br/sobre/participacao-social/cndh/relatorios/RelatriodeBeloMonteBeloSun_aprovadocomrevisaoDOPLENRIO.pdf

5, 2015, the Fundão dam collapsed, dumping approximately 25 million cubic meters of toxic waste from the mining activity into the environment. The Mariana disaster, considered the worst in Brazilian history, has contaminated rivers, soil, vegetation and vital water sources with heavy metals from the site of the dam in the state of Minas Gerais to the mouth of the Rio Doce in Resende in the state of Espírito Santo. Immediately after the disaster, the United Nations Special Rapporteur on Sanitation argued that the distribution of bottled water to society was insufficient and disorganized, and that information on water quality was inconsistent and inadequate[22].

Finally, the Suape Port, in the state of Pernambuco, represents another example of the negative impacts of certain infrastructure projects in the society, among then, the capacity to access drinkable water and sanitation. Suape is a 13,500-hectare complex formed by more than 100 companies, including a port, industries, a power plant, and an oil refinery. The construction of the port and the infrastructure for the industrial complex in an area of estuaries of four large rivers has caused significant impacts to the local ecosystems. Landfills, dredging and damming have caused drastic changes to the hydrodynamics of the region. Communities traditionally dependent on the sea have lost access to their subsistence means, either because they can no longer enter certain areas, or because environmental changes have been so severe that fishing, shellfishing, and other traditional activities are no longer possible. These families have been impoverished and suffer with health diseases, including skin rashes and allergies.

The examples cited here illustrate the importance of the State's role in monitoring economic activities so that its operations do not endanger the health conditions of the population and, on the contrary, induce and guide actions that bring benefits and contribute to the advancement of universalization are implemented.

[22] www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16855&LangID=E

5. Conclusion

Brazil, ninth largest GDP in the world and its 207 million population, is still far from the universalization of basic sanitation. The indicators and information presented in this report indicate that the scenario for achieving a satisfactory situation is still far away.

The conditions of basic sanitation are directly related to the conditions of housing, education, health, environment and, in general, the full development and well-being of a society. For this reason, the international community recognizes basic sanitation as a fundamental human right. The Brazilian State has historically failed in its responsibility to invest and put all available efforts and resources to guarantee this human right to Brazilian society. This fact marks a clear violation of human rights. The violation is more specific to Resolutions A/RES/64/292, A/RES/70/169 and A/HRC/RES/15/9.

Finally, based on this petition, we request that the international community, through the competent bodies of the United Nations Organizations, investigate the situation in Brazil regarding basic sanitation. To the Brazilian State, we hope that from this denunciation the matter will be raised to the priorities of governments and society.

6. Annex

Rate X Year	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Drinking water access rate (IN055)	93,30%	95,10%	94,10%	94,22%	91,42%	88,90%	86,18%	87,50%	87,94%	86,76%	88,64%	87,80%	80,90%	81,20%	81,70%	81,10%	94,53%	82,70%	82,50%	83,03%	83,30%	83,30%
Sewage collection rate (IN015)	35,03%	37,95%	58,05%	47,67%	49,67%	49,90%	50,92%	51,80%	51,36%	52,76%	55,30%	58,12%	42,00%	43,20%	44,50%	53,50%	55,50%	54,25%	54,16%	54,87%	55,17%	57,02%
Sewage treatment rate (IN046)				11,05%	14,70%	16,82%	21,56%	21,12%	22,78%	27,50%	29,58%	36,02%	32,50%	34,60%	37,90%	37,80%	37,50%	38,70%	39,01%	40,78%	42,67%	44,92%
Losses in distribution rate (IN049)				36,30%	39,45%	42,75%	41,80%	43,56%	31,24%	45,60%	43,52%	43,46%	42,34%	41,10%	41,60%	38,80%	38,80%	36,94%	36,95%	36,67%	36,70%	38,05%
Losses per connection rate (L/day/con.) (IN051)				160,77	575	550	557,44	530,6	471,88	565,82	529,34	514,1	315,21	289,91	277,37	316,53	288,11	368,19	366,86	349,4	327,02	343,09

Table 2. History of sanitation indices in Brazil (1995-2016). Source: Snis, Ministry of Cities