

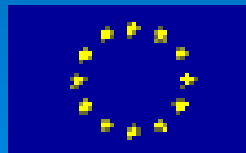


Open Workshop 2004

30 June – 1 July 2004
OXFORD

Session I Policy-institutional dimensions – Comparative analyses of case studies

Dr Marcelo Coutinho Vargas
Dr Osmo Seppälä



<http://www.geog.ox.ac.uk/~prinwass/>

Objectives of D 19 (1)

- **To address the legal and institutional framework that regulates PSP in WSS services in 5 selected countries (Argentina, Brazil, England and Wales, Finland, and Kenya**
- **Trying to understand how this framework was conceived and implemented and how it is being changed or reformed, under specific political and economic constraints from internal and external pressures**

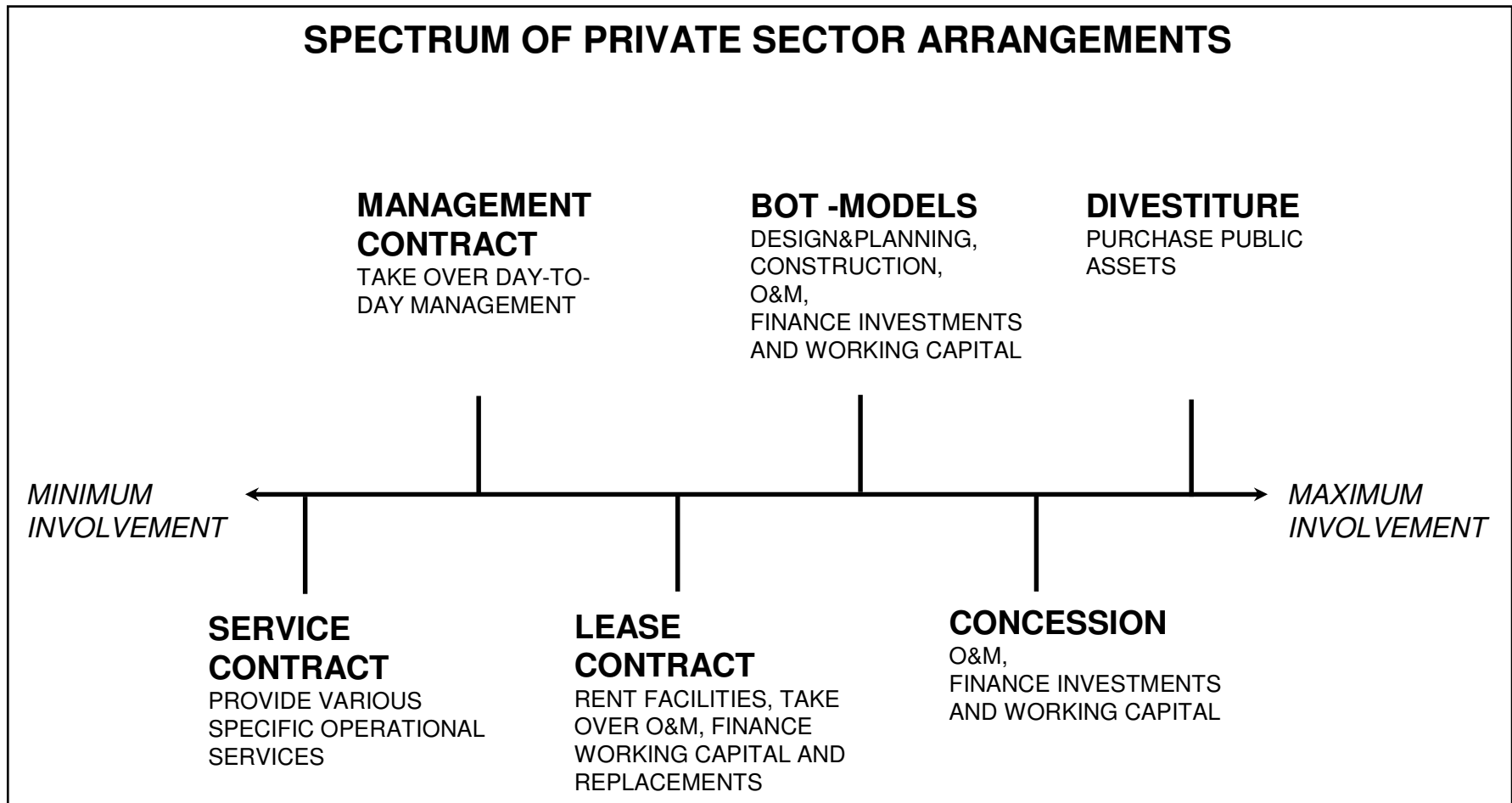
Objectives of D 19 (2)

- **Identify the cornerstones and reference models for WSS services policy and regulatory framework**
- **Evaluate strengths and weaknesses of current policies and institutional framework, including the proposed reforms – trying to identify needed changes to ensure sustainability of services.**

Theoretical considerations – Policy, institutional and regulatory issues

- **Promotion of PSP re-emerged in the 1990s, but heated debates already in late 1800s and early 1900s**
- **Instead of an oscillating movement between public – private we should consider the historically entwined and dynamic nature of public-private relationship → analyse the institutional diversity of management and regulating options for WSS services**

Diversity and spectrum of PSP arrangements



Theoretical considerations – Policy, institutional and regulatory issues

- **Viability of any PSP arrangement depends largely on the surrounding regulatory framework**
- **Institutions, origins and reference models of regulation**
- **Special features of water sector**

Institutions, origins and reference models of regulation

- Late 1800s: Public regulation of economic activities as a counter-reaction to *laissez-faire* policies
- Normative and positive theories of regulation
- Normative: “State intervention is necessary to promote social welfare and public interest” (market failures; natural monopolies, scale economies, sunk costs)
- Positive: “Regulation is a commitment resulting from negotiations between conflicting interest groups” (government failures; rent seeking etc.)
- Re-regulation (England and Wales)

Typologies of regulation

- **Structural regulation:** Aims at inducing competitive behaviour among the firms participating in the market, and involves the consideration of technological constraints, information asymmetries, coordination requirements, and transaction costs
- **Behavioural regulation:** Deals with day-to-day conduct of private firms in relation to profit rates, anti-competitive practices, service and product quality standards, and environmental regulation – protecting public interest

Strategic areas of regulation (1)

■ Water services quality regulation:

Dealing with standards for drinking water, technical performance of services (leak control, reliability, expansion goals, etc.).

■ Economic regulation:

Related to regulation of tariffs, profits, and commercial and financial performance.

- *Cost plus method* (USA, Latin America)
- *Price cap method* (England and Wales)
- *Pro-poor regulation* (Latin America)

Strategic areas of regulation (2)

- **Ownership regulation, competition constraints:**

Dealing with antimonopoly legislation and unfair commercial practices limiting economic competition.

- **Environmental regulation:**

Dealing with water resources management and other related environmental issues.

Four typical modalities of regulatory arrangements (1)

1. **Public ownership and management of firms producing goods and services strategic for social, economic or political reasons:**

Common in most OECD countries and Latin America.

2. **Public regulation of strategic economic activities produced by privately owned companies in charge of the state's ministries:**

Regulation under direct control of governments.

Four typical modalities of regulatory arrangements (2)

3. Auto-regulation by corporative arrangements:

Prevails in some specific sectors of activity as a sort of auxiliary regulatory mechanism.

3. Regulation of strategic economic activities produced by privately owned companies in charge of specialised autonomous agencies or commissions:

Born in the USA (mostly in the 1930s) and created in Europe and Latin America under the privatisation wave (from the late 1970s).

Modalities of regulatory arrangements

- ★ Endogenous regulation:

Based mostly on public provision and/or ownership of assets.

- ★ Exogenous regulation:

Based on autonomous regulatory agencies or commissions which may be considered independent from governments.

Methodology and analytical framework (1)

- **Limitations to comparative analysis**
- **Selected countries -- reasons for selections
(Argentina, Brazil; Kenya; England and
Wales, Finland)**
- **Developing - industrialised countries**
- **Federal - unitary states**
- **Different background, history and recent
development in PSP in WSS**
- **Diversity of PSP arrangements**

Methodology and analytical framework (2)

- **Dimensions / axes in comparative analysis:**
 - 1) **Relationship btw. public and private sector**
 - 2) **Relationship btw. local and central governments**
 - 3) **Relationship btw. public authority and private operator**
 - 4) **Relationship btw. private operator and regulator**
 - 5) **Relationship btw. operator and users**

Research questions (D 19)

- **What does it mean to regulate a public utility service?**
- **On whose behalf or interests is regulation made?**
- **What are the main existing international and national policy models for WSS provision and regulation?**
- **How such models were conceived and implemented in the corresponding countries?**
- **Where and to what extent may we find exogenous pro-market policy models being unilaterally implemented as a sort of “strange body” on the socio-political and institutional environment of a developing country?**
- **What level of resistance or rejection such models have generated in those cases, among which stakeholders and social groups?**
- **Conversely, where and to what extent may we find such exogenous models being submitted to a sort of “acclimatization” to become adapted to national culture and institutions, therefore generating cross-bred or blended models for water sector policy and regulation?**
- **What may be considered an adequate institutional and regulatory framework for public utilities, especially for WSS, and when (under which conditions) may we affirm that it is being actually implemented anywhere?**

MAIN SOCIOLOGICAL FEATURES OF THE SELECTED COUNTRIES

COUNTRY	MAIN SOCIOLOGICAL FEATURES			
	POLITICAL	GEO-DEMOGRAPHIC	ECONOMIC	SOCIAL
U.K. (England and Wales)	Unitary state highly centralised, member of the European Community; Parliamentary government based in an old and stable democracy.	Highly urbanized country, with medium size population (56 million inhabitants) slightly concentrated in the capital and some medium size cities.	Highly industrialized developed country and most important financial market of Europe.	High level of HDI (0.930), ranking 13 in the world and 9 in Europe.
FINLAND	Unitary state with a quite decentralized administration, member of the European Community; Parliamentary government based in a stable democracy.	Small population (5 million inhabitants) living mostly in urban areas (60%) in small and medium size cities.	Industrialized and developed country whose economy is highly based on forestry resources.	High level HDI (0.930), ranking 14 in the world and 10 in Europe.
ARGENTINA	Federal state, with highly centralized administration; Presidential government; democracy relatively instable since 1983.	Highly urbanized country, with medium size population (36 million inhabitants) strongly concentrated in the great Buenos Aires agglomeration.	Developing industrialized country whose economy is based mostly in agro-industrial production; high level of external indebtedness and financial dependence from external capitals.	medium level HDI (0.849), ranking 34 in the world and 1 in Latin America. It is recovering from a very strong political and economic crisis which increased significantly its poverty levels.
BRAZIL	Federal state, with a quite decentralized administration; Presidential government; stable democracy since 1985.	Highly urbanized country, with a big size population (170 million inhabitants) slightly concentrated in metropolitan areas and medium size cities.	Developing industrialized country with a diversified economy in which agro-industrial sector plays a central an increasing role in its exports; high level of external indebtedness and financial dependence from external capitals.	medium level HDI (0.777), ranking 65 in the world and 7 in Latin America. High regional and social inequalities place it as one of the most unequal countries in the world.
KENYA	Unitary state, with a quite centralized administration; presidential government; multi-party democracy since 1992.	Medium size population (almost 30 million inhabitants) concentrated in rural areas.	Very limited industrial activities; economy based in subsistence agriculture, with low level of agricultural exports (mostly coffee and meat); strong dependence from external support (technical and financial).	Low level HDI (0.489), ranking 146 in the world and 14 in Africa; important ethnic conflicts and inequalities.

COMPARATIVE ANALYSIS OF THE SELECTED COUNTRIES (1)

COUNTRY	DIMENSIONS OF PSP ANALYSED (1 - 2)	
	RELATIONSHIP BTW. PUBLIC AND PRIVATE SECTOR	RELATIONSHIP BTW. LOCAL AND CENTRAL GOVERNMENTS
U.K. (England and Wales)	WSS utilities are entirely owned and managed by the privatised water and sewerage companies (since 1989).	Central government does not play a major role in WSS provision, but is involved in regulation and control of the privatised water and sewerage companies.
FINLAND	Public sector predominantly responsible for WSS services. Utilities mainly owned by municipalities. Autonomous municipal enterprises. Outsourcing of non-core services and goods from private companies (40-80 % of turnover).	Municipal self-government defined in Constitution. Municipalities have the main responsibility for WSS services and own utilities. Central government has a policy making and facilitating role.
ARGENTINA	Since early 1990s, local and multinational operator companies have managed many large urban water and sewerage systems under long-term concession contracts. Most of these contracts have raised some conflicts and their success has been debated a lot.	Being formally a federal state, the provincial governments have a considerable degree of autonomy and decision-making power in areas such as WSS services management, especially after the decentralisation of the former National Sanitation Company (OSN) in 1980.
BRAZIL	According to the country's Constitution, "it is in charge of the Public Power directly or through concession or permission regimes, always through public auction, to assure the provision of public services." It means that full divestiture is forbidden. Around 60 municipalities have signed concession or permission [BOT or management] contracts with private companies since 1995. The current government does not specifically favour WSS privatisation, but PPPs are encouraged.	Brazil is also a federal state where the provinces (federated states) and the municipalities have a high degree of autonomy, especially after the promulgation of the Federal Constitution in 1988. According to this Chart, the municipalities are the granting authorities responsible for public services of local interest (as WSS). From the early 1990s, started a transition from a state centralised and de-concentrated WSS services management model, based mostly in provincial companies, to decentralised and "flexible" model.
KENYA	The capacity and role of private sector has earlier been very limited in WSS provision in Kenya. Community-managed water systems in rural areas. Water sector reform proposes for a bigger role for private sector. Private Water Service Providers are encouraged, but currently local private potential is low.	Local authorities have (had) a significant role in WSS in selected towns, although the central government has traditionally had the main responsibility for service provision. As part of the water sector reform local authorities have established autonomous water and sewerage companies who manage WSS services.

COUNTRY	DIMENSIONS OF PSP ANALYSED (3 - 5)		
	RELATIONSHIP BTW. PUBLIC AUTHORITY AND PRIVATE OPERATOR	RELATIONSHIP BTW. PRIVATE OPERATOR AND REGULATOR	RELATIONSHIP BTW. OPERATORS AND USERS
U.K. (England and Wales)	No direct relationship between government and the private operators, but the regulatory agencies are part of the government structure.	Private operators' technical and financial performance is regulated and monitored by independent regulatory agencies.	
FINLAND	Services provision based on the responsibility of the local governments. The municipalities have constitutional autonomy and the possibility to design services' production and management according to what their democratically elected government considers to be best. At present, there is no private operators in charge of WSS services in the country, but rather PSP experiences involving the incorporation of public operators + outsourcing of non-core activities from private companies, based on competitive bidding. In any case, regulation is controlled by local and central governments.	There are no independent and specialized regulatory agencies for WSS services, but rather the intervention of local, regional and national governmental organs to regulate drinking water quality, as well as health and environmental issues related to such services.	
ARGENTINA	National, provincial and municipal authorities may play the role of the granting power, which decides when and how to delegate services management and provision to private operators, always based on contractual rules.	There are national and provincial independent regulators responsible for regulating and monitoring private operators technical and financial performance, but the regulatory framework is instable and fragmented.	
BRAZIL	Provincial and municipal authorities may play the role of the granting power, which decides when and how to delegate services management to private operators, always based on contractual rules.	There are provincial and municipal organs dedicated to regulate and monitor private operators technical and financial performance, whose general status is variable in regards to the degree of independency from governments and specialization.	
KENYA	National authorities are ultimately responsible for services regulation and provision, which is shared by local authorities and small formal and informal private providers.	Regulatory agency established at the central level 2004 (Water Services Regulatory Board, WSRB), but it is under the Ministry of WRMD. There are plans to create regulatory agencies also at regional level.	

Conclusions

- **Pragmatic pluralism**
- **Institutional flexibility**
- **Overall strategic and integrated vision**
- **Social capital enhancement and capacity building of local authorities**