CSP CADERNOS DE SAÚDE PÚBLICA
REPORTS IN PUBLIC HEALTH

PERSPECTIVAS
PERSPECTIVES

What to expect from the new sanitation framework?

O que esperar do novo marco do saneamento?

¿Qué esperar del nuevo marco de saneamiento?

Ana Cristina Augusto de Sousa [1,2]

doi: 10.1590/0102-311X00224020

1 Escola Nacional de Saúde Pública Sergio Arouca, Fundação Oswaldo Cruz, Rio de Janeiro, Brasil.
2 Instituto Federal de Educação, Ciência e Tecnologia, Rio de Janeiro, Brasil.

Correspondence
A. C. A. Sousa
Escola Nacional de Saúde Pública Sergio Arouca, Fundação Oswaldo Cruz.
Rua Leopoldo Bulhões 1480, sala 922, Rio de Janeiro, RJ 21041-210, Brasil.
anacris.sousa@ensp.fiocruz.br

Important changes have recently been made to Brazil's Basic Sanitation Regulatory Framework. The highly controversial bill altered important provisions of seven laws that regulated the sector, in the most radical intervention ever made in the area since the 1970 National Basic Sanitation Plan (Planasa) [1]. The government claims that this will "modernize" the legislation and assure healthy conditions for competition among companies, providing greater security for private investors. But what does established scientific knowledge in the sanitation policy field have to say about the new regulation and what are the effects of this reworking likely to be?

Firstly, competition in producing goods that demand high fixed investments and effects of scale can be counterproductive, when not impracticable, as in the case of sanitation. Economists call these natural monopolies because the high volume of funding needed to implement services and the lengthy payback period require, exclusive, 20- to 35-year contracts to make the investment worthwhile. In natural monopolies, the competition takes place at entry level through a bidding process for the provision of services. This has been allowed in Brazil for decades.

The competing companies will submit proposals and an agreement spanning at least twenty years will be executed with the winning operator, who will decide the cost of services. The regulatory agency will set limits on this cost, but even with good initial contracts it may be prone to capture by economic interests. The costs of reversing privatization are very high. Also, unlike telephone operators, where can switch at any time, there will not be three pipelines, one from each operator, to supply your home with water.

Furthermore, this can hardly be called modernization when the proposed model has been rejected worldwide, where 90% of systems are run by public authorities. An international study has shown that several cities that privatized their sanitation services desisted and took them back. The basic reasons listed were underinvestment, disputes over operating costs, sharp price and tariff hikes, difficulty in monitoring private operators, lack of financial transparency, layoffs and poor overall service quality. Privatization has raised prices globally. Why should it be different in Brazil [2]?

According to the government, because in order to universalize access in a "*context of serious fiscal crisis with restrictions on public investments, the only solution is to set up solid partnerships with the private sector*" [3]. What they fail to mention is that the estimated cost of such universal coverage (BRL 20 billon/year) would amount to only 0.3-0.5% of Brazil's GDP, which would be perfectly feasible if this were a priority. Moreover, nothing in the scientific literature consulted here suggests that private operators are better [4]. The latest figures of the Brazilian Sanitation Information System (SNIS) show that, on average, private companies operating in Brazil did not show lower rates of loss in water distribution or higher workforce productivity. The latest study on investment by regional water and sewage companies in Brazil shows that opening up to the private sector did not yield substantial differences in coverage or deficit reduction. Amazingly, however, their profitability was second only to the financial sector (banks)! The authors believe that the option to pay shareholders dividends constrained investment in expanding coverage. That is why one of the risks of this model is precisely of compromising universalization [5].

The claim that the law will force public and private companies to compete on an equal footing is likewise unfounded. In the bill, ministers complain that private operators in Brazil are a mere 3%. That is because, for a number of reasons, most cities and towns have chosen to renew their concession agreements with State-owned providers. The reasons include unpreparedness to operate services directly, alliances with state governments and even mistrust of the private sector. But renewal is an option, not an obligation.

Neither does the new law make privatization mandatory, but it does originate and facilitate a number of constraints that ultimately induce it. When the Federal Government makes financial aid to an indebted state/city contingent on its privatizing sanitation services, it does not impose an obligation per se, but does create a strong compulsion. After all, if there is no agreement, the state or city will continue indebted and have to bear the costs by, for example, withholding the civil service wages and interrupting public services, further penalizing the population [6].

And how does the law do this? By extinguishing "program contracts" and strengthening the position of states in "common interest" regions (metropolitan areas, for example). The main effects of this measure are to strangle cities that do not agree to convert to the new model and to facilitate the sale of state government enterprises.

Program contracts are cooperation instruments that allow towns and cities to delegate sanitation services to state government enterprises with no call for tenders. Extinguishing this instrument forces them to conduct calls for tenders open to all interested parties. As a result, A city that is ideologically opposed to privatization, but cannot undertake such services directly, may be forced to contract with or, where provision is regionalized, to accept, whatever private company happens to win the bid. The law also penalizes towns and cities that disagree with the privatization of regional (state government) utilities, obliging them to refund unamortized investments should they decide to terminate the agreement. What town or city today can afford to take on such a debt overnight?

The law also stipulates that, in the event control of a state government enterprise is transferred, or a new concession is granted, the new operators inherit the entire contract, but not necessarily the outstanding debts (unamortized investments). This, besides being an additional burden on the state or city, delays reimbursement to the previous (public) provider. In addition, the planned regionalization process will entail splitting existing contracts, requiring companies to adjust accordingly. However, the timeframe originally provided for the transition in the bill was vetoed by President Bolsonaro, since the goal is to privatize as quickly as possible [7].

The federal government claims that regionalized service provision – which means creating blocks of municipalities, by state, so that services can achieve economies of scale and economic viability – refutes the argument that the private sector is only interested in the wealthier cities, leaving the poorer ones to state government utilities. What they omit is that, in this arrangement, guarantees of investment in poor regions are merely formal promises, as compliance with the regional plan, although recommended, is not mandatory (Article 17). In addition, it will be subject to the provider's financial and economic health, a device that allows future additions and revisions to contracts, depending on changing circumstances.

It is important to understand that the fact that a company, whether public or private, provides services to rich and poor areas of a region does not guarantee that it will allocate resources according to principles of justice and equity. There are disadvantages in both forms of provision. A private company will certainly be profit-oriented, as that is its main purpose. The rationality guiding public companies, meanwhile, tends to be political. However, public enterprises have a great advantage over private operators: in addition to not aiming at profit, they offer windows of opportunity, at each election, for adjustments and corrections in the public interest. This is practically impossible under private companies with 20- to 30-year contracts, as is currently the case in Brazil.

According to the ministers, this issue can be solved by specifying well-defined goals in the contracts. The problem is that merely setting goals does not guarantee they will be met. Contracts in this area are lengthy and justifications can always be found for not honoring them, especially when the means and resources exist to take disputes to court, which is no problem in the private sector. Relying on strict contractual rules to ensure that services are provided to poor areas presupposes that state governments have bargaining power and that they are strong and committed to the cause of universal coverage. This does not seem to be the case of governors who sell state-owned companies in exchange for some relief in state finances, or who maintain dubious relationships with interested companies [8].

The company that took over Saneatins (in Tocantins State) in 2012 retained the 52 most populous (profitable) cities in the state and rejected 78, which today depend on the government for sanitation services. In Rio de Janeiro State, Niterói, for example, took the matter to court. Contracts are an important part of the business, but they alone do not solve the issues stemming from the power of economic groups and the challenge of providing sanitation services to poor people in an unequal country like Brazil. Likewise, the mere fact that a company is state-owned does not make its management immune to clientelism. Local governance must be sufficiently qualified to prevent the population from falling hostage to service providers, whether public or private.

Speaking of the population, the law revoked provisions that protected vulnerable groups, according to income. Rural sanitation suffered severely from the partial suppression of Article 10, which allowed community service providers to operate under agreements or partnership contracts. Portions allowing providers to use alternative and decentralized methods in rural and remote areas or established informal urban settlements, without loss of revenue, reinforce concerns regarding the adoption of less secure methods of offering services precisely where they are most needed.

The government's solution to "modernize" the sector is not unprecedented in Brazil [9]. Two years ago, this same bill was proposed twice by the federal government as a provisional measure. One reason for this is the neoliberal agenda for water supply has failed in the rest of the world, driving financial groups out of sanitation in those markets. According to a government minister, "*the new law will standardize rules and provide the legal certainty that investors around the world were waiting for*" [10]. Congressmen who negotiated for its approval have clear connections with transnational companies engaged in the acquisition and exploration of the world's freshwater reserves in the world [11] – and Brazil is the largest blue gold mine on the planet.

Unfortunately, access to sanitation is still not perceived as a human right, even though it has been recognized as such by the United Nations since 2010. If there were political will, public management could be improved with federative coordination and planning and regular earmarked fund transfers to the sector, as in other sectors [12]. The law's proponents ignored these points to make room for those who profit from this deficit.

Additional information

ORCID: Ana Cristina Augusto de Sousa (0000-0002-5288-2274).

References

1. Brasil. Lei nº 14.026, de 15 de julho de 2020. Atualiza o marco legal do saneamento básico e dá outras providências. Diário Oficial da União 2020; 16 jul.
2. Satoko K, Olivier P, Steinfort L. Reclaiming public services: how cities and citizens are turning back privatisation. https://www.tni.org/files/publicationdownloads/reclaiming_public_services.pdf (accessed on 23/Jul/2020).
3. EMI nº 00184/2019 ME MDR. Brasília, 8 de julho de 2019. https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra;jsessionid=480E77B5B4BB4070F870030C89AC740F.proposicoesWebExterno1?codteor=1787462&filename=Tramitacao-PL+4162/2019 (accessed on 27/Jul/2020).
4. Scriptore JS, Toneto Junior R. A estrutura de provisão dos serviços de saneamento básico no Brasil: uma análise comparativa do desempenho dos provedores públicos e privados. Rev Adm Pública 2012; 46:1479-504.
5. Sarti F, Ultremare F. Padrão de investimento e a estratégia financeira das grandes empresas regionais do setor de Água e Esgoto (A&E) no Brasil. In: Heller L, organizador. Saneamento como política pública: um olhar a partir dos desafios do SUS. Rio de Janeiro: Centro de Estudos Estratégicos, Fundação Oswaldo Cruz; 2018. p. 105-29.
6. Savedra P. Exclusão do Rio do Regime de Recuperação Fiscal ameaça pagamento de servidores. O Dia 2019; 20 sep. https://odia.ig.com.br/colunas/servidor/2019/09/5682885-exclusao-do-rio-do-regime-de-recuperacao-fiscal-ameaca-pagamento-de-servidores.html.
7. Brasil. Mensagem nº 396, de 15 de julho de 2020. Diário Oficial da União 2020; 16 jul.
8. Tomazelli I. Em busca de alívio de R$ 62 bi, Rio entrega plano de recuperação fiscal O Estado de S.Paulo 2017; 13 jun. https://economia.estadao.com.br/noticias/geral,em-busca-de-r-62-bi-rio-entrega-plano-de-recuperacao-fiscal,70001838873.
9. Sousa ACA, Costa NR. Ação coletiva e veto em política pública: o caso do saneamento no Brasil (1998-2002). Ciênc Saúde Colet 2011; 16:3541-52.
10. Brasil. Novo Marco de Saneamento é sancionado e garante avanços para o país. https://www.gov.br/pt-br/noticias/transito-e-transportes/2020/07/novo-marco-de-saneamento-e-sancionado-e-garante-avancos-para-o-pais (accessed on 27/Jul/2020).
11. Peres J. A privatização do saneamento saiu do jeito que as empresas queriam. The Intercept Brasil 2019; 6 jun. https://theintercept.com/2019/06/06/saneamento-privatizacao/.
12. Sousa ACA, Gomes JP. Desafios para o investimento público em saneamento no Brasil. Saúde Debate 2019; 43(n.esp. 7):36-49.

Submitted on 28/Jul/2020
Final version resubmitted on 17/Sep/2020
Approved on 23/Sep/2020