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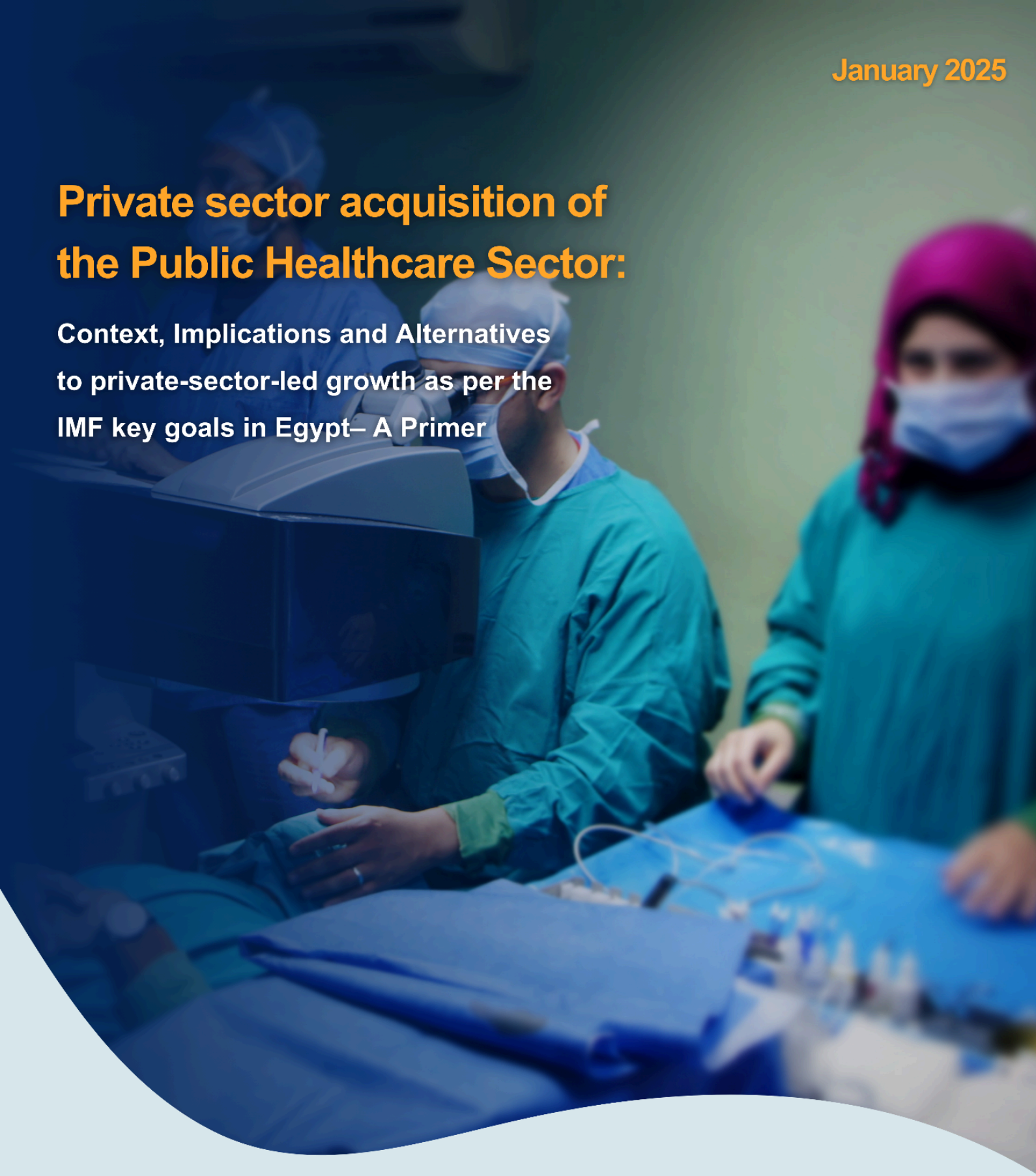
Private sector acquisition of the Public Healthcare Sector:

Context, Implications and Alternatives to private-sector-led growth as per the IMF key goals in Egypt– A Primer



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Abstract

The reform of Egypt's public sector is a key condition for the latest $8bn transaction from the IMF. This includes the sale of state companies as well as the privatization of Egypt's public healthcare sector. In this context, a new Law entered into force in June 2024, allowing the leasing, management, operation and establishment of public healthcare facilities by the private sector.

This paper delves into the possible effects and repercussions of this Law and similar public health reform policies, on the rights to health of individuals and families. It particularly focuses on the shortcomings of the process followed prior to the adoption of the mentioned Law, the minimal standards to respect when addressing the role of the private sector in the public healthcare provision and the alternative policies to consider to achieve the IMF country objectives without infringing on the constitutional right to health for all.

Paper objectives

This paper delves into the possible effects and repercussions of the Law number 87 for the year 2024, regulating the granting of rights to lease, establish, manage and operate public healthcare facilities by the private sector and similar public health reform policies, on the rights to health of individuals and families. It particularly focuses on providing answers to the following questions:

1) To what extent did the process taken for the passing of the Law on private sector leasing of public hospitals, respect the national commitments towards transparency, accountability and participation in public policy, including the IMF measures to promote transparency over policies in Egypt?

2) What should be the minimal requirements for private sector involvement in public healthcare service provision, to guarantee improvement of services without negatively affecting accessibility and affordability of services on one hand and the rights of healthcare workers on the other?

3) What other viable, more responsible alternatives can be sought to achieve private sector growth and participation in the healthcare sector that the IMF must take into consideration?

Context

National and global commitments related to the right to health

The recognition of the right to health as a fundamental human right was first expressed in the 1946 Constitution of the World Health Organization (WHO) where it was referred to as ”the highest attainable standard of health”. Today, the right to health is underlined in many international human rights treaties (like the International Covenant of Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights for the Child (CRC)) and the constitution of numerous countries.

Egypt and Healthcare System reform

In 2014, the new Egyptian constitution marked a critical milestone from a human rights perspective, particularly in the way it clearly included the right to health as an essential right that matches the national and international obligations the country is committed to.[1] This new constitution also stipulates the responsibility of the government to provide a universal healthcare coverage scheme to all Egyptians, without discrimination. This comes as catastrophic health costs in Egypt are among the highest compared to other low and middle income countries, disproportionately affecting individuals and families in the lowest income quintiles.

Today, Egypt is embarking on an ambitious attempt to realize and roll-out a mandatory Universal Healthcare Coverage scheme. In this defying quest, the role of community participation, public and private players has to be redefined. The transition from a fragmented healthcare system, with high out-of-pocket payments, major inequity, deficient outcomes, poor users satisfaction and increasing public costs to a healthcare system that truly meets people’s expectations can only be concretized through a genuine and comprehensive community participation that leads to core-restructuring arising from the bottom up. This has been clearly stated since 1978 in the fourth article of the Alma-Ata Declaration which states that “people have the right and duty to participate individually and collectively in the planning and implementation of their health care”.[2]

[1] https://faolex.fao.org/docs/pdf/egy127542e.pdf
[2] https://www.who.int/publications/i/item/declaration-of-alma-ata

The IMF-supported program in Egypt

The IMF-supported program with Egypt aims at ensuring macroeconomic stability and securing a private-sector-led growth. To achieve that, it centers around 4 key goals the fourth of which is “Better balancing the roles of the public and private sectors, with a focus on enhancing competition and allowing a greater role for the private sector in driving growth.” The measures the IMF supports on that front include the “continued implementation of the State-Ownership Policy and rollout of the asset divestment program” this in turn should “play a critical role in reducing the state footprint and strengthening the ability of the private sector to better contribute to economic growth in Egypt”[3].

The reform of Egypt’s public sector is a key condition for the latest $8bn transaction from the IMF. This includes the sale of state companies as well as the privatization of Egypt’s public healthcare sector; all with the goal of raising private sector participation from 30% to 48% in 2024-2025[4].

The Law 87 for the year 2024

In alignment with this strategy and following an unprecedented accelerated process, a new Law has passed to grant the private sector the right to manage, establish and run new and existing hospitals and healthcare facilities pertaining to the public sector[5]. Although faced with a wide range of public opposition including that of the doctor’s syndicate, as well as lawsuits challenging its abidance with the constitution, this Law opens the doors to leasing public healthcare facilities which are primarily serving populations with limited resources. This also comes at a time when the Universal Health Insurance scheme is being rolled out with a noticeable improvement in public management of state-owned healthcare facilities and as the effects of the inflation and marked economic burdens are directly affecting the purchasing power of families and putting them at a greater financial risk in case of sickness.

This new Law constitutes a legislative act of commitment to the IMF provisions, demonstrating a strategic direction towards promoting the role of the private sector through a robust public asset divestment plan that starts with the healthcare sector in particular.

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[3] IMF, Frequently asked questions on Egypt and the IMF, accessed on August 3rd 2024, https://www.imf.org/en/Countries/EGY/Egypt-qandas

[4] Ahram English, Egypt’s case to the IMF, accessed on August 3rd 2024, https://english.ahram.org.eg/News/522456.aspx

[5] El Shorouk News, The Egyptian Parliament approves the new low for leasing and managing public healthcare facilities, May 20th, 2024, https://www.shorouknews.com/news/view.aspx?cdate=20052024&id=f2623c5e-956c-475d-be76-952190c6f51e

Methodology and limitations

This paper provides a qualitative review of the Law 87 for the year 2024 and its legislation process and draws its findings, conclusions and recommendations from review of available documentation, experts opinions and input from the following available sources:

1) Review of the officially published related Law and executive regulations,
2) Review of official statements, press-releases and press coverage related to the Law and its legislation process,
3) Review of IMF documentation related to Egypt with a particular focus on the objective relating to promoting the role of the private sector in driving growth,
4) Solicited input from key stakeholders and field experts including private sector players, right to health specialists, members of parliament, civil society healthcare service providers and public healthcare service providers and medical syndicate members.

Used resources and inputs were reviewed and collected during the months of September and October 2024.

Limitations

This paper is based on the information and inputs available during the specific period of its writing. This describes a time where the concerned Law has been officially issued but during which it did not enter into execution. Practical challenges and inputs that are bound to be noted as the implementation of the Law is in motion are therefore not included in this paper.

Consulted experts and stakeholders were anonymized based on their request.

Findings and analysis

To what extent did the process taken for the passing of the Law on private sector leasing of public hospitals, respect the national commitments towards transparency, accountability and participation in public policy, including the IMF measures to promote transparency over policies in Egypt?

The measures stated by the IMF to promote greater transparency over policies in Egypt primarily focus on accountability and transparency related to finances, budgets, procurement and financial audits. It significantly lags behind in covering any measures related to how “policies” are being made and the imperative of sound community participation in that regard.[6]

[6] IMF, Frequently Asked Questions on Egypt and the IMF, last viewed on October 14th 2024, https://www.imf.org/en/Countries/EGY/Egypt-qandas#Q10

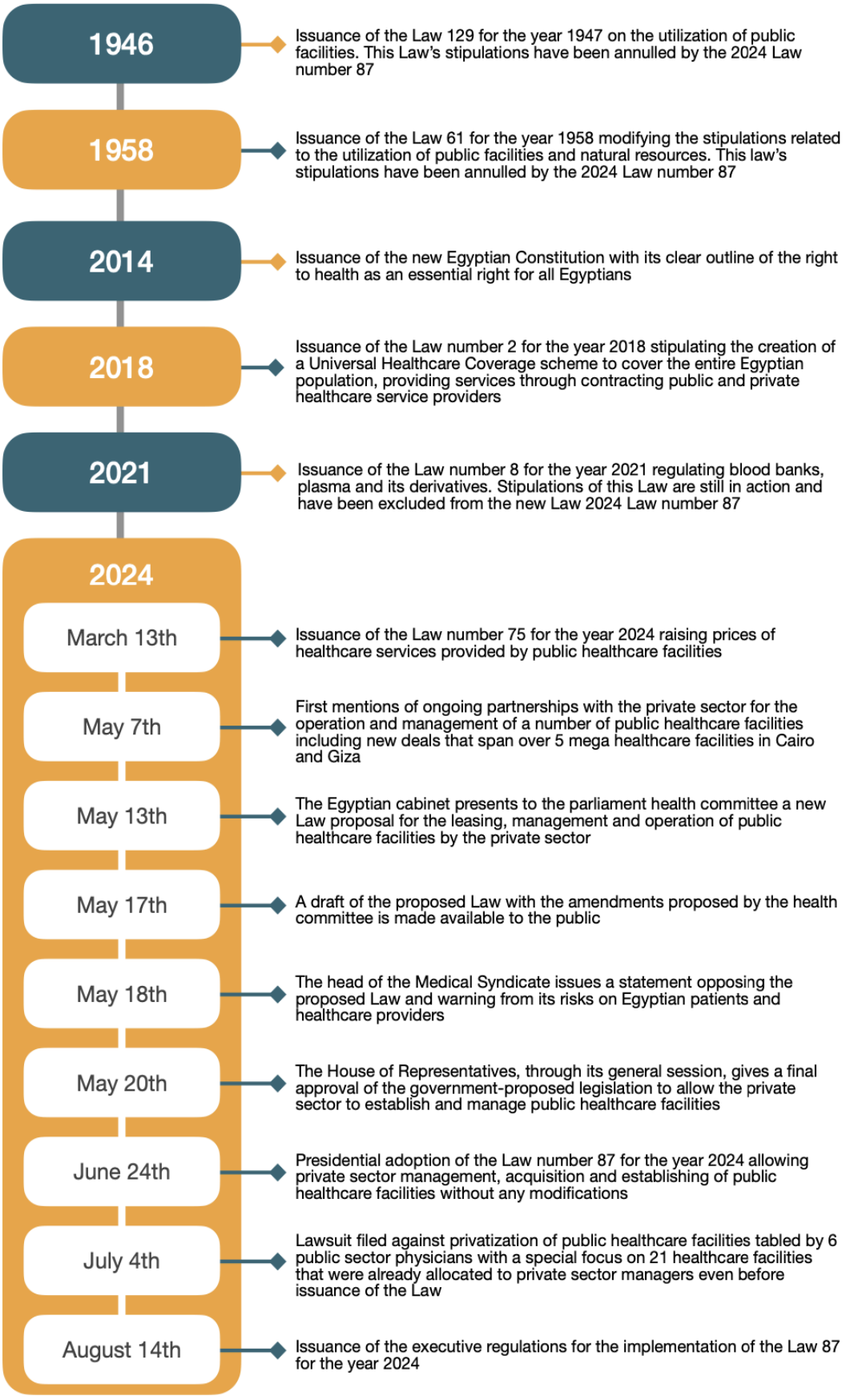
However, history shows how processes that bypass communication, participation, and dialogue often lose momentum and fail at achieving their goals. The attempts of healthcare system reform in Egypt have gone through more than 3 decades of restructuring, legislation and pilots. A number of key defects were persistently present throughout the process: Limited access to information, limited community engagement, and limited citizens' participation at all phases including planning, legislation and implementation.

This constantly put civil society organizations, concerned with an equitable and accessible healthcare system for all, in the position of the antagonist. This dissociation was epitomized in September 2008 when civil society won a court case against the Ministry of Health's plan to establish a Health Care Holding Company which put a halt to the healthcare reform plan it was going through[7].

The publication by the WHO titled "People at the Centre of Health Care" highlights the importance of a people-centered approach in health system development by stating that healthcare systems need to take the views of the people highly into consideration; "not as statistics or targets of interventions, but as full and equal partners" in the process of improving health and well-being[8]. This empowerment of the people would guarantee that policies are established to serve them efficiently, since they are the ones who are most familiar with shortcomings in existing systems.

If there is one shockingly unanimous agreement between all stakeholders consulted during the writing of this paper, it would be that the process for the issuance of the Law 87 for the year 2024 did not benefit from any form of serious or even procedural stakeholder engagement prior to its adoption. The following timeline shows the evolution of this Law and its related milestones, highlighting how the Law simply passed within a weekend without any documented public consultations in its regards and with a clear, rushed and public set of statements opposing it from the most significant stakeholders:

[7] The Egyptian Initiative for Personal Rights, Our case against the privatization of the health insurance authority, 2008, https://eipr.org/sites/default/files/reports/pdf/HealthInsuranceCase2008_EIPR.pdf
[8] *WHO, People at the Centre of Health Care (Geneva: WHO, 2007), at V.*


1946
Issuance of the Law 129 for the year 1947 on the utilization of public facilities. This Law's stipulations have been annulled by the 2024 Law number 87
1958
Issuance of the Law 61 for the year 1958 modifying the stipulations related to the utilization of public facilities and natural resources. This law's stipulations have been annulled by the 2024 Law number 87
2014
Issuance of the new Egyptian Constitution with its clear outline of the right to health as an essential right for all Egyptians
2018
Issuance of the Law number 2 for the year 2018 stipulating the creation of a Universal Healthcare Coverage scheme to cover the entire Egyptian population, providing services through contracting public and private healthcare service providers
2021
Issuance of the Law number 8 for the year 2021 regulating blood banks, plasma and its derivatives. Stipulations of this Law are still in action and have been excluded from the new Law 2024 Law number 87
2024
March 13th
Issuance of the Law number 75 for the year 2024 raising prices of healthcare services provided by public healthcare facilities
May 7th
First mentions of ongoing partnerships with the private sector for the operation and management of a number of public healthcare facilities including new deals that span over 5 mega healthcare facilities in Cairo and Giza
May 13th
The Egyptian cabinet presents to the parliament health committee a new Law proposal for the leasing, management and operation of public healthcare facilities by the private sector
May 17th
A draft of the proposed Law with the amendments proposed by the health committee is made available to the public
May 18th
The head of the Medical Syndicate issues a statement opposing the proposed Law and warning from its risks on Egyptian patients and healthcare providers
May 20th
The House of Representatives, through its general session, gives a final approval of the government-proposed legislation to allow the private sector to establish and manage public healthcare facilities
June 24th
Presidential adoption of the Law number 87 for the year 2024 allowing private sector management, acquisition and establishing of public healthcare facilities without any modifications
July 4th
Lawsuit filed against privatization of public healthcare facilities tabled by 6 public sector physicians with a special focus on 21 healthcare facilities that were already allocated to private sector managers even before issuance of the Law
August 14th
Issuance of the executive regulations for the implementation of the Law 87 for the year 2024

The legislative process adopted with this new Law showcases a considerable neglect to the notions of transparency, accountability, stakeholders engagement and participation, all critical pillars for good governance. Yet, this did not seem to constitute noticeable reservations in the eyes of the IMF which often resorts to a limited interpretation of stakeholders engagement transparency, restricted to financial and procurement audits and fiscal accountability in a broad sense. This divide between genuine stakeholders engagement and the IMF requirements present a considerable "Achilles heel" in the sustainability and effectiveness of such laws and policies, threatening public backlash, considerable resistance in implementation and counter-productive efforts and spending.

Although the IMF has been increasingly making efforts in promoting its commitment to transparency and accountability, both in its internal decision-making process and among its beneficiary countries[9], yet, it is to be noted that its capacity to enforce real stakeholder engagement and transparency measures among different countries is still considerably lagging behind. For example, in September 2023, a review of Sri Lanka's IMF program commitments found that the program reached its lowest point in transparency, with 3 of the 4 government commitments to enhance transparency not met, outlining "a growing lack of transparency in the progress of the program, and a growing failure to meet IMF commitments that call for increased governmental transparency" [10]. Furthermore, in a review carried out by Transparency International on civil engagement, transparency and anti-corruption measures of IMF COVID-19 emergency response funds provided to 4 countries (including Egypt) [11], revealed the gap in the IMF's efforts to ensure governments' commitments to transparency and civil society engagement and accountability measures. Among the factors this review outlined contributing to weak implementation of transparency commitments was the "Inconsistency in the IMF's approach to measures and follow-up. The specific measures the IMF required varied widely from one government to another and only in certain cases did the IMF tie compliance to future lending. Significantly, Cameroon and Ecuador only followed through on their initial commitments because the IMF made approval of a second loan request dependent on their doing so. The IMF did not do so for Egypt, despite Egypt's poor implementation of its commitments".

[9] The IMF, Transparency and the IMF, https://www.imf.org/en/About/Factsheets/Sheets/2023/Transparency-at-the-imf

[10] Public Finance, IMF programme's transparency falls to lowest point in September, https://publicfinance.lk/en/topics/sri-lanka-met-40-imf-commitments-and-failed-10-by-end-sep-1697710187

[11] HRW, IMF: Scant Transparency for Covid-19 Emergency Loans, 2021, https://www.hrw.org/news/2021/03/30/imf-scant-transparency-covid-19-emergency-loans

What should be the minimal requirements for private sector involvement in public healthcare service provision, to guarantee improvement of services without negatively affecting accessibility and affordability of services on one hand and the rights of healthcare workers on the other?

Prior to the passage of the Law in its final version for adoption from the parliament's general assembly on May 20th 2024, the health committee issued a number of "conditions" for the private management, operation or lease of public facilities in the healthcare sector[12]. Although some of these conditions were reflected in the adopted Law (such as the exclusion of primary healthcare facilities and family health units), many of these conditions are still not covered with operational guarantees in the Law or the recently issued executive regulations.

However, and in addition to this, the following minimal requirements have been identified, collected, and compiled, stating what any law, regulation of framework for private sector involvement in the public healthcare sector should respect:

Laws or regulatory frameworks should include:

1. Stipulations that ensure the role of the state in setting services prices.

2. Clear regulations requiring the private sector to comply with a minimal level of qualifications for employees based on standards set by the relevant authorities.

3. Conditions guaranteeing that all employees have formal and legal contracts, with a minimum number of permanent workers (instead of primarily relying on visiting doctors and nurses) and that all payments are registered and taxed (without exception for the fees of visiting doctors, which often occur without documentation in the private sector).

4. Assurance of the investor's commitment to provide the health services specified by the state at each facility, without reduction or alteration of the offered services or the number of beds.

5. The application of all labor laws to all workers in the facility (including social and health insurance, minimum wage, and labor regulations), even for those outsourced through external companies (such as cleaning, security, hospitality, and food services, among others that are often provided by independent companies that do not comply with these).

Laws or regulatory frameworks should avoid:

1. Any discrimination in service among citizens based on the health coverage, economic circumstances, service delivery times, or others.

2. Any stipulations that could adversely impact the quality of service if implemented.

[12] El Watan News, 11 conditions to allow the private sector to manage public hospitals, May 15th 2024, https://www.elwatannews.com/news/details/7329622#goog_rewarded

3. Relying on setting quotas for healthcare workers (based on nationalities) to ensure fairness in service provision or operation. Requirements should be fair to all, without discrimination among workers based on the nature of their contractual relationship with the facility.

4. Any specification of quotas for beds or services for certain groups; the facility must adhere to treating all people without discrimination as long as the state is purchasing the service for them and provide these services within a clearly defined pricing list overseen by the state.

5. Absolve the private investor from the obligation to provide public health services and emergency services and to fully dedicate their services to the Ministry of Health during public health emergencies or epidemics.

Laws or regulatory frameworks should clearly state:

1. Links and alignment with the Universal Health Insurance Scheme and how it is expected to be used to achieve the desired expansion within it.

2. Mechanisms for determining the facilities to be put up for private investment and the authority responsible for this planning and the governance frameworks associated with it.

3. A defined framework for the mechanism of purchasing services by the state for beneficiaries affiliated with different treatment systems (the social health insurance system, universal health insurance, state-funded treatment, and treatment for those unable to pay).

4. How current employees of health facilities will be treated and what are the rights and obligations of the private investor towards them.

5. The responsibilities of those managing the facility regarding documentation, registration, reporting and secure data exchange.

These minimal requirements presented by civil society actors are not echoed in any disclosed IMF narratives. Considerations related to safeguarding the right to health of the Egyptian population do not seem to be included with the IMF's strategic push towards enhancing private sector ownership of public assets. In the healthcare sector in particular, the drive to reduce state footprint in the economy may be in direct conflict with protections for people's right to health. In other sectors, other regulatory protections may be infringed upon such labor law. The rapid, unstudied shift towards private sector growth is poised to step on these safeguards, leaving entirely up to states, struggling with financial and economic difficulties, to take these safeguards into consideration. In an environment with limited accountability, transparency and civic engagement, this can easily be detrimental to people's essential rights including the right to health.

What other viable, more responsible alternatives can be sought to achieve private sector growth and participation in the healthcare sector?

In addition to the minimal guarantees presented earlier, the new Universal Health Insurance Law currently in implementation provides a clearly stated pathway that defines a comprehensive and systematic involvement of the private sector that supports its growth and participation in the healthcare sector.

In its Country Private Sector Diagnostic, the IFC states that "The Universal Health Insurance Scheme (UHIS) is expected to transform the role of private sector health services providers." This will take place through the reimbursement of contracted private sector service providers by the health insurance scheme. "This will enable private providers to reach lower-income patients otherwise unable to afford high-quality private provision from the private sector. Along with the increased demand for services will be pressure to raise clinical quality standards, improve the patient experience, and drive enhanced value. Providers will only be eligible for empanelment if they have achieved the quality standards set by the General Authority for Healthcare Accreditation & Regulation (GAHAR). Funding for the public and private facilities working under UHIS will depend on their ability to attract patients who will be free to choose between secondary and tertiary facilities that are part of the system. This will provide these facilities with an incentive to actively compete for patients by providing higher quality health care services."[13]

To meet this demand, the private sector has a considerable area to cover. It needs to expand its offering of affordable, efficient and high quality care, support in equipping healthcare facilities with the needed technologies, provide trained and capable healthcare professionals, foster innovation in management, data-driven decision-making and operational excellence and, most importantly, establish and provide NEW services in thousands of needed primary healthcare facilities, providing the essential role of the scheme's "gatekeeper" and without which it cannot function. In addition, establishment of NEW speciality clinics, diagnostic centers and hospitals around the country would be a critical entry point particularly beyond the capital.

Areas of value creation in eHealth, supply chain, human resources, diagnostics and evidence-based clinical decision-making are still heavily underserved.

[13] IFC, Egypt Health Sector Deep Dive, November 2023, https://www.ifc.org/content/dam/ifc/doc/2023/egypt-private-sector-diagnostic-health-sector-deep-dive.pdf

Conclusion

As a conclusion, regarding the process adopted during the issuance of the Law for the private sector management and leasing of public healthcare facilities that has been accelerated in the light of the IMF supported program in Egypt and its promotion of the role of the private sector, it is fair to say that this process did not meet any minimal degrees of stakeholder engagement, dialogue or transparency.

A set of minimal requirements are still in need to be met to guarantee the IMF supported program in Egypt does not lead to negative shortcomings among services provided to patients with limited resources and healthcare providers.

The national direction, commitments, institutions and plans towards the implementation of the Universal Health Insurance Scheme provide a fertile ground to promote private sector engagement and its role in the healthcare sector within a carefully studied strategy and plan that is sustainable, structured and that provides numerous opportunities for private sector upscaling within a protected environment that guarantees the right to health of all.

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