

Chapter Four

Aguas Públicas: Buenos Aires in Muddled Waters

by Daniel Azpiazu¹ and José Esteban Castro



In 1993 the private consortium *Aguas Argentinas SA* (AASA), headed by the French multinational Suez, was granted a 30-year concession to run the integrated water and sanitation services of the Buenos Aires metropolitan area. At the time it was the largest of such private concessions in the world, serving roughly nine million people in Argentina. The contract was imbued with neoliberal recommendations and was heralded as a flagship privatisation to be replicated in other countries.² In what followed, the private operator failed to comply with contractual obligations, but Argentine authorities turned a blind eye. However, in 2006 the government cancelled the AASA concession and then-president Nestor Kirchner returned the responsibility for water and sanitation services to the public sector.

Strictly speaking, the de-privatisation of AASA was not a case of ‘remunicipalisation’. First, the concession had been granted by the federal government and not by municipal authorities. Second, it was taken over by a newly created public company, *Agua y Saneamientos Argentinos* (AySA), under the control of the national government. Nevertheless, the water service operates at a municipal level and lessons learned from this case are relevant to the subject matter of this book. In particular, the case highlights how the privatisation of water and sanitation makes it difficult to reorganise around public objectives, especially those of subordinating profitability to higher social priorities of universal access to quality water services.

In the first part of the chapter we review key aspects of AASA’s concession to contextualise the cancellation of the private contract. We then analyse the long and conflictive process of contract renegotiation that took place between 2002 and 2006, involving not only the national government, Congress and the private operator but also foreign governments, international tribunals, workers’ unions (mainly the Sanitary Works Union of the Great Buenos Aires, SEGBATOS), non-governmental organisations and independent public institutions, among others. Part three reviews problems associated with the normative and regulatory institutions that emerged with renationalisation and the creation of AySA. Finally, the performance and main characteristics of the public operator are examined. We conclude by drawing lessons from Buenos Aires’ disastrous experience with privatisation and how this affects shifts to public water services.

Cashing in on poor performance

The troublesome history of the AASA concession can be divided in two periods: from 1993-2002, and from 2002-2006. The first period was characterised by recurring contractual modifications, mostly associated with tariff increases and by repeated government complaints about AASA’s failure to honour the contract in relation to investment commitments, expansion targets, environmental protection and service quality, among other issues. Yet, authorities showed leniency in face of the financial strategy adopted by

the private operator, which would come to have disastrous consequences. This period was marked by the systematic subordination of authorities to the interests of the private operator, with initial government complacency turning into an unwillingness to pay the political cost of interrupting an emblematic privatisation effort. The second period concerns the long-delayed process of contract renegotiation that was triggered by the abandonment of fixed parity of the Argentine peso with the US dollar.

The terms of the original concession, the main modifications introduced afterwards, and the underlying drivers of the concessionaire's strategy help understand the dynamics of these two periods. In a nutshell, in the original contract the operator committed to: 1) universalisation of access by 2023 (100% coverage for water from 70% in 1993 and 95% from 58% for sewerage); 2) improvement of service quality to meet international standards; and 3) incorporation of new technologies for wastewater treatment. This was to be achieved while maintaining "reasonable" services tariffs, with an initial reduction of 26.9% of the existing tariff.³

The original contract divided the life of the concession into six five-year periods, and contract revisions were to take place at the end of each period to verify the operator's compliance with expansion targets, investments, and the tariff freeze that was integral to the original bid. However, the first 10 years of the concession were subsequently exempted from the tariff freeze requirement as requested in the private company's offer. Monitoring compliance was to be the shared responsibility of the service regulator and of the Tripartite Entity for Sanitary Works and Services (ETOSS, in its Spanish acronym), according to the Regulatory Framework set by Decree 999/1992.

As for the quality of water supply and sewerage services the contract adopted the physical-chemical and bacteriological parameters recommended by the World Health Organisation. Specific environmental protection measures were agreed to, which required the concessionary to build wastewater treatment plants with the objective of progressively eliminating the pollution of water sources. Tariff regulation was based on a mean income per user cap for the private operator whereby ETOSS could demand tariff reductions if this income were to exceed a set level. As with many other terms of the original contract, this criterion was modified in contractual renegotiations in following years, much to the benefit of the private company.

The contract also established two possibilities to grant tariff adjustments: "ordinary" and "extraordinary." The former would be considered during the performance reviews at the end of the five-year periods, while the latter could be granted in cases of changes in the company's operational costs as measured by a special index. Before the end of the first year of the concession AASA requested an "extraordinary revision" of the tariff arguing that it had suffered unforeseen operational losses and ETOSS allowed a 13.5% tariff

increase, on top of a considerable rise in the fixed “infrastructure charge” levied on newly connected users.⁴

From then on, AASA’s concession was characterised by a worsening record of non-compliance with contractual targets, particularly regarding the pace of investments, the expansion of coverage, and the quality of services. It was also marked by the operator’s relentless pressure to squeeze concessions from the authorities, including demands to ‘dollarise’ the tariffs and to tackle widespread non-payment of the infrastructure charge by newly connected users. The government responded favourably to the company’s demands and in 1997 set up a process to renegotiate the concession contract that brought about substantive modifications to the original terms (Decrees 149/97 and 1167). The renegotiations continued between 1997 and 1999, resulting in additional modifications to respond to the private operator’s interests. The new terms of the contract included: the effective dollarisation of the tariff that came to tie directly to the evolution of a US price index; the elimination of the regulatory principle that capped the mean income per user; the provision for yearly “extraordinary revisions” of the contract; and the cancellation or postponement of investment commitments originally agreed to. In this context, the first five-year review originally scheduled for 1998 was delayed until 2001, when a new Five-Year Plan was negotiated behind closed doors between AASA and ETOSS. The new plan contemplated additional tariff increases as requested by the operator to comply with the investment targets, including new fixed charges.

During the period 1993-2002, ETOSS estimates that AASA only met 60.9% of its contractual investment and expansion targets; a poor performance considering that this figure was calculated on the basis of the lower renegotiated investment commitments (ETOSS, 2003). In terms of environmental protection, AASA did not deliver on these commitments either, with dangerous substances (such as arsenic, cyanide, heavy metals and nitrates) remaining well above recommended World Health Organisation levels. As a case in point, AASA had not assessed potential environmental impacts when it decided to close a number of underground water wells in the southern area of Greater Buenos Aires, leaving municipalities reliant on water supplies pumped from La Plata River. This decision eventually caused a rise of the water table, which led to flooding of buildings and streets in the municipalities of Lomas de Zamora, Quilmes and Morón; it also worsened the pollution of the underground water sources in the region. In 2001 the municipality of Berazategui presented a lawsuit against AASA for failing to comply with the original contractual commitments to build adequate treatment facilities for the sewage that was still being released untreated into La Plata. Later on, evidence of this type of negative environmental impacts of AASA’s activities would contribute to the cancellation of the contract.⁵

Lack of compliance with the original commitments was also reflected in the failure to meet expansion targets. The target for water supply was to increase coverage from 70%

to 88% by 2002, but it had only risen to 79% by then. The target for sewerage was to increase coverage from 58% to 74%, but it barely reached 63%. This means that by 2002, 800,000 people were still left without access to water, and more than one million without sewerage services. The figure is substantially higher if we consider the original targets for primary wastewater treatment for which AASA complied only at 7%, thus leaving more than six million people without this service.⁶

Another indicator of poor performance is the increasingly regressive evolution of the tariff. First, between May 1993 and January 2002 the mean residential tariff increased by 87.9%, while during the same period the Consumer Price Index only increased by 7.3%. Second, during the contract renegotiations a number of progressive tariff criteria that provided some level of cross-subsidy to support lower income users were removed, and this is reflected in the impact of the tariff hikes on different groups of users. In the same period, the basic tariff increased by 177% and the average bill by 62%, but high consumption users only saw a 44% rise.⁷

Under these conditions, the private company cashed in on a mean profit rate of more than 20% over net assets and around 13.3% over aggregated revenues between 1994 and 2001. Low price elasticity of demand and relative stability of consumption, coupled with null risk guaranteed by the complacency and leniency of the regulatory authorities, meant that AASA was allowed to make extraordinary profits while failing to deliver on contractual commitments. AASA also minimised the use of its own private resources and accumulated a disproportionate level of debt to fund the investments. Between May 1993 and December 2001, only 2.6% of AASA's total investments came from its own funds. The company acquired huge debts well above the maximum levels permitted in the original contract, mostly with multilateral financial bodies at interest rates much lower than those available in the local market. This strategy would eventually have disastrous results, not least because AASA dismissed the potential risks of future devaluations. Thus, when the peso-dollar parity was ended in 2002 the private operator faced a debt of US\$700 million, which then represented over three years of gross revenue and over 20 times the net value of the company. This also explains why in 2002 AASA's account deficit was 13% higher than the total amount billed that year.

To summarise, the first period of the concession was marked by a series of contractual modifications, mostly related to tariff increases, and by a lack of compliance with investment commitments, expansion targets, environmental protection and service quality. All the while, the company was stacking up profits and debts.

The renationalisation saga

The passage of the Law of Economic Emergency and Exchange Regime (Law 25561)

in early 2002 triggered the cancellation of AASA's contract. The legislation ended fixed parity between the Argentine peso and the US dollar and established a new operational context for companies privatised during the 1990s. In particular, it cancelled the indexing mechanisms previously enforced to increase tariffs and reverted to local currency public service tariffs (*pesificación*). It stipulated that all contracts with privatised companies would be subject to renegotiation but in the meantime private operators could not suspend or alter the terms of compliance with their contractual obligations.

In this context, the AASA renegotiation entered a complex stage. The private company reacted immediately by putting pressure on the government, directly and through its foreign shareholders, notably appealing to the World Bank's International Centre for Settlement of Investment Disputes (ICSID).⁸ In addition, the governments of the countries where shareholders were based, especially France, rallied with the International Monetary Fund (IMF) to press Argentina to resolve the matter to AASA's advantage. These developments imposed severe restrictions and worsened the conditions for the long-delayed and already conflictive process of contract renegotiation.

AASA had not changed its approach since the 1990s and showed no inclination to accept the loss of the privileges it enjoyed for almost a decade. Within days of the enactment of the new law, AASA prepared an emergency plan and made a number of requests to the government: to provide retroactive insurance to cover its external debt of around US\$700 million, to grant a peso-dollar parity for its imports (mostly internal transactions between foreign and local branches of the consortium companies), and to suspend all investments unilaterally and indiscriminately.⁹

However, when Nestor Kirchner assumed the presidency in 2003 his government seriously considered revoking the contract. There was a strong sense that the privatisations of the 1990s, particularly AASA's, carried a heavy social cost. A number of official reports¹⁰ and evidence gathered by civil society organisations, including user and consumer groups and NGOs, suggested that there was sufficient proof of non-compliance to annul the contract. A number of other options were on the table, for instance private management (preferably with a different shareholder structure) with more state intervention for infrastructure planning and development, or an adapted contract to facilitate the private "management" of the company but to fully transfer the responsibility for infrastructure expansion and maintenance to the government.¹¹

Following the 2002 Argentina default on its public debt, a clear priority for the government was to find a solution that would prevent taking charge of AASA's huge debt and that would avert harsh international pressures. Hence, in May 2004 the government signed an agreement that maintained tariff levels, suspended fines for contractual non-compliance and committed to pumping public money into infrastructure works while

binding AASA to suspend its request for arbitration before the ICSID and to present a plan to restructure its external debt.

However, the renegotiation took a new turn in October 2004 when AASA submitted a new proposal that revived the confrontational character of the process. AASA's proposal included a series of steps oriented at reconstituting the economic-financial equilibrium of the concession: a revenue increase of 60% from January 2005; state intervention to obtain a loan for US\$250 million to be repaid in 18 years at an interest rate of 3%, with a three-year holiday period; government commitment to take charge of 48% of future infrastructure investments; and exemption from income tax.

Argentine authorities deemed the proposal unacceptable, marking a turning point in the renegotiations. The process became even more antagonistic in the following months, possibly because the private operator's main shareholders sensed that the ICSID would rule in their favour and against Argentina.¹²

Finally, after mounting confrontations, the government passed Decrees of Necessity and Urgency 303/2006 and 304/2006 in March 2006 to cancel AASA's concession and create the public company AySA under a participatory ownership scheme (the state owns 90% and the workers' union owns 10%) to immediately take responsibility for the provision of water and sanitation services.

An imperfect institutional design

The case of AySA was unique in the series of renationalisations implemented by the Kirchner administration in that it sought to consolidate the operational-institutional environment of the new public company in normative terms. The proposed Regulatory Framework submitted to Congress in November 2006 set sector-specific norms for water and sanitation embedded in a national law rather than relying on *ad hoc* special decrees sanctioned by the executive, as had been the rule during the 1990s. Moreover, it appeared it would allow public debate on water and sanitation and on public goods more broadly. Unfortunately, the impact of this well-intentioned initiative was limited due to a number of factors. In Congress, as much as in society, debate remained limited since the government was able to pass the law quickly thanks to the majority it enjoyed in both chambers.¹³ The March 2007 law had a number of important shortcomings in light of existing international standards and experiences. For example, there was no provision for public discussion of the AASA renationalisation process even though there had not previously been massive public mobilisation to end the private concession – with the exception of protests organised by the Coordinator of Neighbourhood Assemblies against *Aguas Argentinas*.

The new legislation created a new regulatory body for monitoring and control, the Water and Sanitation Regulatory Entity (ERAS), within the Ministry of Federal Planning,

Public Investment and Services (MINPLAN). Its three directors were appointed by the federal executive without public competition based on professional merit and without consultation with Congress. Thus, from the start it was clear that the degree of autonomy of the new regulator was seriously compromised. The law also established the creation of the Planning Agency (APLA), also within MINPLAN, with responsibility for the “evaluation, study, planning, projection, execution and control of investments.”¹⁴ The Under Secretariat of Water Resources (SSRH) became the implementing authority with the responsibility for setting water and sanitation tariffs, and its director would be the same as APLA’s.

These considerations illustrate that despite the important advances made through setting up a new public entity, the institutional design of AySA had significant shortcomings. These range from the vague delimitation of incumbencies for the various bodies, aggravated by the multiplication of government agencies involved, to the limitation of the role of the regulator to functions of monitoring and control, to the concentration of the authority for implementation, planning and regulation in the hands of MINPLAN.

Furthermore, the new law does not obligate public consultations for substantial modifications to the system (e.g. alterations in the tariff system or in expansion targets). Participation is limited to consultations organised by the user syndicate, an entity operating voluntarily and constituted by recognised organisations defending user interests. The law provided for the parallel creation of a consumer watchdog entity to represent users in public hearings and judicial or administrative procedures; its head would be appointed through public competition based on professional credentials, a process that only started in late 2010. Clearly, users had little if any opportunity to participate in crucial decisions such as tariff setting or infrastructure planning. When the much delayed incorporation of user representation in ERAS through the consumer watchdog, and to a lesser extent through the user syndicate, finally comes into effect, it will be merely tokenistic unless significant changes are introduced.

Summing up, the creation of AySA permitted important advances, particularly by putting in place a regulatory framework specific to the water and sanitation sector that facilitates control and monitoring. However, the concentration of regulatory and other functions in the hands of the executive strays from international best practice. Today, AySA’s institutional and operational environment is fragmented and all decision making is centralised.

Assessing AySA’s performance

Although AySA is still relatively new, it is useful to assess its performance from the perspective of ‘efficiency’. The conventional, neoclassical understanding of efficiency gives

priority to the profit rate of a stand-alone organisation. We argue that it is necessary to go beyond these narrow confines and to recover a broader meaning of efficiency that includes state subsidies in the provision of essential public goods and services, and recognises the social and environmental benefits of investments that go beyond a single agency or sector.

If we were to accept the neoclassical position, the performance of AASA between 1993 and 2001 would be considered highly efficient, as it delivered a mean profit rate of over 20% on net assets. By contrast, the efficiency of AySA since its creation would be considered negative. Despite receiving direct transfers from the national budget equivalent to 60% of gross revenue, the company's 2010 balance sheet showed losses of 18.5% over gross revenue and 6.6% over net assets.¹⁵ Alternatively, if we give analytical priority to such indicators as the expansion of access to water and sanitation services to achieve essential social objectives, then AySA's performance to date would have to be considered much more 'efficient' than its predecessor's.

When AySA began operations in March 2006 the deficit in service coverage was 16% (1.5 million people) for potable water and 36% (3.5 million people) for sewerage. In response, AySA implemented the Plan for Immediate Action (PIA), involving infrastructure investments of roughly US\$40 million. The PIA had several sub-components and was mainly oriented to: 1) recovering the quality of services (Nitrates Plan), which had deteriorated in some areas due to poor environmental management by AASA; 2) expanding the capacity for treatment and transportation of drinking water and increasing access to new users; and 3) rehabilitating and renewing the infrastructure to guarantee service provision during periods of peak demand.

A more comprehensive roadmap, the Water Supply and Sanitation Master Plan 2006-2020 (WSMP), was launched in October 2006 by President Kirchner. It sets the priority goal of securing rapid universal access to water and sanitation services for AySA. The WSMP is divided into two phases, the Five-Year Plan (2007-2011) and the post-2012 period. The initial Five-Year Plan aims to achieve full universalisation of access to water (connecting 1.5 million new people) by 2012 and expanding the coverage for sewerage to 80% of the population (connecting 1.4 million new people). It also sets targets for improvements in the quality of drinking water and rehabilitation of infrastructure. For 2020, the WSMP aims to extend the coverage for sewerage services to 95% of the population, while also providing for the maintenance and renewal of the infrastructure and improving environmental health. The WSMP represents a total investment of roughly US\$5.7 billion, and funding responsibility is shared by AySA (52%) and the national government (38%), while the Autonomous City of Buenos Aires (5%) and the governments of the Province of Buenos Aires and the conurbated municipalities (5%) also contribute to the effort.

In brief, looking at AySA's economic-financial performance requires one to remember that the *raison d'être* of the company is not to make profit, provide value to private shareholders or become a water and sanitation utility that can compete on international markets. AySA's aim is to universalise access in the Buenos Aires metropolitan area by 2020 and, as such, it forms part of a political program that prioritises public and environmental health and well-being. The national government has committed to huge investments to meet these goals because it concluded that sufficient funding cannot come from AySA's revenues. Concretely, the federal government has granted increased transfers, which in 2009 amounted to roughly US\$137 million and were projected to rise to US\$340 million in 2010.

Crucial political decisions will have to be made to balance between the possibility of economic-financial self-sufficiency of the company and the higher societal goals set by the WSMP for 2020. It is important to critically evaluate the current economic-financial model in order to anticipate potential problems that may jeopardise the future performance of the utility and, consequently, the ability of the government to meet the targets. Among the key factors that influence AySA's chances of meeting its objectives are the infrastructure programs funded by the National Entity for Sanitation Water Works (ENOHSA) and tariff policies, to which we turn now.

Tariff policy

The WSMP explicitly recognises that AySA's revenues will not be sufficient to fund the investments needed to meet its ambitious targets, which has proven true since 2007 as revenues have been consistently lower than operational costs.¹⁶ This situation calls for a critical examination of the present tariff structure. A revision of tariffs could help to introduce more equity and solidarity among users, induce more rational water use, and allow for a reduction in the contribution required from the national budget to reallocate resources in priority areas.

It is worth recalling that water and sanitation tariffs have been frozen since January 2002, while the Consumer Price Index has increased by 150% as of November 2010. It is evident that the policy has had a significant impact on the company's revenue. Moreover, the tariff structure was inherited from AASA, which, as explained earlier, showed a number of distortions due to regressive fixed charges introduced during the renegotiations of the original contract. An unexpected outcome of the decision to maintain the tariff structure has been the entrenchment of unacceptable inequalities in the system, inequalities that have been substantially worsened by the effect of the tariff freeze. This situation is particularly noticeable in the case of the so-called 'free tap' (*canilla libre*) system, in use by high volume and high income users. In addition to the long overdue review of all fixed charges introduced during AASA's concession, it would have been important to update and extend

the value of some tariff components that are responsible for ensuring a higher degree of fairness in the system. In particular, tariff formula coefficients ‘Z’ (socio-economic conditions of the area as proxy for user payment capacity) and ‘E’ (quality and age of the building), which in principle provide the mechanism to charge more to high-income users than to poor users, should have been reviewed because they have proved insufficient. In other words, there is a need to update and extend the system of cross-subsidies that was part of the original tariff structure adopted at privatisation but that was later abandoned through the successive contract renegotiations. This is important not only to establish a fairer charging system but also to induce a more rational use of the services given that the tariff freeze has brought about a substantial drop in the cost of water and sanitation services for users, which tends to promote wasteful water use particularly among the well-off. Until tariff structures are re-evaluated and actual consumption is metered, it is hard to see how AySA campaigns for user education about water use can be effective.

Granted, some efforts were made to redress imbalances in the tariff structure inherited from the 1990s. For instance, the first “ordinary” contract renegotiation with AASA in 2001 introduced a Social Tariff that was implemented the following year. This tariff is targeted to vulnerable families that cannot afford to pay the cost of the services, and its application involves a complex set of actors including the WSS utility, the regulator, user and consumer bodies, neighbourhood associations, and local authorities. The tariff consists of a subsidy that varies according to the needs and characteristics of the households. Until 2008 the number of beneficiaries of the scheme ranged between 100,000-120,000 households but in 2009 the figure dropped to 57,329 households, receiving an average subsidy of US\$2.90 per month.¹⁷ This could be explained as the combined result of the drop in WSS bills caused by the tariff freeze and the clear improvement in the socio-economic conditions of poorer families recorded in recent years. However, the Social Tariff is just one among many programs targeted to protect the needs of the poorer users that were initially implemented to counter the impact of privatisation.

Infrastructure and expansion of access

Current infrastructure and access initiatives are the product of the first five-year review, originally scheduled in the AASA privatisation contract to take place in 1998 but only completed in 2001, that brought about a renegotiation of key aspects of the agreement. Indeed, this process generated a number of new initiatives aimed at compensating for the failures of the private company to deliver on targets originally agreed to regarding the expansion of coverage to low income sectors. These initiatives were to be publicly funded or based on the provision of labour and resources by the communities themselves; for instance the Participatory Management Model (MPG), also known as the Plan for Poor Neighbourhoods, was initiated in 2003 and the Water+Work Plan funded by ENOHSA was implemented in 2004 and taken over by AySA in May 2007.

The MPG is organised through the shared work of AySA, the municipalities and neighbourhood communities, with neighbours providing the labour force to receive discounts on water and sanitation bills in return. The MPG is almost fully funded by AySA who also provides the technical supervision of the works, and its objective is to expand water and sanitation coverage to very poor communities. Although the impact of the MPG has been modest it has nonetheless allowed the connection of around 44,000 people to the water supply and around half as many to the sewerage network.

More importantly, the Water+Work Plan has played a significant role in the expansion of the water network in recent years. This plan has multiple objectives, including the alleviation of the sanitary risk affecting the population lacking access to water and sanitation services, reducing the cost of network expansion in low income neighbourhoods, and the promotion of job opportunities through the creation of cooperatives. Since 2007, AySA funds and contributes to the design and supervision of infrastructure works while labour is provided by work cooperatives. These cooperatives are integrated by neighbours who are beneficiaries of social assistance or unemployed without welfare benefits. The SEGBATOS also plays an important role in the training of the cooperative workers, while the municipalities are in charge of leading the projects. Since the creation of AySA in 2006, the Water+Work Plan has helped to connect over 330,000 people to the water supply network, and it is expected that an additional 550,000 will be connected through projects that started in late 2009.¹⁸ This is a major contribution toward the objectives set by the government in the WSMP. Building on this success, the sister plan Sewerage+Oriented Work was started in 2008. This initiative involves a number of ongoing projects that are expected to connect over 16,000 people to the sewerage network in the Buenos Aires conurbated municipalities in the near future.¹⁹

A common characteristic of these programs is the direct involvement of residents, mostly from vulnerable communities, and their technical training to expand the water supply and sewerage networks and to improve access to the services provided by AySA. They give a significant boost to the central objectives set by the government in the Five-Year Plan (2007-2011), as a first step toward the universalisation of provision by 2020. By the end of 2009, AySA was able to connect over 540,000 people to the water supply network. Through the projects already being implemented it plans to extend the service to 415,000 more people by the end of 2011. In relation to sewerage, a total of 77,285 users were connected by late 2009, and AySA's current projects will include over 525,000 people by 2011. Thus, APLA authorities are confident that the targets set in the Five-Year Plan will be met.²⁰

Bringing workers on board

AySA's operational performance is strongly dependent on the collaboration of the SEGBATOS workers' union, a union that played an active role in the privatisation of the

utility in the 1990s when it was promised a share of 10% on the privatised utility. The company's president, Dr Carlos Ben, is closely associated with the union and was himself a member of the committee in charge of the privatisation program and later adjunct director of AASA. This strong involvement of Ben and the union in the business of the privatised utility is recurrently commented upon by critics who see worrying continuities with the past in the running of the renationalised utility. These problems are difficult to ignore. The national government has tried to dismiss these criticisms, notably in a speech delivered by Kirchner during the public announcement of the WSMP on October 12, 2006:

I do not have any doubt that the workers of the company AySA, working with the Argentinean people, with the providers, and through the public bids that we will be launching, will give a true example of what Argentines are able to do. I am absolutely convinced.²¹

It should be noted that AySA's workforce has grown steadily, from 4,058 employees in 2006 to 4,596 in 2009. This is not far from the numbers reached during the privatisation period, with 4,267 AASA workers in 1998.²² Considering the level of productivity as measured by the ratio between cubic meters of raw water produced per day to the number of workers, AySA's current performance shows positive trends: slightly over 1000 m³ per worker as compared to 968.4 m³ per worker recorded by AASA in 1998.²³

AySA's technicians and professionals benefit from a diversity of training programs organised with the active participation of SEGBATOS, covering technical, commercial, and administrative aspects. Also, there are training workshops for skilled workers in welding, mechanics and electro-mechanics, among other areas. The hours of training provided through these programs to AySA's workforce have significantly increased, from 21,874 hours in 2006 to 60,000 hours in 2009.²⁴ Moreover, the evidence suggests that AySA has been diligent in developing better working conditions in terms of safety and hygiene.

Conclusion

The recent experience with water and sanitation services in the Buenos Aires metropolitan area reveals useful lessons about rebuilding public utilities in the aftermath of privatisation. The case of Argentina is particularly valuable because of the abrupt changes in the macroeconomic, social and political contexts, forcing us to examine the ruptures and continuities between 1990s neoliberalism and post-2002 state-led economic and social policies.

A wealth of literature has been dedicated to the performance of AASA, and we have only reviewed some of its key aspects here. The main conclusions are that the privatised company failed to comply with contractual obligations and followed a strategy driven

by the pursuit of extraordinary profits. This strategy was successful for AASA during the period of forced stability of the Argentine currency (1993-2001), but imploded with the collapse of the neoliberal model in 2002. The economic, financial, environmental, political and social costs of the privatisation of Buenos Aires' water and sanitation services have yet to be fully understood, but evidence shows that these costs were very high and will compromise the ability of Argentina to achieve universalisation of essential public services by 2020.²⁵

In this respect, an example of the structural (and structuring) conditions that constitute the legacies of the neoliberal period are the different binding agreements signed by countries like Argentina to protect foreign investments, notably bilateral investment promotion and protection agreements (IPPAs).²⁶ These agreements have allowed private corporations such as Suez to sue governments that decide to terminate privatisation contracts even if the cancellation of the contract is justified by non-compliance on the part of the private operator. Argentina alone is facing dozens of such cases presented to the ICSID, including those by corporations like Enron that face corruption and money laundering charges in the United States but thanks to the IPPAs have a right to seek compensation in countries of the South.

The performance of AySA since 2006 is therefore marked by the tension between laudable efforts on the part of the national government to prioritise the universalisation of water services on one side, and the drag exerted by the legacies of privatisation on the other. Be it because of the inertia of high-ranking cadres initially associated with the privatisation experiment continuing to exert their influence on policy and operation, or the irrational tariff structure inherited from AASA, or the negative environmental impacts of contract non-compliance, the positive effects of bringing services back under public control have been limited by the institutional framework adopted for the public sector provider.

There is a need to improve the strategic planning of AySA's activities by incorporating all relevant dimensions of water services, particularly environmental issues which, although formally integrated, have been neglected in practice. AySA is under mounting pressure to take a more active role in the integral management of the metropolitan river basins that were historically abandoned and are now heavily polluted. A ruling by the Supreme Court passed in 2008 has ordered the government to take the necessary measures to clean up the highly polluted Matanza-Riachuelo basin, which raises the cost of water management exponentially in the Buenos Aires metropolitan area but also has very significant implications elsewhere. This decision came after long-standing mobilisation by a broad alliance of citizen organisations, water users, NGOs, local governments and environmental groups. This has serious implications for the future of AySA's management structures and performance and the public utility will have to consider pleas for institutionalised

mechanisms for meaningful user participation in pursuit of democratisation of water governance in the country.

These problems notwithstanding, renationalisation of the water and sanitation utility in Buenos Aires has brought about important and necessary transformations in the way these services are governed and managed, which offers important lessons for similar renationalisation or remunicipalisation projects elsewhere. AySA's mandate stems from a political decision made by the national government that introduced significant changes to the status of water and sanitation services. Those services are now formally recognised as human rights and as public goods that cannot be treated as commodities governed by market forces. There remain enormous challenges on the ground, but the government is working along with the utility to achieve the full universalisation of essential services. The case of AySA contains many lessons about the challenges and opportunities facing governments left to pick up the bits and pieces bequeathed by weakly regulated privatisation processes, and how they can deliver the universal quality services required for civilised life in the 21st century.

Endnotes

- 1 Daniel Azpiazu passed away shortly after completing his work on this chapter. As a researcher committed to the defence of the public good he made a substantial contribution to the understanding of the causes of socio-economic inequality and injustice in Argentina, including those associated with the privatisation of essential public services.
- 2 Idelovitch, E. and Ringskog, K. (1995) *Private sector participation in water supply and sanitation in Latin America*. Washington, DC: World Bank.
- 3 Resolution 155/1992 from the Secretariat of Public Works and Communications (SOPyC) granted the concession to AASA; the Resolution was confirmed by Decree 787/1993 from the National Government.
- 4 ETOSS (Ente Tripartito de Obras y Servicios Sanitarios), Resolution 81/1994.
- 5 Decree of Necessity and Urgency 303/2006.
- 6 ETOSS (2003) *Informe sobre el grado de cumplimiento alcanzado por el contrato de concesión de Aguas Argentinas S.A.*, Nota UNIREN, no. 73. Buenos Aires: ETOSS.
- 7 CRCOSP (Comisión de Renegociación de Contratos de Obras y Servicios Públicos) (2003) *Informe del equipo técnico y análisis, sector agua y saneamiento sobre el procedimiento de documento de consulta de Aguas Argentinas S.A.* Buenos Aires: CRCOSP. http://www.mecon.gov.ar/crc/inf_doc_cons_aguas.pdf (accessed 12 December 2011).
- 8 AASA's main shareholders filed their case to the ICSID as Suez, *Sociedad General de Aguas de Barcelona S.A.* and Vivendi Universal S.A v. Argentine Republic (ICSID Case No. ARB/03/19); others such as Anglian Water Limited presented it before the United Nations Commission on International Trade Law (UNCITRAL).

- 9 AASA (Aguas Argentinas S. A.) (2002) *Respuesta a la información solicitada por el Ministerio de Economía por medio de la guía de procedimientos*. Resumen Ejecutivo. Buenos Aires: AASA; Azpiazu, D. and Porcinito, K. (2004) Historia de un fracaso: La privatización del sistema de agua y saneamiento en el Área Metropolitana de Buenos Aires. In Azpiazu, D., Catenazzi, A. and Forcinito, K. (Eds.), *Recursos Públicos, Negocios Privados. Agua Potable y Saneamiento Ambiental en el AMBA*. Los Polvorines, Buenos Aires: Universidad Nacional de General Sarmiento.
- 10 See for example AGN (Auditoría General de la Nación) (2003) *Resolución 185*. Buenos Aires: AGN. <http://www.agn.gov.ar/informes/Aguas.PDF> (accessed 12 December 2011); CRCOSP (2003), *op.cit.*; DPN (Defensor del Pueblo de la Nación) (2003) *Informe sobre el servicio de agua potable y cloacas*. Buenos Aires: DPN. <http://www.dpn.gov.ar/areas.php?id=58&ms=area4> (accessed 12 December 2011).
- 11 Azpiazu, D., Schorr, M., Crenzel, E., Forte, G. and Marín, J.C. (2005) Agua potable y saneamiento en Argentina. Privatizaciones, crisis, inequidades e incertidumbre futura. *Cuadernos del CENDES* 59(22): 45-68.
- 12 The case presented by AASA before the ICSID (Case No. ARB/03/19) is still pending at the time of writing this paper (April 2011).
- 13 CELS (Centro de Estudios Legales y Sociales) (2007) *Derechos humanos en Argentina*. Buenos Aires: CELS-Siglo Veintiuno Editores Argentina; debate in Congress, however, helped clarify the nature of the new public company and avoid potential conflicts of interpretation. It led to the passing of Decree 373/06 where AySA is clearly defined as a public enterprise of social interest, and the company's shares in state hands were declared non-transferable.
- 14 Decree 373/06.
- 15 AySA (Agua y Saneamientos Argentinos S. A.) (2009a) *Informes anuales*. Buenos Aires: AySA.
- 16 AySA (2009b) *Informes al usuario*. Buenos Aires: AySA.
- 17 *Idem*.
- 18 *Idem*.
- 19 AySA (2009a), *op.cit.*
- 20 *Idem*.
- 21 Kirchner, N. (2006) Speech by President Nestor Kirchner during the public announcement of the creation of Argentina's Water and Sanitation Master Plan, Buenos Aires, 12 October.
- 22 Senén González, C. (2000) *Privatizaciones y relaciones laborales en empresas privatizadas de la Argentina. Los casos de las telecomunicaciones, el agua y el saneamiento*. Buenos Aires: University of Buenos Aires.
- 23 *Idem*; figures are author's own elaboration on the basis of AySA (2009a), *op.cit.*
- 24 AySA (2009a), *op.cit.*
- 25 Castro, J.E. (2009) Systemic conditions and public policy in the water and sanitation sector. In Castro, J.E. and Heller, L. (Eds.), *Water and sanitation services: Public policy and management*, pp. 19-37. London and Sterling, VA: Earthscan.
- 26 Although these types of agreements obviously existed before the neoliberal period, their growing significance and scale since the 1980s are unprecedented. A single country like Chile has assigned hundreds of such agreements, which according to analysts will curtail the capacity of the government to take sovereign decisions even in strategic areas for decades to come.