



3rd International Seminar on Water Resources Management
Governance and performance of water utilities: tools and best practices

Institutional analysis and the development of rules for PSP in the Brazilian water sector: governing next generation PPPs in Brazil

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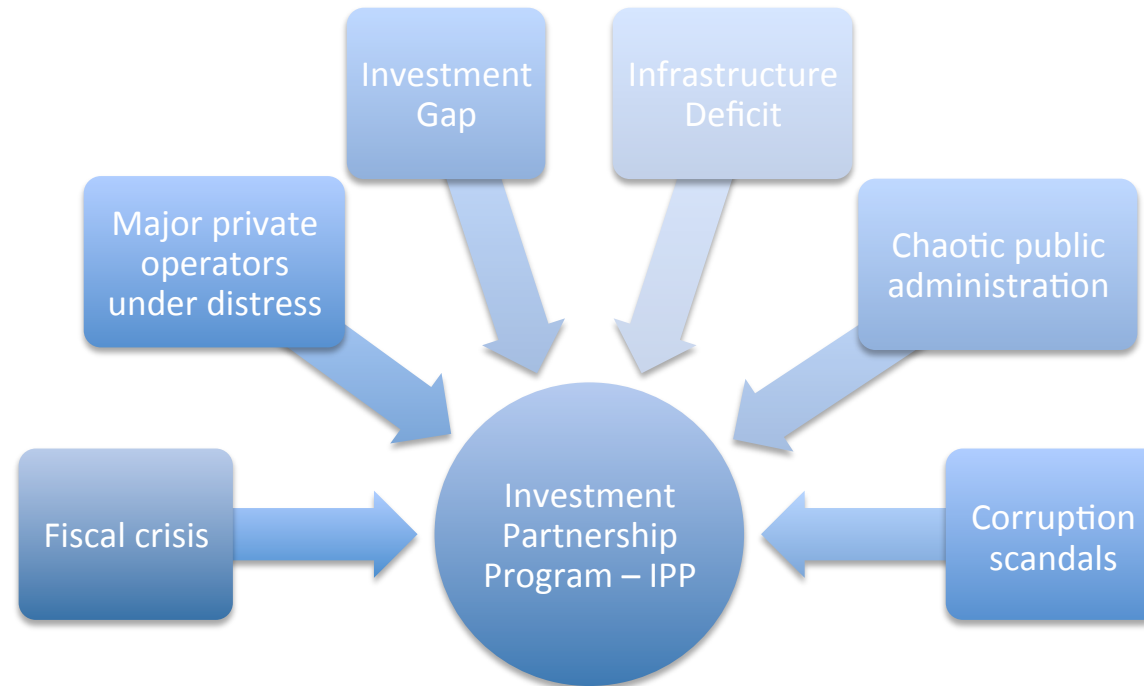
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Governing next generation PPPs in Brazil

Overview: scenario and drivers



- * State owned water utilities were included in the IPP
- * 18 States members confirmed interest to participate in the IPP
- * BNDES is responsible for modeling PPP on behalf of State members
- * 3 Projects already approved under IPP (RJ, RO and PA)

* Investment gap to cover infrastructure deficit is 265 Billion BRL until 2030 (PLANSAB)

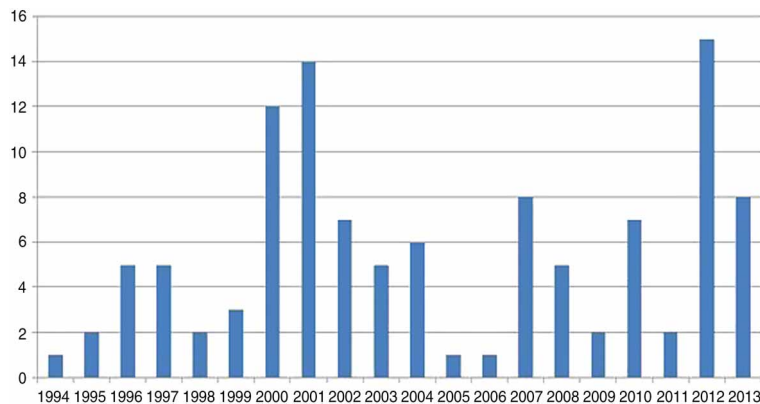
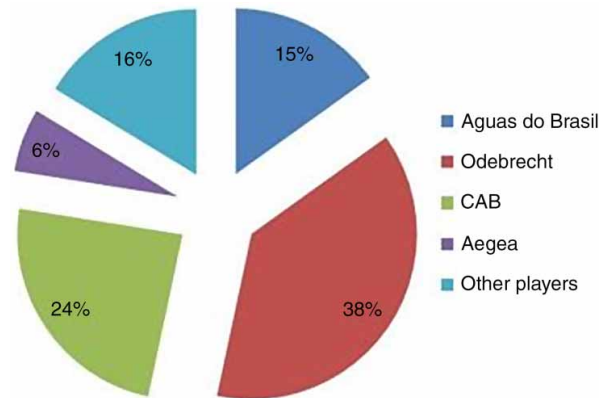
* <http://www.bndes.gov.br/wps/portal/site/home/transparencia/desestatizacao/ppi>



Private sector participation: market figures

Overview

R. C. Marques / Water Policy 18 (2016) 463–479



- ✓ 287 municipalities were served by private water utilities (5%)
- ✓ 27 million inhabitants (approx. 14% of Brazil’s population)
- ✓ 128 have full concessions
- ✓ 22 have partial concessions
- ✓ 66 have PPP projects
- ✓ Since 1994, 111 PPP contracts signed (aver. 5.5 PPP per year)
- ✓ 26 PPP players, but only four major players (84% of market share).
- ✓ The largest operator (Odebrecht) serves 38% of the population (approximately 10.4 million).
- ✓ Recently, Odebrecht were partly acquired by a foreign investor.
- ✓ The private sector 5.5 billion BRL plus 6.5 billion forecasted for 5 years (Abcon & Sindcon, 2014)



Private sector participation: PPP generations in Brazil

Overview

1st Generation (1900's)

- Lack of technology or capital to implement infrastructure
- Foreign capital to fund infra (debt)
- Overseas guarantees
- Service agreement model (early concessions)
- Government subsidies

2nd Generation (1994 -2007)

- Economic crisis, State Reform Program and PMSS
- Collapse of old model for public provision (PLANASA)
- Poor discretionary regulation and unclear institutional framework
- Local and State private concessions under new Concession Law
- Foreign participation (operation)
- New corporate strategies of State Owned Companies

3rd Generation (2007 - ?)

- Exit of foreign operators and concentration of the private operation (big contractors)
- Improved discretionary regulation (regulatory agencies)
- New Water Law, New Federal WSS Law, New Public Consortia Law, and New PPP Law
- New PPP arrangements
- Increased role of the federal government (Ministerio das Cidades)
- New Water Supply Plan (PLANSAB)



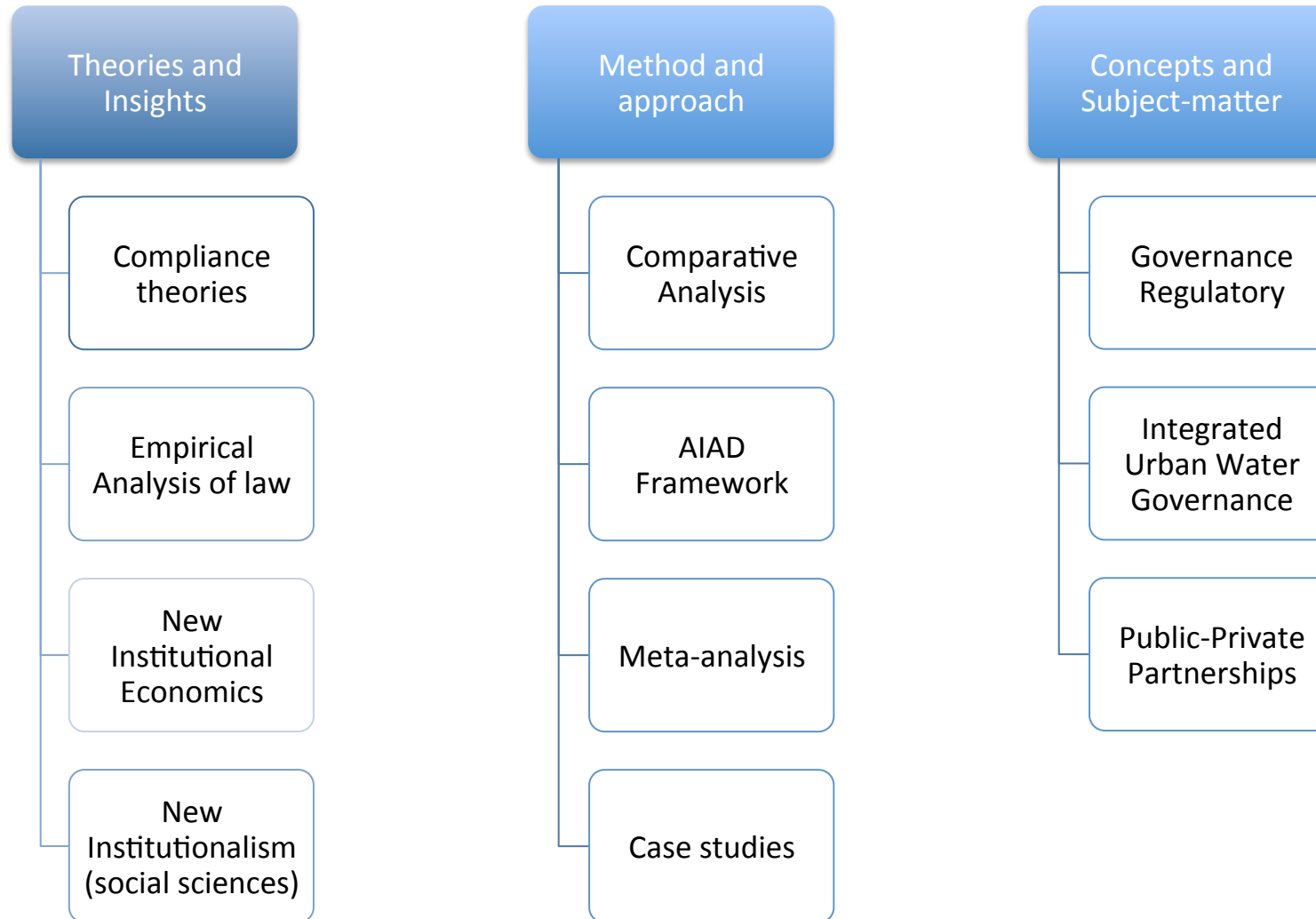
How to govern next generation PPPs in the Brazilian water industry ?

Research question

Objective	<ul style="list-style-type: none"> ✓ Elaborate an analytical framework for legal and policy decision-making about next generation PPPs in the Brazilian water industry
Main assumption	<ul style="list-style-type: none"> ✓ PPPs are incomplete contracts that require both independent discretionary regulation and contract management (Marques 2016b; Marques 2016a)
	<ul style="list-style-type: none"> ✓ In Brazil, there are limited competition for the market and entry barriers to foreign companies (Marques 2016a)
Secondary questions	<ul style="list-style-type: none"> ✓ How to improve regulatory governance to maximize the relative efficiency of PPP arrangements, mitigate regulatory risk and limit opportunistic behaviour?
	<ul style="list-style-type: none"> ✓ By Improving contract design and balancing allocation of risk, can PPP arrangements secure public interest (Marques 2016a)?
	<ul style="list-style-type: none"> ✓ What are the limits to “rules in form” (problems of institutional syntax and compliance) ?
Methodology	<ul style="list-style-type: none"> ✓ Review empirical and theoretical publications on PPP, governance and institutional analysis (“state of the art”)
	<ul style="list-style-type: none"> ✓ Identify and classify “rules in form” based on the AIAD Framework to determine the evolution of PPP arrangements in the Brazilian sector
	<ul style="list-style-type: none"> ✓ Apply the AIAD Framework to the selected Brazilian PPP arrangements (Case studies)

Proposed approach: Institutional analysis

Theoretical framework



Proposed approach: AIAD Framework

Theoretical framework

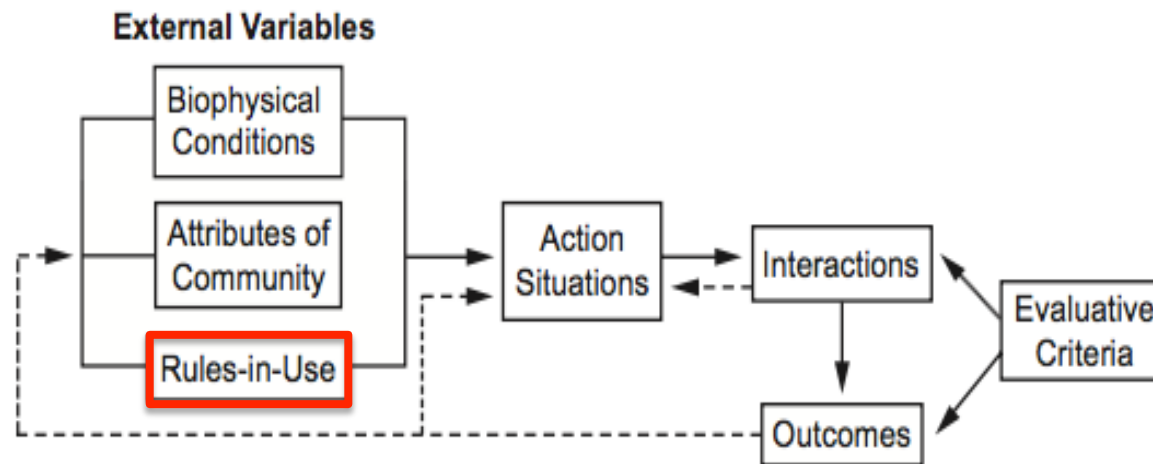


Figure 1. A Framework for Institutional Analysis.

Source: Adapted from E. Ostrom (2005, p. 15).

Proposed approach: Rules-in-Use

Theoretical framework

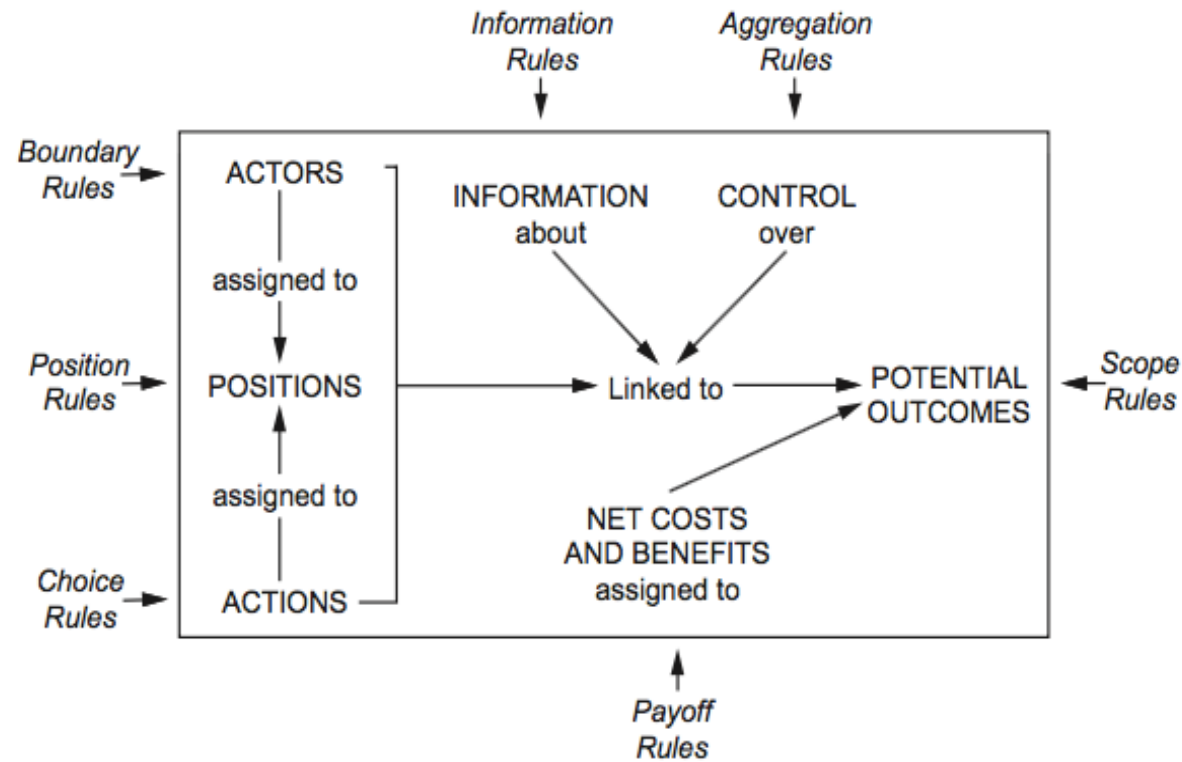


Figure 3. Rules as Exogenous Variables Directly Affecting the Elements of an Action Situation.

Source: Adapted from E. Ostrom (2005, p. 189).



Limitations and expected results

Limitations	<ul style="list-style-type: none"> ✓ Access to “public” material at the local level ✓ The challenge of working with “rules-in-use”
Expected impact	<ul style="list-style-type: none"> ✓ Better understanding the evolution and the impact of rules-in-form of next generation of PPP in the Brazilian water sector ✓ Contribute to the awareness about the risks (and potential benefits) of PPP arrangements ✓ Assess the need for institutional change to foster competition for the market and improve regulatory governance ✓ Contribute to the discussion on contract design for PPP arrangements (legal and policy perspectives)
Novelty	<ul style="list-style-type: none"> ✓ IAD Framework has only recently been used to Urban WSS ✓ Next generation PPP arrangements is a work in progress and IPP has just been launched
Status	<ul style="list-style-type: none"> ✓ State of art “on going” ✓ Preliminary assessment of case studies concluded ✓ First working paper early 2017

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