

Case Study Alberto Barton-Callao Hospital III Public Private Partnership and its Primary Care Center, of the Health Care Network La Red Asistencial Sabogal de EsSalud

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DRAFT for discussion

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CASE STUDY
ALBERTO BARTON-CALLAO HOSPITAL III PUBLIC PRIVATE
PARTNERSHIP AND ITS PRIMARY CARE CENTER, OF THE HEALTH
CARE NETWORK *LA RED ASISTENCIAL SABOGAL DE EsSalud*.

BETHSABÉ ANDÍA PÉREZ

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Acronyms

AFIN	Asociación para el Fomento de la Infraestructura (Association for the Promotion of Infrastructure)
APP (PPP)	Asociación Público Privada (Public Private Partnership)
BID (IDB)	Banco Interamericano de Desarrollo (Inter-American Development Bank)
BM (WB)	Banco Mundial (World Bank)
CGTP	Confederación General de Trabajadores del Perú (General Confederation of Workers of Peru)
CONFIEP	Confederación Nacional de Instituciones Empresariales Privadas (National Confederation of Private Business Institutions)
COPRI	Comisión de Promoción de la Inversión Privada (Commission for the Promotion of Private Investment)
CPIP	Comité de Promoción de la Inversión Privada de EsSalud (Committee for the Promotion of Private Investment of EsSalud)
CPISS	Comité de Promoción de Infraestructura y Servicios de Salud (Committee for the Promotion of Infrastructure and Health Services)
CR	Certificado de Reconocimiento de Derechos Irrevocables (Certificate of Recognition of Irrevocable Rights)
DL	Decreto Legislativo (Legislative Decree)
DS	Decreto Supremo (Supreme Decree)
EPS	Entidades Prestadoras de Salud (Health Care Providers)
EsSalud	Seguro Social de Salud (Social Health Insurance)
FED-CUT	Federación Centro Unión de Trabajadores del Seguro Social de Salud del Perú (Federation Workers' Union Centre of the Social Health Insurance of Peru)
FMI (IMF)	Fondo Monetario Internacional (International Monetary Fund)
FOMIN (MIF)	Fondo Multilateral de Inversiones (Multilateral Investment Fund)
FONAFE	Fondo Nacional de Financiamiento de La Actividad Empresarial del Estado (National Fund for the Financing of the State's Entrepreneurial Activity)
FONCEPRI	Fondo de Promoción de La Inversión Privada en las Obras Públicas de Infraestructura y de Servicios Públicos (Fund for the Promotion of Private Investment in Public Infrastructure Works and Public Services)
FOROSALUD	Foro de la Sociedad Civil en Salud (Civil Society Forum on Health)
IGV (GST)	Impuesto General a las Ventas (General Sales Tax)
INDES	Instituto Interamericano de Desarrollo Económico y Social (Inter-American Institute for Economic and Social Development)
INVIERTE.PE	Sistema Nacional de Programación Multianual y Gestión de Inversiones (National System of Multi-Year Programming and Investment Management)
IPRESS	Instituciones Prestadoras de Servicios de Salud Privadas (Private Health Service Providers)
IPSS	Instituto Peruano de Seguridad Social (Peruvian Institute of Social Security)
MEF	Ministerio de Economía y Finanzas (Ministry of Economy and Finance)
MINJUS	Ministerio de Justicia y Derechos Humanos (Ministry of Justice and Human Rights)
MINSA	Ministerio De Salud (Ministry of Health)
MMM (MMF)	Marco Macroeconómico Multianual (Multi-year Macroeconomic Framework)
OECD	Organización para la Cooperación y el Desarrollo Económicos (Organization for Economic Cooperation and Development)
OCI	Órgano de Control Interno (Internal Control Body)
OMS (WHO)	Organización Mundial de la Salud (World Health Organization)
OPS (PAHO)	Organización Panamericana de la Salud (Pan-American Health Organization)
PNIC	Plan Nacional de Infraestructura para la Competitividad (National Infrastructure Plan for Competitiveness)

PROINVERSIÓN	Agencia de Promoción de la Inversión Privada (Private Investment Promotion Agency)
PROMCEPRI	Comisión de Promoción de Concesiones Privadas (Commission for the Promotion of Private Concessions)
RPI	Retribución por Inversiones (Remuneration for Investments)
RPO	Retribución por Operaciones (Remuneration for Operations)
RPS	Retribución por el Servicio (Remuneration for Service)
SINAMES	Sindicato Nacional de Médicos de EsSalud (Doctors' National Union of EsSalud)
SINAMSSOP	Sindicato Nacional Médico del Seguro Social del Perú (National Medical Union of Social Security of Peru)
SINESSS	Sindicato Nacional de Enfermeras del Seguro Social de Salud (National Union of Nurses of the Social Health Insurance)
SNPIP	Sistema Nacional de Promoción de la Inversión Privada (National System for the Promotion of Private Investment)
SO (OC)	Sociedad Operadora (Operating Company)
SUTACAS	Sindicato Unido de Trabajadores Asistenciales Callao Salud (United Union of Healthcare Workers Callao Salud)
TUO	Texto Único Ordenado (Single Ordered Text)
UIT	Unidad Impositiva Tributaria (Tax Unit)
USAID	United States Agency for International Development (United States Agency for International Development)

DRAFT for discussion

This case study describes the process of privatization of the State since the 1990s, as well as the institutional system developed with the advice of international organizations in order to promote the implementation of Public Private Partnerships (PPPs) as a solution to the infrastructure deficit in the country. It analyses in depth the Alberto Barton-Callao Hospital PPP and its Primary Care Centre of the Health care network *La Red Asistencial Sabogal de EsSalud*, which is currently in operation, observing that it is a complex project, which has not been adequately negotiated, since there are gaps in the contract in relation to the level of the establishment, the definition of the services, the periodicity for the follow-up of the indicators and for their modification, among others; in addition, addenda have been signed that are detrimental to EsSalud, with serious signs of corruption.

Regarding transparency, it is evident that the main actors have not been consulted, either within or outside EsSalud, and that the documents that support decisions made regarding the contract and addenda have not been published. The monitoring reports that allow citizen oversight are not being published either.

This situation increases the tension between the interests of the operating company -to obtain as many benefits as possible- and EsSalud, which must look after the interests of the users. This has an impact on the quality of the services that these users must receive. The company has not met targets of quality and results affecting mainly the health of women, and infringing on the labour rights of its personnel, the majority of whom are women.

We conclude that the Barton PPP has produced higher costs than direct public investment and management, both in the financing of infrastructure and in the cost of operating the services. The annual payments that EsSalud will make for 30 years does not correspond to the services it provided by the PPP, compromising investment in care provided by other health services.

In the face of this, union and social movements continue resisting and avoiding the implementation of PPPs and the privatization of public services, with the aim of guaranteeing quality services for the population as a whole.

Introduction

The objective of the study is to provide evidence on the PPP of the New Alberto Barton Hospital III and its Primary Care Centre, of the Health care network *La Red Asistencial Sabogal de EsSalud* (Alberto Barton PPP) from a feminist intersectional analytical framework, which makes it possible to prevent and resist the negative impact of PPPs on the human rights of women and the less favoured social sectors.

Considering the precarious situation of the health sector, it is extremely important to analyse the impacts of PPPs in this sector, and thus guarantee the right to health of women and the population as a whole.

The study begins with a general review of the context in which PPPs are promoted - the evolution of the legal framework, the main actors - and then moves on to focus on the characteristics of the Barton PPP, its implementation and impact on the human rights of women and the less favoured social sectors. It then analyses the transparency of the selection process until its implementation, and finally analyses the resistance that has taken place in the process on the part of social organizations.

Chapter 1 Context

1.1 Background

The countries of Latin America, at the beginning of the 1990s, adopted a market-based economic system, implementing macroeconomic stabilization programs and structural reforms. These measures were aimed - stated from the perspective of the Washington Consensus - at generating the conditions for sustained growth of the economy based on private investment, as well as reintegrating the countries of the region into the international financial market.

In the case of Peru, the above-mentioned measures were implemented during the government of Alberto Fujimori (1990-2000). The stabilization program began in August 1990 based on monetary and fiscal policy. The process of structural reforms began in March 1991, "including the liberalization of trade, the capital market, the financial system and the labour market" as well as the reform of "public activity and government management". (Otero, 2001, p.9). In other words, restrictions on foreign investment were removed, the economy was opened up to international trade, markets were deregulated and public enterprises were privatized.

The privatization process began in September 1991 with the enactment of the Law for the Promotion of Private Investment in State-Owned Companies (D.L. 674). This law states that the growth of private investment should be promoted in all areas of national economic activity, that the business activity of the State has not yielded, on the whole, positive results, and therefore the necessary conditions should be created for the development and growth of private investment in the area of State enterprises, in order to achieve the modernization, reorganization and invigoration of the activities under their responsibility. The bodies promoting private investment were also created: The Commission for the Promotion of Private Investment (COPRI, for its acronym in Spanish) and the Special Committees. The same ones that made possible the implementation of an ambitious privatization program.

D.L. 758 was issued on 8 November 1991 for the Promotion of Private Investments in Public Service Infrastructure. Within this regulation's framework public works includes, among others, infrastructure works for transportation, environmental sanitation, energy, health, education, fishing, telecommunications, tourism, recreation and urban infrastructure. The concept of public services refers, among others, to public transportation, sanitation, telecommunications, public lighting, as well as education, health and recreation services. D.L. 839 was published on 21 August, 1996, approving the Law for the Promotion of Private Investment in Public Infrastructure Works and Public Services, by which the promotion of private investment in the field of public infrastructure works and public services, under the modality of Concession, is declared to be of national interest. The Commission for the Promotion of Private Concessions (PROMCEPRI) was created, which assumes all powers for the concession of infrastructure public works and public services. At the same time, the Fund for the Promotion of Private Investment in Public Infrastructure Works and Public Services (FONCEPRI) was created to finance the activities involved in the granting of concessions.

The privatization of public companies was a fundamental component in the program of structural reforms in search of the modernization of the economy, "it was conceived as a tool through which the State would transfer the productive and entrepreneurial initiative to the private sector" and thus, supposedly achieve greater efficiency in the allocation of resources and the production of goods and services (Ruiz, 2002, p.10).

The subsidiary role of the State was consolidated in the new Constitution enacted in 1993, in whose Economic Regime it is established that "the State can only carry out subsidiary business activity, directly or indirectly, when authorized by express law for reasons of high public interest or of manifest national convenience. Business activity, whether public or non-public, receives the same legal treatment" (Article nº 60).

Furthermore, in order to facilitate private investment, various normative instruments were created, such as law contracts, by virtue of which the State established guarantees and provided security to investors, preventing the State from implementing radical changes in tax and regulatory policies, which could imply a higher cost in investment projects.

At the beginning of the nineties, the State had an important intervention in different sectors of the economy, assuming the role of entrepreneur in almost all economic activities. Its participation covered 186 companies, of which 135 were non-financial and 51 were linked to the financial system. (Otero, 2001, p.17).

The process of privatization meant the withdrawal of the State from important productive sectors, and the reduction of its participation in others.

A decade after the process of privatization of public companies in Peru began, it was detected that "some were sold at undervalued prices, that in certain cases privatization was not justified, that it was poorly conceived and that the resources obtained from their sale were not used properly" (Ruiz, 2002, p. 9). In addition, it was known that efficiency had not been achieved in the privatized sectors so that the principle that justified them had not been fulfilled. (Ruiz, 2002).

In spite of this, all subsequent governments -Toledo, García, Humala, Kuczynski-, including the current one of Vizcarra, continued with the policy of promoting and facilitating this process, with special emphasis on investments that were linked to the concession of infrastructure works and public services, perfecting the legal instruments to facilitate their implementation, as can be seen in the Compendium of Legislation for the Promotion of Private Investment (Ministry of Justice and Human Rights, 2012) and in subsequent legal regulations.

1.2 Economic policy and PPPs

Since the 1990s, Peruvian economic policy has maintained an international trend that seeks to reduce the State's participation in the economy. In accordance with this, one of its main public policy instruments is the National Policy for the Promotion of Private Investment in PPPs and Asset Projects (Ministry of Economy and Finance (MEF), 2016) -formulated at the end of Ollanta Humala's administration (2011-2016),- which aims to promote the participation of the private sector in the

modalities of PPPs and Asset Projects, to supposedly contribute efficiently to closing the gap in the country's public infrastructure, improve the scope and quality of public services, energize the national economy, generate productive employment, and thus achieve the much-desired competitiveness of the country.

"To this end, the State must generate the appropriate conditions at the political, regulatory, institutional, social and economic levels, among others, that favour the fulfilment of the objectives" of the aforementioned policy (MEF, 2016, p.2), which deepens the process of privatization of public spending implemented by the MEF.

In this context, the economic policy guidelines set out in the Multi-year Macroeconomic Framework¹ (MMF) 2020-2023, (MEF, 2019a), to achieve sustained economic growth, are based on boosting investment, competitiveness and productivity, in line with the main international practices, which seeks to make Peru a member of the OECD.

As a result, the boost to the GDP will be given mainly by strengthening the dynamism of private investment; the National Infrastructure Plan for Competitiveness (PNIC, for its acronym in Spanish) (MEF, 2019c) constitutes one of its pillars, in which 52 infrastructure projects have been prioritized for an amount of US\$ 30,060 million, where 66% of the investment will be made under the PPP modality (see table No. 1.1).

In addition, rules have been approved to improve the regulatory framework for PPPs and tax works, and monitoring committees have been set up to ensure the implementation of large investment projects. Additionally, the Private Investment Promotion Agency (PROINVERSION) has been applying measures to encourage private investment such as legal stability agreements, tax refunds and early recovery of the General Sales Tax (GST). (MEF, 2019a). In its 21 years of existence, PROINVERSION (n.d.) has carried out processes that have meant more than 50 billion dollars in investment contracts.

In turn, the guidelines of the MMF's fiscal policy (MEF, 2019a) study to improve the process of public investment management, and thus reduce infrastructure gaps. To this end, standards have been approved in the National System of Multi-Year Programming and Investment Management (known as INVIERTE.PE)² as well as in the PPPs and Tax Works systems, which seek to streamline processes, reduce time, increase efficiency and quality of projects, and "continue to promote the participation of the private sector through the optimization of the National System for the Promotion of Private Investment and Tax Works". (MEF, 2019a, p.10)

Table No. 1.1

EXECUTION METHOD		PROJECTS	INVESTMENT (US\$ Millions)*	%
Public Private Partnerships	Self-financed	18	6.032	20 %
	Co-financed	11	13.729	46 %
Public Work		17	9.320	31 %
Active Projects		6	980	3%
TOTAL		52	30.060	100 %

MODALITIES OF EXECUTION OF THE PROJECTS PRIORITIZED IN THE NATIONAL INFRASTRUCTURE PLAN FOR COMPETITIVENESS

(*) Exchange rate used 3.3 soles.

Adapted from the National Infrastructure Plan for Competitiveness (MEF, 2019c, p.41)

Prepared by the author.

The PPP projects awarded by sector have focused on energy, transport, communications and sanitation, as well as those prioritized in the PNIC. In this case, the prioritization criteria are based on

competitiveness, growth and social development in productive terms (MEF, 2019d). The projects do not take into account the impacts on gender gaps,³ neither economic policy nor the national policy on productivity and competitiveness consider reducing them.

1.3 The health sector and the PPPs

The health reform in the 90s was part of the general reform or modernization process of the State (Mesa-Lago, 2005): "it was expressed by sector together with the formulation of the Health Policy Guidelines 1995-2000" (PAHO, 2002, p. 3) in which it was stated that "the State must guarantee the provision of basic health services and that human development, including health, is a social responsibility that includes the public and private sectors" (MINSA, 1998, p. 31). In this way there is a reformulation of the State-civil society relationship towards a relationship of complementarity and competition between the State health services, social security and private health services, for greater access and better health care for the population. To this end, it is "imperative to reform the health sector. This implies accepting and effectively facing the challenge of making changes that lead to pluralism and competitiveness, removing anachronistic regulations that reduce the productive potential of the sector and building new financing, management and service provision models to achieve equity, efficiency and quality." (MINSA, 1998, p. 43).

Since 1995, "the reform was centrally managed by the authorities of the Ministry of Health. The design of the reform was based on the guiding principles contained in the "Sector Policy Guidelines 1995-2000"; the financing of field experiences and the implementation of the process took place through projects supported by the IDB, the World Bank, the Public Treasury and international technical cooperation." (PAHO, 2002, p.5)

"The legal framework of the sector was renewed in 1997 with two laws" (PAHO, 2002, p. 9): the General Health Law (Law 26790) which established the responsibility of the State in the provision of public health services and in the promotion of universal and progressive insurance. The Law for the Modernization of Social Security in Health (Law 26790) introduced new forms of care for the beneficiaries of Social Security with the participation of private providers. In this law, "Health Care Provider Institutions (EPS, for its acronym in Spanish) are understood to be public or private companies and institutions other than the IPSS⁴ whose sole purpose is to provide health care services, with their own infrastructure and that of third parties" (Art.13). Likewise, the employing entities may grant health coverage to their active workers, through their own services or through health plans or programs contracted with the EPS, and thus enjoy a credit with respect to their contributions.

Subsequently, other strategies for private sector participation have been implemented, such as the outsourcing and intermediation of services, and more recently the hiring of Private Health Service Providers (IPRESS) under the Framework Law on Universal Health Insurance (Law No. 29344, 2009).

In this context, PPPs have been used as a mechanism to expand service coverage. There are currently four PPP projects in operation in the health sector, three managed by EsSalud and one by the Ministry of Health (MINSA), see Table 1.2.

DRAFT for discussion

Table No. 1.2

PPP Projects in the Health Sector as of 2020

IN CHARGE OF MANAGEMENT	NAME	TYPE OF PROJECT	SCOPE	YEAR OPERATION ASSIGNED	DURATION OF THE CONTRACT
EsSalud	Callao Hospital and Sabogal Network	Private initiative/Self-financed	Design, construction, medical equipment and comprehensive care with assigned population.	2010/2014	30 years of operation + 2 of construction
EsSalud	H. V. M. T and Rebagliati Network	Private initiative/Self-financed	Design, construction, medical equipment and comprehensive care with assigned population.	2010/2014	30 years of operation + 2 of construction
EsSalud	Network of stores and pharmacies	Private initiative/Self-financed	Construction of stores, remodelling of hospital warehouses and logistics management of medicines and supplies.	2009/2012	10 years of operation + 3m launch
MINSA	Management of the National Children's Institute – San Borja	Publication co-financed	Maintenance: of the building, facilities. Clinical and non-clinical equipment. Operation and maintenance of general services and diagnostic support services. Acquisition technical assistance service.	July 2014/ Oct.2014	10 years operation +3m launch +15d Check inventory

Source: EsSalud, MINSA.
Prepared by the author.

Chapter 2 Legal and regulatory framework for PPPs.

As mentioned above, it was in the early 1990s, during the Fujimori administration, that a whole regulatory framework was in place that provided a strong incentive for the promotion of private investment within the State, which continued with subsequent governments, including the current one, and has been the legal framework for PPPs ever since.

However, the publication of the D.L. 1012 (2008) marks a milestone. This is the framework law for Public-Private Partnerships was specifically approved for the participation of the private sector in the operation of public infrastructure or the provision of public services in order to make their implementation viable, generate productive employment and improve the country's competitiveness.

The aforementioned D.L. defined PPPs as "modalities of participation of private investment in which experience, knowledge, equipment and technology are incorporated, and risks and resources,

preferably private, are distributed with the purpose of creating, developing, improving, operating or maintaining public infrastructure or providing public services". (Art.3)

In turn, PPPs were classified as self-sustaining and co-financed. Self-sustaining PPPs are those that demand a minimum or no guarantee financed by the State and whose non-financial guarantees have a minimum or no probability of demanding the use of public resources. Co-financed PPPs are those that require the co-financing or the granting or contracting of financial guarantees or non-financial guarantees that have a significant probability of demanding the use of public resources. (Art.4)

Therefore, depending on the financing modality and origin of the initiative, there are four types of PPPs, as shown in Table 2.1.

Table No. 2.1

TYPES OF PPP PROJECTS		
CLASSIFICATION		
ORIGIN	State Initiative / Self-financed	State Initiative / Co-financed
	Private Initiative / Self-financed	Private Initiative / Co-financed

Source: D.L. 1012, 2008.
Prepared by the author.

The principles under which projects should be developed under the PPP modality were also established:

- Value for money. It establishes that a public service should be provided by a private entity that can offer a higher quality at a certain cost or the same quality results at a lower cost.
- Transparency. It establishes that all quantitative and qualitative information used for decision-making during the evaluation, development, implementation and accountability stages of a project must be made known to the public, under the principle of publicity established in Article 3 of the Single Ordered Text of the Law on Transparency and Access to Public Information (D.S.Nº043-2003-PCM).
- Competition. It establishes that competition must be fostered and promoted in order to ensure efficiency and lower costs in the provision of infrastructure and public services, as well as to avoid any anti-competitive and/or collusive act.

- Adequate risk allocation. There must be an adequate distribution of risks between the public and private sectors.

The D.L. 1012 was in force during the process of signing the Barton PPP contract. Its Fifth Final Complementary Provision states that EsSalud, within the framework of the autonomy granted by the law, is empowered to promote, process and sign PPP contracts with the purpose of incorporating private investment and management in the services it provides to the insured.

Subsequently, other regulations have been issued to strengthen the promotion of private investment, such as the Legislative Decree of the Framework for the Promotion of Private Investment through Public-Private Partnerships and Projects in Assets (D.L. 1224, 2015) and its Regulations (DS No. 410-2015-EF).

The current government issued the D.L. 1362 (2018) Public Private Partnership and Projects in Assets, which created the National System for the Promotion of Private Investment (SNPIP, for its acronym in Spanish), formed by public entities belonging to the Non-Financial Public Sector (Art.2). That is, it includes all public entities of the National Government, Regional Governments and Local Governments and non-financial public enterprises.

The SNPIP is a functional system for the development of Public-Private Partnerships and Active Projects (Art.5.1.). It is composed of principles, rules, procedures, guidelines and technical normative directives aimed at promoting and speeding-up private investment. (Art. 5.2)

The system has been perfected to increase private investment at all levels of government. Despite this, there are no mechanisms in the legislation to evaluate and monitor results, to know if the PPP modality is more adequate than traditional public investment, or to evaluate the impact of projects on environmental and social rights, or on gender gaps.

Likewise, the principles are declaratory. There are no adequate mechanisms to apply them or exceptions are generated that weaken their application.

For example, the Regulations of the D.L. 1362 (DS No. 240-2018-EF), established a simplified procedure for state initiatives. Its special rule focuses on the fact that the opinion of the MEF is limited to the state's capacity to pay, and to the verification of the project's classification. This procedure applies to PPPs whose total cost is less than 15,000 Tax Units (UIT) which, by 2018, meant about US\$ 19 million, an amount higher than the annual budget of most of the country's district municipalities. In practice, they could all go ahead with it, with weak controls.

As several authors have pointed out, the weakness of the organizations in charge of managing the processes and the deficiencies of the regulatory framework, among others, have made it possible for PPPs to be a breeding ground for corrupt practice, generating greater economic and political costs for society. (Alarco, 2015; Baca, 2017; Benavente, 2017; Alarco and Salazar, 2019).

On the other hand, there are no mechanisms in the system to incorporate the voice of communities or people involved in the prioritization and development of projects, or in the monitoring of their implementation. Rather, it is against their rights. In the procedural rules of the D.L. 1362, the public entities holders of the projects executed under the PPP modality are obliged to "initiate early on the process of identification, acquisition, clean-up, and expropriation of the lands and necessary and supportive areas for the execution of the project, as well as the release of interferences under responsibility". They are also authorized to "carry out the processes of relocation or resettlement that allow the release and clean-up of lands and areas for the implementation of the project" (Art.30).

DRAFT for discussion

3. Main actors

The main actors are: a. the State, b. the private enterprise, c. international organizations, and d. the civil society.

- a. The State regulates and promotes private investment through PPPs and projects in assets and has generated an institutional framework that cuts across all public entities at all levels of government (see Table 3.1).

The SNPIP is presided over by the Ministry of Economy and Finance, which establishes the policy for the promotion of private investment. Its governing body is the General Directorate of Private Investment Promotion Policy, which establishes the guidelines and issues binding opinion (see table No. 3.1). In turn, PROINVERSION, as an attached entity, aims at promoting private investment through PPPs, projects in assets and tax works, for their incorporation in public services, public infrastructure, in assets, projects and state enterprises. Chart No. 3.2 shows PROINVERSION's structure, whose Board of Directors is made up of authorities of the highest level.

Table No. 3.1

NATIONAL SYSTEM FOR PRIVATE INVESTMENT PROMOTION		
CENTRAL	Ministry of Economy and Finance The Private Investment Promotion Agency - PROINVERSION Special Committees	Other public entities authorized by law Private Investment Promotion Committee-CPIP Specialized body for project management > 300,000 UIT*
	The Ministries Private Investment Promotion Committee-CPIP Specialized body for project management > 300,000 UIT	
	The Regulatory Agencies	
	The Comptroller General of the Republic, without prejudice to its autonomy and legal powers	
REGIONAL	Regional Government Private Investment Promotion Committee-CPIP Specialized body for project management > 300,000 UIT	
LOCAL	Local Government Private Investment Promotion Committee-CPIP Specialized body for project management > 300,000 UIT	

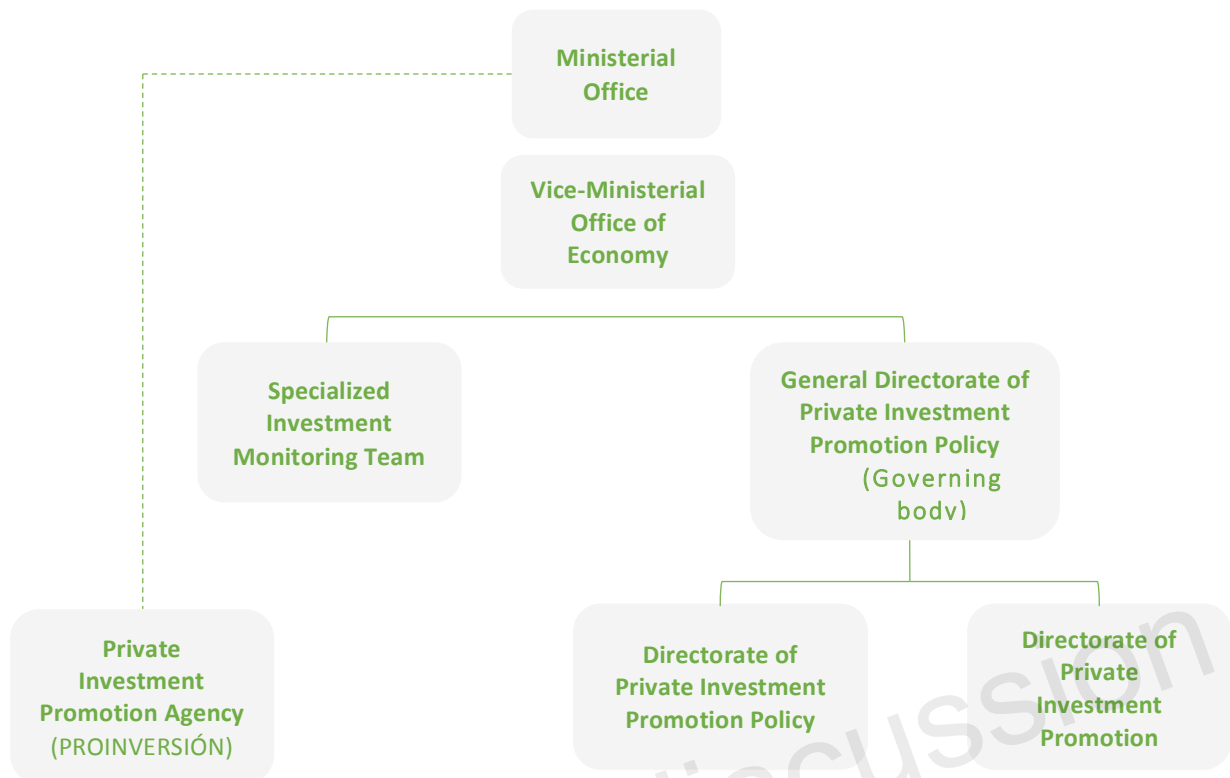
(*) UIT 2020 Aprox. 1,265 US\$.

Based on the D.L. No. 1362, 2018; DS No. 240-2018-EF

Prepared by the author

Chart No. 3.1

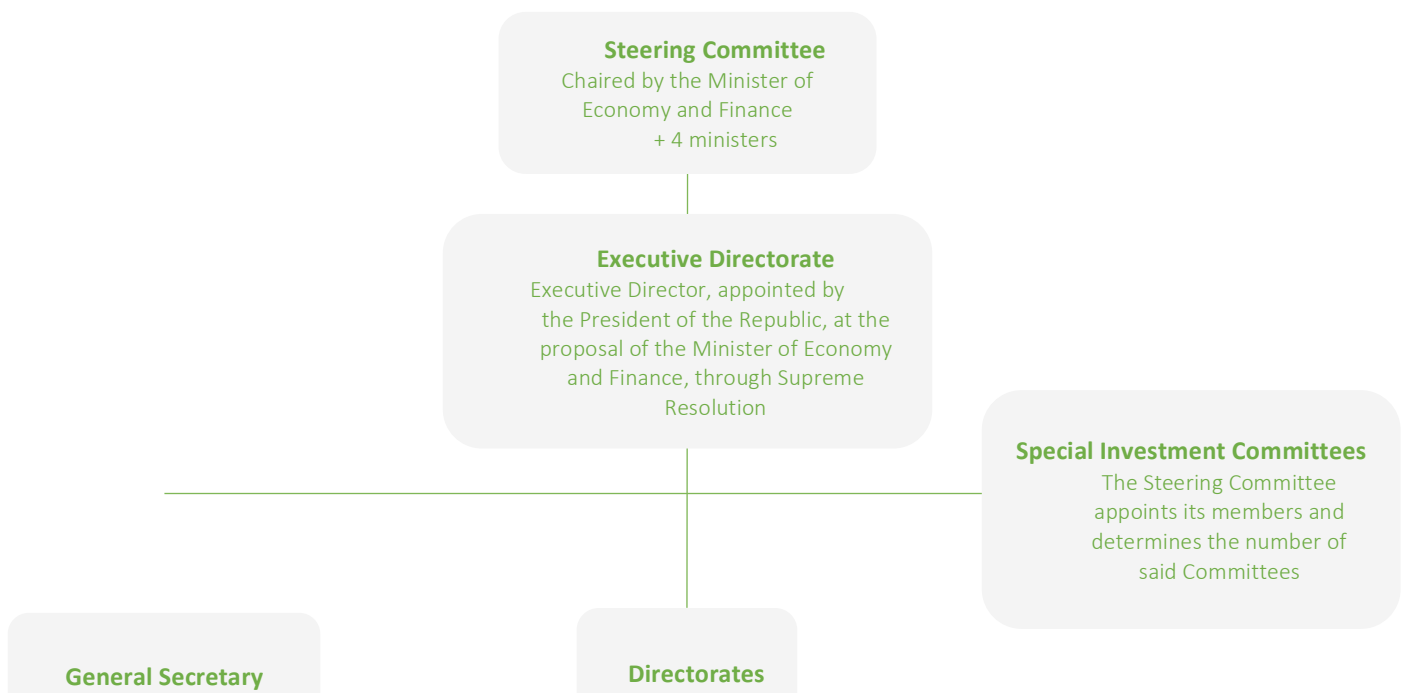
PARTICIPATION OF THE MINISTRY OF ECONOMY AND FINANCE IN THE PRIVATE INVESTMENT SYSTEM



Based on: MEF's Organization Table (2019b); D.L. No. 1362, 2018; DS No. 240-2018-EF.
Prepared by the author

Chart No. 3.2

PROINVERSION ORGANISATION CHART



- b. The private company participates directly in the bidding process or by proposing projects, in many of which there has been corruption:

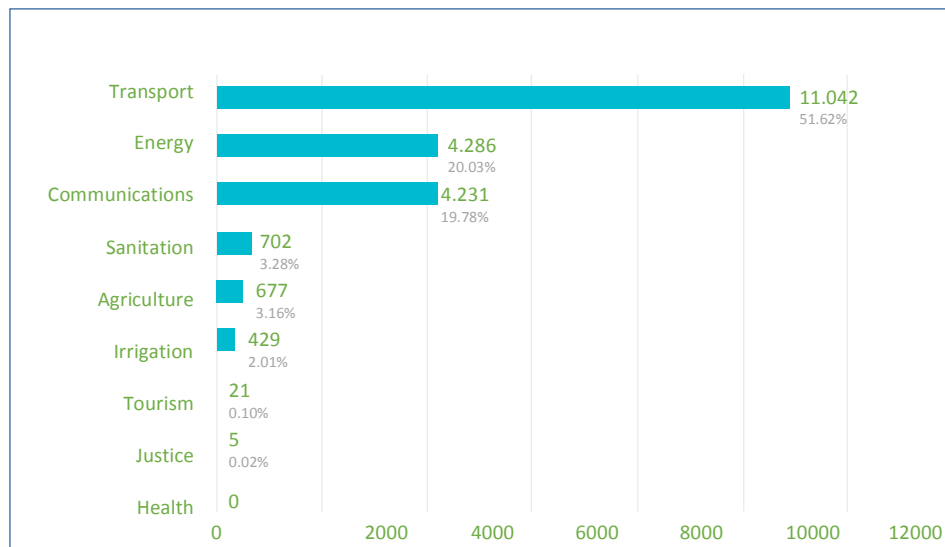
This (...) includes all the neoliberal regimes of the last 25 years. Its main means have been public-private partnerships (PPPs) with the aim of achieving the allocation of public infrastructure and services, allowing cost overruns and limiting benefits to users. (Alarco, 2017).

In addition, through business associations, it influences the State to formulate policies that favour private investment in PPPs. The National Confederation of Private Business Institutions - CONFIEP, for example, promotes and disseminates this type of investment. This year, the president of CONFIEP, María Isabel León, led the visit of ambassadors from six nations accredited in our country to the EsSalud Hospital Alberto Leopoldo Barton. She highlighted that the private sector, through PPPs, can help the State to provide, with greater dynamism and quality, the services it gives to citizens. (CONFIEP, 2020)

It also guides the type of sectors where to invest: according to their interests, PPPs have concentrated, in terms of amounts invested and number of projects executed, in transportation, energy and communications as can be seen in Charts No.3.3 and No.3.4. This is reinforced in the National Infrastructure Plan 2016-2025 proposed by the Association for the Promotion of Infrastructure - AFIN (Bonifaz, J. et al., 2015).

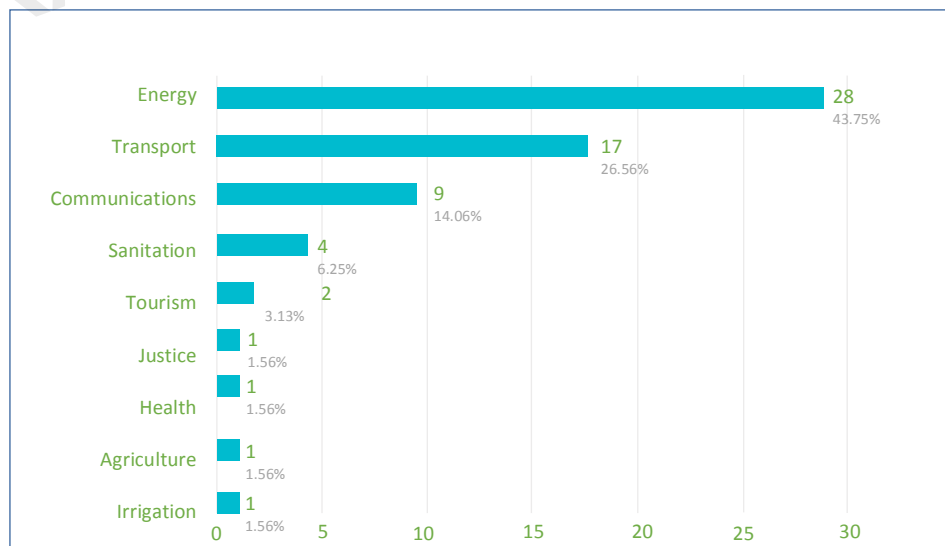
Chart 3.3:

AMOUNT OF INVESTMENT IN PPP AWARDED BY SECTOR
From January 2008 to December 2018 in Millions of US\$



Adapted from MEF's Statistics (n.d.)
Prepared by the author

Chart 3.4



Adapted from MEF's Statistics (n.d.)
Prepared by the author

c. International organizations, which promote and provide theoretical, technical and financial

support to PPPs.

The World Bank in its report "Investing in Health" (1993) "laid down the basic principles of the reforms and the new systems. The IMF, USAID, and the IDB, as well as private insurers/providers and prepaid, government officials, and academics have helped shape those principles." (Mesa-Lago, 2005, p. 35)

In the above-mentioned report, the WB proposes a three-pronged approach to improve health conditions in developing countries: firstly, to promote growth policies; secondly, to direct public spending on health to low-cost and high-efficiency programs; and thirdly, to facilitate greater diversity and competition in the financing and provision of health services. It recommends that governments should finance essential services, while the rest of the services could be covered by private financing, through private or social insurance. It also recommends encouraging competition and private sector participation in the provision of public health services. Along these lines, the WB advised the elaboration of EsSalud's Master Plan 2013-2021, which prioritizes, among others, the use of PPPs for new investments and for the management of health units. (EsSalud, 2014)

In turn, The Inter-American Development Bank (IDB) considers that PPPs are a mechanism for developing infrastructure and improving access to services in the region. It states that the countries' use of the benefits of PPPs depends largely on an adequate distribution and management of the associated risks, as well as the associated contingencies for the State. For this reason, it promotes the development of institutional capacities of governments for the evaluation and management of these risks (IDB, n.d). Peru is part of the PPP Risk Management Group, dedicated to generating a space for exchange and cooperation among specialists in public-private financing.

Within the framework of capacity building, the IDB, together with the Multilateral Investment Fund (MIF), the Inter-American Institute for Economic and Social Development (INDES) and in coordination with the MEF, developed the course Public-Private Partnerships in Peru: Analysis of the New Legal Framework.⁵

The IDB also promotes and finances the structuring of projects. EsSalud has received an allocation under its Regional Advisory program for PPP investments in order to develop a PPP project in the city of Piura. (EsSalud, 2019)

In 2014, the OECD established the "Country Program" as an instrument to support emerging economies in the design of their reforms and the strengthening of their public policies. Peru signed up to this program in December of that year. It included a set of projects, which were carried out

over a period of two years (2015-2016), in order to support Peru in its reform agenda, and to improve its public policies in key priority areas. The Program involved the inclusion of some OECD legal instruments, such as the Council Recommendation on Principles for Public Governance of Public-Private Partnerships⁶, the participation in OECD programs and bodies, and the effective implementation of OECD standards and good practices. (MEF, 2016). The legal regulations issued from 2015 onwards have aimed at complying with these principles.

d. Civil society is represented in part by academic sectors such as universities and research centres, which provide analysis and evidence on the advantages and disadvantages of PPPs, as well as information on the corruption cases that have been generated. The dissemination of these facts is seen more as a problem of corruption of officials and businessmen, rather than as a questioning of the promotion of private investment by the State.

Another very important sector of civil society is made up of social movements⁷ that denounce and oppose PPPs and the privatization of public services. This will be analysed in more detail in the chapter on resistance.

Chapter 4 Characteristics of the Barton PPP

4.1 Process

EsSalud (2008) approved its Strategic Plan 2008-2011 and its Strategic Investment Plan, then had to perform a cost-benefit analysis to define the investment modality and opt for a PPP⁸.

The principle of value for money, which is basic to determine the convenience of using a PPP, was not applied. According to the regulations of the D.L. 1012 (D.S No. 146-2008-EF) the Public-Private Comparator (numerical expression of the value for money) was to be applied to projects of more than 100,000 UIT, which in 2008 meant projects of more than US\$ 112 million, and the reference projected investment of the Barton PPP was US\$ 39.9 million.

In the public initiatives, the State defines the characteristics of the goods and services that must be offered by the interested parties. EsSalud, on the other hand, used the modality of private initiative by which private proponents are requested to present proposals under a set of requirements. EsSalud

published the international invitation on 26 and 30 March 2008. Only the consortium BM3 SALUD, made up of four Spanish companies (Ribera Salud S.A., Mensor Consultoría y Estrategia S.L., BM3 Obras y Servicios, Exploraciones Radiológicas Especiales ERESA), expressed its interest in participating and developed a proposal that met the technical requirements established in the Bases and the Draft Contract.

The EsSalud Board of Directors declared the proposal submitted by the consortium to be of public interest. It was published and disseminated so that within 90 days interested third parties could submit their expressions of interest regarding the execution of the project, together with a letter of guarantee. Only the BM3 SALUD consortium submit a tender to execute the project, so there was no competition. On 10 February, 2009, the Board of Directors of EsSalud approved the direct award to the BM3 SALUD consortium.

Contract and participants

The PPP contract of the New Hospital III Callao and its Primary Care Centre of the Sabogal Healthcare Network of EsSalud was signed on 31 March 2010, between the Social Health Insurance-EsSalud and the company Callao Salud S.A.C. (EsSalud, 2010a).

EsSalud is a decentralized public organization, with legal status under domestic public law, attached to the Ministry of Labour and Employment Promotion. Its purpose is to provide coverage to the insured and their beneficiaries, through the granting of benefits that correspond to the Social Security in Health Contribution System. (Law 27056, 1999)

In order to fulfil its purposes, EsSalud, according to its creation law, may enter into all types of contracts and/or agreements permitted by Peruvian law, including contracts for the realization of medium or long term investments and services as established in its Strategic Investment Plan. (DS No.025-2007-TR)

The company Callao Salud S.A.C., hereafter Operating Company⁹ (OC) is made up of seven Spanish companies (BM3 Obras y Servicios S.A, Ribera Salud S.A., Mensor Consultoría y Estrategia S.L., IBT Health, BM3 Iberosalud S.L., Exploraciones Radiológicas Especiales S.A, Ibérica de mantenimiento S.A.). The majority shareholder is IBT Salud, a member of the IBT Group, a business group specialized in the development and execution of public works, equipment projects and concessions. (Callao Salud SAC, 2016)

The OC requested amendments to the contract on 21 February 2011. After the respective administrative processes, the Central Office for the Promotion and Management of Investment Contracts issued the consent for the amendments requested. Addendum No.1 was signed on 7 April 2011. (EsSalud, 2011). The amendments accepted clearly benefit the OC, inexplicably harming EsSalud and the Peruvian State. Some of these amendments are:

- The transfer of ownership of infrastructure or equipment to EsSalud automatically upon the issuance and delivery of each CR RPI (Section V). In this way, the OC avoids paying the temporary net asset tax as established by Law 28424 (2004).
- In Section VI, Assets Regime, the paragraph referring to the fact that the improvements that would have been made will remain for the benefit of EsSalud without the OC being able to demand any reimbursement for them, is eliminated.
- In Section XIV, Guarantees, a subsection is included by which the OC, with prior authorization from EsSalud, may *assign its contractual position*, as well as constitute a lien on the Surface Right.
- In Section XIX, Termination of the contract, a paragraph is added. It stipulates that in any case of termination, general expenses and investments made, plus the applicable GST, are recognized to the OC.

Subsection 19.21 is amended by deleting the paragraph that indicates that in no case the amounts recognized to the OC will be considered as an additional payment to the RPS, but on the contrary, that these replace the RPS.

Subsection 19.22 is amended by deleting the paragraph that indicates that after the settlement date EsSalud will issue an instruction to the trustee in order to stop disbursements and proceed to settle the trust, and the remaining debts will be paid directly.

- In Annex A, the area of the land where the New Hospital III will be built is modified; originally, the architectural program had to be adapted to an area of 24,465.05 m² and it is reduced to 21,939.12 m². Despite the fact that the area of the land was reduced by 10%, the infrastructure costs did not decrease.

The second Addendum is a result of the communication sent by EsSalud to the OC for the termination of the contract, due to the fact that the OC had not confirm the Financial Closing. That is, it had not proved that it had the commitment of the necessary financing to execute the Infrastructure Construction. After a process of direct treatment, the contract was continued and signed on 28 March 2012 (EsSalud, 2012).

For the purposes of the continuity of the contract, it is agreed that:

- The parties submit to Bank of America Merrill Lynch the information requested.
- Once the information has been delivered, the OC has 40 days to confirm the financial closing.

Regarding the responsibilities of each party in the operation, it is agreed:

- To develop the service indicators and minimum standards of care necessary to monitor the due fulfilment of the obligations included in the health and non-health services.
- To update the service portfolio and the equipment plan. To this end, a coordinated evaluation of the service portfolio, the equipment plan and the insured population affiliated will be carried out.
- To resolve the disputes that could arise related to the quality manual and/or the result of the evaluation abovementioned, by means of an expert's report.

It is mentioned that a coordinated evaluation of the updates agreed upon in the Addendum will be carried out, but this document is not available on the Essalud website (n.d.). In table No. 4.1 we summarize the agreements that modify the responsibilities of the OC and EsSalud. The evaluation carried out to determine whether a balance is maintained or whether the PPP is favoured over EsSalud deserves to be known.

DRAFT for discussion

Table No. 4.1
Summary of agreements Addendum No. 2

COMMITMENTS OF THE OC	BENEFITS THAT THE OC RECEIVES FROM EsSalud	REMARKS
Haemodialysis centre and 60,000 sessions per year Outpatient care. Diagnostic tests for the non-affiliated population as long as the availability of the offer exists for the affiliated population.	Updating of the equipment plan (implies an investment by EsSalud, every 3 years for group II and every 10 years for group I). Corporate purchases. The OC can outsource services	The equipment plan was \$11,449,870 in Group I and \$1,375,240 in Group II. This could mean an investment greater than the services received. In addition, the objective of the PPP is changed: EsSalud is going to invest so that the PPP can operate. They depend on the demand of the population affiliated, so they may not be carried out. The increased use of equipment for diagnostic tests will impact on the updating of the equipment that EsSalud would have to make. The OC may tend to lower costs and the control of the quality of services may become more complex.

Source: Addendum 2 (EsSalud, 2012).

Prepared by the author

Nowhere in the process have mechanisms been used that allow for the participation of important actors, both within and outside EsSalud, in order to gather criticism and suggestions.

4.2 Object

The object of the Barton PPP is the Design, Construction of Infrastructure, Equipment, Operation and Maintenance of the New Hospital III Callao and its Primary Care Centre of the Sabogal Healthcare Network of EsSalud, for the attention of an affiliated population made up of 250,000 insured persons assigned to CAS. To provide the following *White coat* services:

- Emergency.
- Outpatient consultation.
- Hospitalization.
- Obstetrics Centre.
- Surgical Centre.
- Help with diagnosis and treatment.
- Critical Care Unit.
- Medical-Surgical Day Hospital.
- Home care.

- Outpatient emergency care.
- Rehabilitation and physical therapy.
- Primary care centre.
- Haemodialysis centre.
- Non-clinical services.

4.3 Main aspects of the contract

4.3.1 Term

The project horizon is 32 years, two years of construction and 30 years of operation.

The contract indicated that the construction schedule would begin after the financial closure. As this took two years, the terms between the award in 2010 and the start of operations on 30 April 2014 were extended.

4.3.2 Economic and Financial Regime

White coat projects can be by *per capita* payment or by payment of services. In the Barton PPP, the *per capita* model has been used, considering the comprehensive care of the affiliated population, including the network care.

EsSalud has assigned the health care of 250,000 insured persons to the OC and a *per capita* amount is assigned for each insured person (regardless of the use of the services they make, the *per capita* amount is calculated on accident rate and medical procedures to be performed). (Bravo, 2013)

The total income of the operating company (OC) is composed of a Remuneration for Investments (**RPI**) and a Remuneration for Operations (**RPO**). This monthly remuneration that EsSalud must pay is called **Remuneration for Service (RPS)**.

The **RPI** is divided into two components:

- Remuneration for Investments in Infrastructure: RPI-I, payments are made monthly for the period of 15 years
- Remuneration for Investments in Equipment: RPI-E is paid monthly for ten years for the equipment of Group I and three years for the equipment of Group II.¹⁰

The first payment of the RPI is made irrevocably on the 31st month from the construction start date.

The **RPO** has two components:

- The costs of Assistance Operation: RPOA
- The costs of Operation and Maintenance: RPMO

They are both paid monthly from the date of commencement of operations.

The **RPS** is equal to the sum of the above numbered concepts, to which the GST must be added. In turn, the detailed concepts are subject to variations and/or adjustments.

$$\text{RPS} = \text{RPI} (\text{RPI I} + \text{RPI E}) + \text{RPO} (\text{RPOA} + \text{RPMO})$$

The structure of payments to the OC to be made by EsSalud also considers deductions for penalties and adjustments.

4.3.3 Investment and operating resources

The projected referential investment, for the realization of the obligations of the contract, according to the economic proposal, amounted to US\$ 39,917,100.11. However, the investment capital was updated through Addendum No. 2 and amounted to US\$ 48,449,001.68 million, without GST (EsSalud, 2018b). This has meant an increase of 21% over the initial proposal. The payment for RPI went from 6.9 million dollars per year to 8.6 million dollars. (See Table 4.2).

The operating cost at the time the contract was signed was 65.8 million dollars. (See Table 4.2). This amount is much higher than the one defined in the study that was carried out to compare costs of hospital services. The analysis determined that the public sector operated at 60 million dollars per year compared to the offer of the specialized PPP operator of 45 million dollars per year (Bravo,2013), which constituted a saving. However, in the end, the cost of the PPP was much higher.

Table No. 4.2
Annual remuneration of the Barton PPP 2010-2018
In US dollars

SECTORS	2010		2018
Infrastructure (RPI-I):	\$4,772,775.36		\$4,575,048.31
Equipment (RPI-E):	\$2,306,538.12		\$4,094,472.03
Assistance Operation (RPO-A):	\$50,077,060.00		\$76,668,865.25
Administrative Operation and Maintenance (RPM-O)	\$15,776,000.00		
RPS	\$72,932,373.48		\$85,338,385.59
RPS + GST	\$86,789,524.44		\$100,699,295.00
GST	19%		18% ¹¹

Source: EsSalud, 2010a and 2018b.
Prepared by the author

The increase in investment, the higher cost of operation, as well as the adjustments EsSalud has to make, call into question the effectiveness of using the PPP mode.

4.3.4 Supervision of the Contract and Operations

EsSalud exercises its administrative competences by itself and/or through a Third Party (Supervisor). On behalf of EsSalud, the verification of compliance with the obligations of the OC is carried out by the PPP Contract Execution Monitoring Office. In turn, EsSalud must hire a Supervisor of the design, infrastructure and equipment, and of the Contract and Operations. The latter is responsible for carrying out legal, financial and economic audits, as well as technical audits on the indexes and standards defined from the date of commencement of operations. There are no mechanisms for the participation of unions, users or other civil society entities.

EsSalud also has the power to review the standards and ratios of operation of the services initially defined. It is able to adapt them to the reality of the Healthcare Network, but the contract does not indicate how often the review will take place, nor the mechanisms to carry it out.

On the other hand, there are inconsistencies in the contract. The minimum requirements for the development of the private initiative project were defined for a Level III Hospital as shown in Annex X of the contract (EsSalud, 2010b). However, in Annex 1-3 where the service indicators and minimum standards of care are detailed, it is stated that "Since the proposed facility corresponds to the second level of care, it consequently has services (...) according to the approved

service portfolio" (EsSalud, 2010b:147). All this causes continuous discussions with the OC and generates inefficiencies that harm the insured. (EsSalud, 2019).

The permanent tension between, on the one hand, the interests of the OC, which tends to maintain or increase its profitability, and on the other hand, EsSalud, which must look after the interests of the insured, is to the detriment of the health services that the insured receive.

Chapter 5. Impact of the NHB PPP on human rights and gender.

5.1 The economic aspects

Both the increase in investment and the operating costs directly affect the coverage and quality of the services of the insured, since they reduce the possibility of investment in other health services.

In addition, there are the costs of supervision of contracts and operations and the difficulties EsSalud faces in administering the contract, monitoring the indicators, the processes for reviewing the contract and negotiating mechanisms, among others (EsSalud, 2019).

There are the additional costs generated by presumed acts of corruption. The international bid for the presentation of private initiatives was for the development of a **Level III Hospital** and a primary care centre. But according to what El Comercio (2018) publishes, the audit report 066-2015-2-0251 of EsSalud's Internal Control Body (OCI, for its acronym in Spanish) found that the Committee for the Promotion of Infrastructure and Health Services (CPISS, for its acronym in Spanish), approved the winning proposal "without observing that the equipment and infrastructure plans did not consider the minimum services corresponding to a category III-1 hospital", thus failing to comply with the terms of the international bid for the presentation of private initiatives.

So, when EsSalud classifies the Barton PPP as a Level II Hospital, it is favouring the OC, since low and medium complexity patients are referred to it, therefore, with lower care costs. The unions have expressed their opinion against this situation and denounce that the PPP Barton charges S/ 300 million soles annually¹² and only assists simple pathologies. (SINAMSSOP, 2017; SINESSS, 2017)

The aforementioned audit report also states that the CPISS "approved, at the request of the consortium, the modification in the definition of the cost of medicines". According to the OCI, this caused patients

with haemophilia and biological treatments from Barton Hospital to be referred to Alberto Sabogal, which generated an expense of S/576,499¹³ that was transferred to Sabogal Hospital. (El Comercio, 2018)

5.2 Coverage and quality of services

It is argued that productivity and quality of the service provided are not controlled in State institutions. There are no prizes or penalties, which do exist in PPPs, although it is not necessarily fulfilled. On the one hand, because the quality indicators may be weak (Alarco and Salazar, 2019) or because the contract is deficient, and / or the supervision is not adequate and / or the governance is weak.

This is verified in the Barton PPP. Although the contract specifies contractual penalties, the description of the penalties of the operation phase established in Annex VI of the contract **does not include non-compliance with the service indicators and minimum standards of care.**

That is why only four years after the operations began, the Arbitration Court of the Lima Chamber of Commerce made an acknowledgment of the mechanisms for applying penalties imposed by EsSalud, through awards issued on 12 July and 15 August 2018 (EsSalud, 2018a).

Likewise, only in 2018, three internal procedures have been approved and implemented to improve the management of the Barton PPP contract:

- Procedure for applying hospital penalties by PPP modality v01.
- Procedure to grant compliance to the reports of the supervision of the operation contracts and supervision of the hospital operation contract by PPP modality v.01.
- Internal procedure to verify the penalties of the hospital operation contract by PPP modality v.02. (EsSalud, 2018a, p.54)

Categorization II given to the Barton Hospital harms affiliated and referred patients that exceed care capacities of the Barton PPP. These patients will not be seen or treated, and will be referred to other care centres with possible the fatal consequences that this can bring in a patient with complex ailments.

The minimum standards of care and the agreed-upon indicators are another aspect that does not guarantee a better quality of service, compared to other EsSalud facilities, because there are standards and indicators with lower goals than those formulated by MINSA or EsSalud itself. There are indicators that are poorly formulated and may rather be harmful, such as the indicator of mammography screening coverage. Table No. 5.1 gives some examples of this situation.

In addition to the weakness of the agreed standards and indicators, the OC does not meet the established goals. In 2017, the measurement of the 40 service indicators showed that 15 indicators (38%) did not reach the target, as shown in tables 5.2, 5.3, and 5.4.

Table No. 5.1
Remarks on the Minimum Standards and Indicators

TYPE / NAME	REMARKS
Minimum standard	
Outpatient medical consultation, 5 patients per hour.	The standard of the MINSA is 3-4 according to specialty (MINSA, 2013).
User Satisfaction Indicators	
Percentage of complaints	It limits the possibility of filing complaints since evidence or verifiable elements must be presented in order to be considered.
Percentage of complaints of the surgical service.	
Percentage of complaints of the clinical service.	
Percentage of complaints of the diagnostic service.	
Quality indicators	
Percentage of patients with deferrals of first appointments for outpatient clinic and/or diagnostic and therapeutic procedures. Greater than 5 days	Protocols should be established according to the type of symptoms, in certain cases 5 days may be too much.
Percentage of patients with deferrals of follow-on appointments for outpatient clinic and/or diagnostic and therapeutic procedures. Greater than 10 days	The standard in the MINSA (2001) is <7 days.
Percentage of patients with deferral for surgery greater than 30 days	Protocols should be established according to the type of illness, in certain cases 30 days may be too much.
Use of protocols and clinical practice guidelines, target 90%.	The use of protocols is a contractual commitment so it should have a goal of 99%.
Outcome indicators	
Early diagnosis of breast cancer, goal >60%.	The indicator should not be static; progressive targets should be set as MINSA does (2017)
Early diagnosis of the cervix, goal >60%.	The indicator should not be static; progressive targets should be set.
PAP screening coverage, target >60%.	The standard for EsSalud (2016) is 70%. The indicator should not be static; progressive targets should be set.
Mammography screening coverage in women over 40, target >60%.	PAHO recommends mammography screening for women aged 50-69 years. And for women aged 40-49 years, it is suggested that screening be conducted in a context of rigorous research, monitoring, and evaluation. (PAHO, 2015).
Caesarean section rate less than 38%	MINSA's standard is 20%-25% (MINSA, 2013)

Source: EsSalud, 2010b. Annex I.3 Service indicators and minimum standards of care.
Prepared by the author.

Table No. 5.2
Satisfaction Indicators that do not meet the Goals
August 2017

INDICATOR NAME	RESULT (%)	GOAL(%)
User Satisfaction	83.46	90
Surgical service user satisfaction	88.85	90
Clinical service user satisfaction	64.04	90
Diagnostic service user satisfaction	83.64	90

Source: EsSalud, 2017
Prepared by the author

Table No. 5.3
Quality Indicators that do not meet the Goals
August 2017

INDICATOR NAME	RESULT	GOAL
Percentage of patients with deferrals of first appointments for outpatient clinic and/or diagnostic and therapeutic procedures. Greater than 5 days	27.60%	<5%
Percentage of patients with deferrals of follow-on appointments for outpatient clinic and/or diagnostic and therapeutic procedures. Greater than 10 days	15.25%	<10%
Availability of medicines: dispensing indicator	95.67%	>99%
Percentage of patients with complicated hypertensive pregnancy disease.	42.03%	<5%

Source: EsSalud, 2017
Prepared by the author

Table No. 5.4
Outcome Indicators that do not meet the Goals
August 2017

INDICATOR NAME	RESULT	GOAL
Early diagnosis of breast cancer	33.33%	>60%
PAP screening coverage	21.28%	>60%
Mammography screening coverage in women over 40	16.01%	>60%
Prostate cancer screening coverage.	34.77%	>50%
Caesarean section rate	41.28%	<38%
Immunizations - pentavalent vaccine coverage	60.27%	>90%
Immunizations - polio vaccine coverage	0.25%	>90%
Immunization coverage for measles, mumps and rubella.	88.88%	>90%
Pre-natal control - attraction of pregnant women.	47.16%	>90%

Source: EsSalud, 2017
Prepared by the author

Of the 13 quality and outcome indicators that do not meet the goal, six directly affect women's health,¹⁴ and their numbers are far from the proposed targets, deepening the health gaps that affect women.

5.3 Working conditions and their impact on women workers

The Barton PPP contract specifies that the OC should be subject to the rules that regulate the labour relations of workers in the private sector. It was also supposed to apply the special labour regimes, but this was not complied with.

According to the information collected from the social networks of key informants, among the labour conditions an annual compensatory role¹⁵ was implemented that:

- It infringed the right to a continuous working day.
- It did not account for overtime
- It infringed the right to 150 hours per month of technical nurses and care assistants.

This was detrimental to the workers, because it not only reduced their income, but also made it impossible for them to reconcile their family and work life. In addition, it hindered their possibility of training or supplementing their income, so they were forced to join a union to assert their rights.

During the pandemic, in May 2020, the union denounced the lack of personal protection equipment and requested that it be distributed without discrimination (because official masks were being distributed to administrative staff and lower quality masks to healthcare personnel). They also denounced the lack of recruitment of personnel with decent salaries in accordance with the current market.

These conditions are detrimental to the health of the staff, the majority of whom are women, generating work overload and widening the salary gap.

Chapter 6. Transparency

Transparency implies "the social visibility of the acts" (Figuerola, 2015, p.6) and the stability of the legal regulations. Both factors are fundamental for citizen vigilance, to generate equal opportunities in the public processes and to have evidence to formulate adequate public policies.

Although the contract and addenda to the Barton PPP are available on the EsSalud websites, the information that supports the decisions made and the documents that allow for the monitoring of the operation phase are not available: the only report on the indicators was published in 2017.

On the other hand, the process regulated in the D.L. 1012 generates advantages to the consortium that develops the proposal declared of interest, since it has previous knowledge of the contract and the project, which limits the competitive conditions of the processes.

It also breaks the transparency, the continuous modifications to the legal regulations. In the case of addenda, the rules of the D.L. 1012 (DS No. 146-2008-EF) established that no addenda to the contract could be made during the first three years from the date of its execution. After that period, if the proposed addendum exceeded 15 percent of the total cost of the PPP project, the entity would evaluate the convenience of carrying out a new selection process (Art.9). However, this article was modified by the D.S. No. 144-2009-EF, establishing various grounds for which addenda could be signed during the first three years. This is exactly what happened with the Barton PPP, generating cost overruns for the State and high possibilities of corruption.

DRAFT for discussion

Follow-up and evaluation of the contract

The Contract and Operations Supervisor is responsible for carrying out technical inspection activities on service indicators and minimum standards of care, preparing monthly reports on its activities and the application of penalties, among others.

The contract states that "Each time the penalties reach ten percent (10%) of the Reference Projected Investment, EsSalud will be entitled to proceed to the termination of the contract or agree to the continuity of its execution with the imposition of new penalties". (EsSalud, 2010a, p.170)

The Supervisor should also perform:

- The validation of normative, procedural and computer tools
- The application of procedures and tools for control, monitoring and follow-up, as well as the issuance of monthly reports.
- The monitoring of indicators, monthly and annual reports with recommendations.

Gaps in the contract (EsSalud, 2019), in terms of defining penalties, in the periodicity for monitoring indicators and for their modification, among others, are detrimental to effective monitoring and to the quality of the service that users should receive.

The lack of transparency, since neither the tools nor the supervisor's reports are published on EsSalud's website, prevents civil society from following up and monitoring. This happens because it does not have evidence of the progress of the PPP, and therefore it is not possible to report or demand the termination of the contract. This, as has been observed, creates a breeding ground for corrupt practice, to the detriment of the quality of services that should be received by the insured.

Chapter 7. Resistance

The social movement has been resisting for decades the privatization of public services, denouncing the various strategies that seek to privatize the Social Security Health (EsSalud); PPPs, as well as the outsourcing of services, are considered to be obvious mechanisms that lead to the privatization of health, in addition to being sources of corruption.

- Internal resistance

When the Barton PPP began its operations, it appeared to comply with the labour rights of its personnel, but over time, the labour situation deteriorated. One worker describes it this way:

This company started off very well by complying with its workers in everything. However, today everything is upside down for us, the staff. With the annual role, is terrible to work in these conditions. To come in the morning and return for the evening. To work tired and stressed out from the traffic. Terrible. (Ramirez, 2018)

In turn, the OC began to condition labour stability on the signing of agreements that harmed women workers' rights, as one worker relates:

That happened years ago: in admission, we started with 6-hour rotating schedules and then they imposed the 9-hour schedule on us. They still forced us to sign and so far, we can't return to the schedule of the beginning of the contract. This company is used to working with fear. (Polo, 2018)

In view of this situation and despite the hostilities of the OC, in March 2018 the United Union of Healthcare Workers Callao Salud (SUTACAS, for its acronym in Spanish) was formed. Its first directive is leaded by a female worker and composed of 7 women and one man.

Among their claims, they declared against the annual compensatory role, as well as against the overload of work. And this, because procedures that should be in charge of a medical technologist were included in the nursing and care technician procedures. In both cases, their rights were recognized.

They have carried out campaigns against anti-union practices, as well as negotiations with the authorities of EsSalud and the Ministry of Health to legally support their demands.

Also in social networks via Twitter their leaders have warned about PPPs: "Mr. Vizcarra, no more PPPs, don't allow the waste of money on someone who not only curtails our labour rights but also imposes a foreign model that goes against our professional laws. Our laws are not privatized. No more abuse!" (Luna, 2018)

The strategy most used by SUTACAS to exert pressure is the sit-ins on the front of Barton Hospital, as well as the use of Facebook and Twitter to spread its actions.

- Participation of social organizations

The opposition of the unions to the implementation of PPPs in the health sector has expressed itself in various ways. For example, in 2010 the National Medical Union of Social Security of Peru (SINAMSSOP, for its acronym in Spanish) stated that "ESSALUD commits itself not to implement privatization or public-private partnerships" (2010a). But finally, in the commitment act with EsSalud, it was stated that "they have not reached agreements (...) regarding Public-Private Partnerships and Administrative Contracting of Services" (2010c)

They also spoke out requesting the unconstitutionality of D.L. 1012, because they considered that the PPPs were the basis of the privatization of EsSalud. (SINAMSSOP, 2010b)

The General Confederation of Workers of Peru has included it in various platforms of struggle, for example in 2014: "Defence of health and public education, increase in budget according to the National Agreement. Defence of social security (EsSalud), autonomous from the MEF and FONAFE and without privatization of its services. No to privatizations through Public-Private Partnerships." (CGTP, 2014) And in the platform of the national strike of 9 July 2015 it was stated "No to privatizations or Public-Private Partnerships of strategic State enterprises and public services". (CGTP, 2015)

In view of the presentation of the Master Plan 2013-2021 of EsSalud that prioritizes, among others, "the use of contracting processes of private entities and public-private partnerships for new investments and for the management of health units." (EsSalud, 2014) The *Front for the Defence of the Right to Health and Social Security* was formed by nine EsSalud unions, who:

Reaffirmed that the National Public Health System has sufficient installed capacity, in many cases idle, and the State and EsSalud have sufficient budget and resources to promote a strong investment in repowering the hospitals, polyclinics and assistance centres (...) without the need to count on the participation of the Public Private Partnerships (PPPs), which in the end represent a millionaire business of resources and privileges behind the backs of the people. (SINAMSSOP, 2014)

The *Federation Workers' Union Centre of the Social Health Insurance of Peru* (FED-CUT, 2015), under the title "PPP contracts harmful to ESSALUD and the country", denounced that the Central Manager of Health Benefits was forced to resign because he proposed to review the contracts of the Kaelin and Barton PPPs, considering them harmful to EsSalud.

The Doctors' National Union of EsSalud (SINAMES, 2015) published a statement in which it rejects a fragmented, segmented, and underfunded health system that objectifies the human person and commodifies health. It also opposes privatization (via outsourcing and PPPs) because it is neither equitable nor inclusive and because it also deepens the health crisis.

In 2017, when the Committee for the Promotion of Private Investment of EsSalud (CPIP, for its acronym in Spanish) was created to carry out private investment projects through Public Private Partnerships and Projects in Assets, several institutions took a stand: the National Union of Nurses of the Social Health Insurance, stated that:

Under the argument of giving coverage to the insured and their beneficiaries, the intention is to leave in private hands the health services that are paid for with the money of the insured. This modality implies a risk as it leaves the commitment to the health care and quality deserved by the insured population in the hands of third parties. (SINESSS, 2017)

In addition, they alerted civil society to the expenses EsSalud makes in the PPPs of the Alberto Barton and Guillermo Kaelin hospitals, as well as the implementation of two new PPPs in Piura and Chicla, while no resources are allocated to address the lack of health and care professionals, maintenance and acquisition of equipment, and obsolete infrastructure.

The journalist Sarmiento (2017) reported that the Peruvian Medical Association asked EsSalud to demonstrate with technical studies that public-private alliances will promote good results in the health sector and that, if these alliances are formed, the State will have to place limits on the economic profits of the private sector. He also reported that the Social Security medical union stated that "there is no need for PPPs in the health sector, since the budget it has is sufficient to build hospitals, buy equipment and hire more doctors."

For its part, the Civil Society Forum on Health - Forosalud, a national movement that works from the perspectives of human rights, gender and interculturality,- has expressed in various spaces against the privatization of health and on the negative consequences that the application of the modality of Public-Private Partnerships in the health sector will have for the population. (Lazo, 2020)

The most used strategies are denunciation in alternative means (since commercial media generally do not broadcast them), communications in social networks, the inclusion of opposition to PPPs in various platforms of struggle.

Despite the existence of a consensus in the social movement about the problems and disadvantages of PPPs in public services, it does not succeed in establishing a unified, solid and alternative current in opposition to PPPs.

Summary and Recommendations

Since the 1990s in Peru there has been a process of privatization of public services and promotion of private investment in public infrastructure projects. The Peruvian State has generated a transversal system at all levels of government and at the highest level to promote private investment in PPPs supported and advised by international organizations. In the face of this, the social movement has for decades resisted the privatization of public services and denounced the various strategies - including PPPs - aimed at privatizing health care.

The legislation on PPPs and its continuous modifications limit the competitive conditions of the processes. This, coupled with the lack of transparency and mechanisms for civil society participation, creates a breeding ground for corrupt practices.

Barton PPP has implied a higher cost than traditional public investment, both in terms of investment and operation costs. The increasing and inflexible cost of the annual remuneration that EsSalud will have to pay for 30 years is not in line with the Level II services it provides and compromises investment in other health services.

The Barton PPP is a complex project; the gaps in the contract are detrimental to effective supervision and the quality of service that users should receive. The coverage and quality of services are not guaranteed. In addition to the weakness of the agreed standards and indicators, the OC does not meet the quality goals and results established, nor does it respect the labour rights of workers.

Recommendations in relation to PPPs

- To eliminate the modality of the PPPs by private initiative and only consider the PPPs of public initiative that are included within the framework of the National System of Strategic Planning.

- To generate mechanisms for the participation of civil society in the different phases of the projects.
- To incorporate environmental and gender equality criteria in the different phases of the projects.
- To generate mechanisms to comply with the principle of transparency in information.
 - o Obligation that the public entity's website has the documents that support the decision-making with respect to the contracts.
 - o Obligation to publish the contract proposal before it is signed in order to receive remarks or suggestions.
 - o Obligation to publish the monitoring and evaluation reports of the Contract Supervisor.
- To generate the mechanisms to make the processes transparent and competitive.
- To have *ex ante* and *ex post* evaluations of the projects.
- The *ex-ante* evaluation should include: evaluation of environmental impact, gender impact, and cultural impact.
- To apply prior consultation processes during the *ex-ante* evaluation when dealing with projects that may affect communities.
- To guarantee the application of the Value for Money Principle to all projects, and have a methodology for applying the Public-Private Comparator.
- Strict regulation of renegotiations and the use of addenda for all contracts and publication of the documents that support them.
- To have public information on: indicators, minimum standards, unit costs that allow civil society to make observations and follow up on projects.

Recommendations regarding resistance to PPPs

- Join efforts to prevent the voices of civil society that oppose PPPs from being diluted in the face of the aggressive PPP promotion strategy implemented by the government.
- Strategic Actions
 - o To demand that no new PPP contracts are made until a transparent evaluation of the PPPs in operation is carried out.
 - o To carry out sustained dissemination campaigns on the SNPIP and the results of the PPPs.
 - o To follow up on and disseminate reports of corruption.
 - o To incorporate into the complaint forms demands based on the law of transparency in information that allow for the follow-up of contracts and, if necessary, to have elements to request their resolution.
- Strengthening
 - o To generate training spaces on the SNPIP and the PPP legislation, which allow for a comprehensive view.

- To generate spaces for the exchange of experiences in: follow-up to contracts, dissemination and advocacy campaigns.
- Knowledge management to transform it into intellectual capital that generates a current of opinion and strengthens the social movement that resists PPPs and privatization.
 - To identify, collect and organize existing knowledge about Peruvian PPPs
 - To promote the creation of new knowledge, deepening the study of legal and tax aspects, transaction costs, promotion costs, among others, as well as case studies.

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¹ The Multi-year Macroeconomic Framework, the most relevant document in economic matters, contains the macroeconomic and fiscal projections, as well as the assumptions on which they are based, for a period of four years.

² This system, whose governing body is the General Directorate of Public Investment of the Ministry of Economy and Finance, was created by Legislative Decree No. 1252 of 1 December, 2016.

³ For information on gender gaps in Peru, see INEI, 2019.

⁴ Peruvian Institute of Social Security, which later through Law No. 27056, becomes the Social Health Insurance (EsSalud).

⁵ The materials used in the course are available at:

https://www.mef.gob.pe/index.php?option=com_content&view=article&id=4609&Itemid=102291&lang=es
[Consulted 21-09-2020]

⁶ See OECD, 2020.

⁷ "We understand social movement as a process of politicized collective action aimed at fighting against forms of accumulation and colonization that reproduce injustice and that has an alternative vision of society and development". Bebbington (2008)

⁸ The investment plan is not available on the EsSalud website in the Planning and Organization section <http://www.essalud.gob.pe/transparencia/index.html> [Consulted on 21-09-2020], nor is the cost-benefit analysis of current PPP contracts on the ESSSALUD website <http://www.essalud.gob.pe/asociacion-publico-privada-contratos-vigentes/> [Consulted 21-09-2020]

⁹ The legal entity constituted by the successful bidder who signs the PPP contract with EsSalud.

¹⁰ See what corresponds to each group in the PPP contract (EsSalud, 2010a, p.67)

¹¹ On 1 March, 2011 the GST dropped to 18%.

¹² Approximately US\$ 90 million (average bank exchange rate for the 2019 period: 3.34)

¹³ Approximately US\$ 173,000 (average bank exchange rate for the 2019 period: 3.34)

¹⁴ Highlighted in orange.

¹⁵ The annual compensatory role adds up the working hours for the entire year and distributes them arbitrarily, not taking into account the legally established daily or monthly working hours.

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