

water

A right, not a commodity

Civil Society Proposals for a Public Model of Water Services

Coordinated by: Jaume Delclòs

Pedro Arrojo, Esteban Castro, Lluís Basteiro, Ana Gris, Eloi Badia, Vicky Cann, Maude Barlow, Philipp Terhost, Jaume Delclòs, Adriana Marquisio, Al-Hassan Adam, Olivier Hoedeman, Josep Centelles, Silvano Silvério da Costa

WATER, A RIGHT NOT A COMMODITY

JAUME DELCLÒS (coord.)

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PROPOSALS FROM CIVIL SOCIETY
FOR A WATER PUBLIC MODEL



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FOREWORD

This book is the result of the collective learning experience and actions of the global water justice movement. One of the campaigns forming a part of that movement is the *Water, a Right, not a Commodity* campaign of Engineers Without Borders (*Ingeniería Sin Fronteras*).

This book aims to focus on the main causes, on a global level, of lack of access to water, both in quantitative and qualitative terms, without entertaining secondary issues. It therefore compiles the core contributions and proposals of a wide range of social groups regarding water as a human right, and universal access to water and sanitation.

The book explores key challenges and conflicts in socio-environmental terms and takes a historic look at the commoditization and privatization of water. It analyses the prevailing policies promoted by international financial institutions, the implementation of those policies by the various levels of government, at the service of large private water corporations to the public sector's detriment, and the consequences of such policies in social terms. Civil society and social movements have responded, developing excellent alternative initiatives to return control over water, over life, to the citizenry. The development of alternatives has taken a variety of forms,

ranging from social mobilizations to the drafting of proposals. Underlying these alternatives is a desire to build institutions in the service of all, recognizing and defending the rights of all the planet's inhabitants.

This book would never have been possible without the collaborative effort of all its authors, from different walks of life, including trade unionists, academic activists, and management personnel. To all of them, our sincere thanks for their contributions.

I. TYPOLOGY AND ROOTS OF CONFLICTS OVER WATER IN THE WORLD

Pedro Arrojo Agudo*

As a consequence of the systematic, generalized degradation of continental water ecosystems, 1.2 billion people in the world currently lack access to potable water. If current trends continue, this figure will reach 4 billion by the year 2025. Moreover, the crisis of unsustainability of water ecosystems aggravates world hunger problems, inasmuch as, by degrading or destroying river and marine fisheries, it devastates traditional agricultural production processes linked to river cycles. Said fisheries play an essential role in the diet of millions of people, especially in poor communities.

In this critical context, the current globalization model, devoid of the most basic ethical principles, aggravates these problems. Far from arresting ecological degradation, it is accelerating the degradation of water resources and a breakdown of continental water cycles. Far from closing the wealth gap and guaranteeing fundamental rights to the poorest of the poor, such as access to potable water, it opens the field of environmental resources and environmental values to the market as a space for doing business.

In this context, multiple clusters of conflict have been emer-

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ging related to water management, generating crises along two great fault lines:

- A crisis of sustainability: with movements in defense of territories and water ecosystems, in response to hydro-megaprojects and pollution problems.
- A crisis of governability: with a resilient movement in defense of human and civil rights, in response to privatization of basic water and sanitation services.

These movements, whose social and environmental concerns vary considerably, are demanding new approaches to water management to guarantee:

1. The sustainability of water ecosystems;
2. Effective access to potable water for all, as a human right;
3. The establishment of universal rights for the citizenry worldwide;
4. The development of new forms of participatory governance.

Beyond promoting political and institutional changes, as well as technological improvements, there is a need for a new ethical approach as called for by the civic and philosophical movement for a «New Water Culture».

The Sustainability Crisis of Rivers and Aquifers and Access to Potable Water

The ancestral paradigm of «Mother Nature» offers a mythical view, making use of the image of a mother, personified in female form, as the generator and sustainer of life. The Renaissance spirit, however, in its zeal to break the code of nature, ended up shattering that myth in large measure. The objective of learning about nature in

order to dominate it and have it serve mankind was voiced with ever increasing clarity. Bacon went so far as to state that science should treat nature in the same way the Spanish Inquisition treated its victims: it should torture her until she revealed the last of her secrets...

Romanticism gave that approach a more elaborate and subtle tone, praising nature's beauty, which arouses our passions and enraptures us.

Thus, the paradigm shifted towards a new mythification, again personified in female form, but this time as a lover, as man's object of desire. Yet once reaching that point, emphasis was and generally continues to be placed on nature's irrational, unstable, erratic, unpredictable qualities. Said qualities, attributed to the female gender, need to be dealt with through the rational, firm hand of science and technology, clearly personified, of course, in masculine form, with the aim of «dominating her and having her serve mankind».

With this logic and a blind faith in scientific and technical developments, considerable improvements in the quality of life for billions of people have undoubtedly been achieved. Nonetheless, breakdowns in the natural order have also been seen, at a high price, especially for the poorest of the poor and future generations.

It is currently estimated that more than 1.2 billion people do not have guaranteed access to potable water, which results in over 10,000 deaths per day, mostly of children. On the other hand, rivers, lakes and wetlands are undergoing one of the biosphere's most severe biodiversity crises. As underscored by the European Declaration for a New Water Culture, signed in early 2005 by one hundred scientists from several countries of the European Union, both these realities are part of the same crisis: the crisis of unsustainability of continental water ecosystems and underground aquifers.

In fact, the problem is not so much the scarcity of water, but rather pollution and environmental degradation. No one has built his house far from a river, a lake or a spring or from areas with access to groundwater. The problem is that, given our insatiable,

irresponsible developmental ambitions, we have degraded those ecosystems and aquifers, creating severe health problems for the population that depends on them.

Sustainability has frequently been considered a priority objective for developed countries only, the assumption being that the economic growth of impoverished countries necessarily entails the degradation of their environmental assets and resources. Such an approach, which is almost always unfair, is particularly unacceptable in regards to water, given that the health and lives of people are at stake. The fact that certain polluting and environmentally damaging technologies have been used in developed countries in the past does not mean that the same mistakes have to be made in impoverished countries, ruling out the use of modern technologies and strategies that are now available.

Unfortunately, a lack of democracy and the irresponsibility of many governments, combined with the logic of «free competition» as imposed by the World Trade Organization (WTO) favor the possibility of completely unregulated pollution in impoverished or developing countries, in a practice known as *environmental dumping*.

A polluted river in a developed country, though undoubtedly serious, will not necessarily lead to public health problems, since urban water systems can generally ensure a safe water supply. In impoverished or developing countries, however, killing a river ravages life in the communities that depend on it. Thus, the sustainability of rivers, lakes, wetlands, and aquifers is a matter of survival that must be met in the short-term in impoverished or developing countries, over and above the global challenge of habitability and quality of life on a planetary level.

Impacts on the Food Crisis

Direct and indirect impacts on sources of food production in the world, caused by a breakdown of the water cycle and the crisis of

unsustainability of rivers, lakes and wetlands, have been and continue to be devastating, especially as they relate to the natural productivity of protein foods.

The draining and drying of wetlands has been frequently justified with the argument that those spaces should become productive to fight against poverty and world hunger. Their destruction, however, has disrupted the rich biodiversity nourished by these ecosystems, not only within the wetlands themselves but also in other connected habitats. This creates a crisis for their role in protein food production (especially fisheries), which are key for the diet and subsistence of many communities.

It should be noted that although fish is not usually the main protein source in the diet of the most developed countries (only 10% in Europe and USA), it tends to be much more important for impoverished or developing countries. Fish amounts to over 20% of all animal protein in Africa and 30% in Asia (ICLARM, 1995). It is worth mentioning that, for many inland communities without access to coastal fishing, river and lake fisheries are key to survival.

Throughout the 20th century the construction of large dams has been one of the factors that has led to a drastic reduction in river fishing, resulting in the extinction of many species of fish and mollusks. Some documented cases that could be mentioned include the Urrá River in Colombia, the Singkarak Dam in Sumatra, the Lingjintan Dam in China, the Theun Hiboun project in Laos, or the Pak Mun Dam in Thailand (Dave Hubbel, 1994). In all these cases, large dams caused severe food problems for hundreds of thousands of families living in poor riverbank communities due to the degradation, and in some cases destruction, of their fish production.

Of significance are the environmental and humanitarian catastrophes in the Sea of Aral in central Siberia and Lake Chad in Africa. In the case of the Sea of Aral, the diversion of 90% of the flow of the Amu Daria and Syr Daria Rivers, tributaries to what used to be the fourth largest lake in the world, in order to irrigate cotton

fields, has reduced the water surface to less than half (from 64,500 km² to 30,000 km²), and tripled its salinity. As a consequence, the fisheries that produced 44,000 tons of fish per year and provided 60,000 jobs have disappeared (Patrick McCully, 2004). To make matters worse, as Janet Abramovitz from WorldWatch Institute points out in her work, wind storms kick up dust clouds that carry toxic salts over the 36,000 km² of exposed sea bed, which results in severe public health problems (J. Abramovitz, 1996).

The development of hydro megaprojects has not only affected fishing in rivers and lakes, but also in seas. The case of the Aswan High Dam, on the Nile, is paradigmatic. Ten years after its inauguration, only 17 species were left out of a total of 47 previously used for fishing. However, the most abrupt, traumatic impact on fishing occurred in the sea. One year after the dam's flood gates were closed, the catch of sardines and anchovies dropped by 80% to 90% in the Eastern Mediterranean Sea (Gilbert White, 1988). We know today that these species, and others, breed at the mouth of large rivers, where they benefit from the spring rise of water levels rich in nutrients. This phenomenon of coastal platform fertilization has always been particularly relevant for closed or semi-closed seas, poor in plankton, as in the case of the Mediterranean. A similar impact was observed at the Sea of Cortés (Baja California, Mexico) as a consequence of diverting the Colorado river to irrigate the Imperial Valley and aid urban development in the Los Angeles-San Diego area (Sandra Postel, 1996).

The growing international commercialization of fish is leading to situations of overfishing that contribute to destroying the sustainability of many of these river and coastal fisheries, thereby undermining local family consumption. In Bangladesh, for example, despite a multiple increase in fishing activities, the per capita share in poor communities has been reduced to one-third over two decades (J. Abramovitz, 1996).

The Amazon River, home to over 3,000 species of fish (one-third of all the world's fish species), yields 200,000 tons of fish per

year, the majority of which is used for personal consumption or sold in local markets. However, over the past few years, a boom in industrial fishing, massive deforestation, mining waste, dam construction, and the draining of wetlands (growth of the so-called agro-livestock frontier) are creating a crisis for this powerful source of protein food, causing the progressive disappearance of species as emblematic as the tambaqui (scientific name: *Colossoma macropomum*) (M. Goulding, 1993).

In Southeast Asia, Thailand's accelerated industrial growth is leading to the construction of large dams and the diversion of the Mekong river, which threaten to trigger environmental disruptions with disastrous impacts on traditional food sources for millions of people. A basic component of that complex water system is Lake Tonle Sap or the Great Lake of Cambodia with a surface area that ranges from 3,000 km² to 13,000 km², reaching its largest area following heavy monsoon rains. Thanks to this oscillating dynamic, this lake has been producing some 100,000 tons of fish per year, providing the main protein source for 9.5 million Cambodians. The periodic flooding of these 10,000 km² of forests and fields feeds a critical ecological cycle (Mark T. Hill, et al., 1994). On the one hand, it fertilizes fields that yield 50% of the rice produced in Cambodia; on the other, it is key to the reproduction of fish that spawn and feed in the flooded forest areas. Similar cycles take place along thousands of kilometers of the Mekong's flood areas all the way to the productive delta. It is estimated that a total of 52 million people depend on the natural biological productivity of the Mekong for their basic food supply (Mok Moreth, 1995).

Qualitative and quantitative changes in the flow of many of the world's largest rivers have created a crisis for traditional forms of agrarian production dependent upon rising levels of river cycles. Construction of the Bakolori dam in Nigeria resulted in a 53% loss of traditional crops dependent upon those flooding cycles of the plains of the lower and mid basin; on the other hand it brought about the destruction of grasslands which served as the foundation

for livestock raising and seriously affected aquifers, exhausting water reserves that were vital in dry seasons (Adams, 1992). Similar cases can be found, as noted in the final report of the World Commission on Dams (presented in London in 2000), along the Senegal River, with almost 800,000 people affected by damage to their traditional crops, at the Sobradinho Reservoir in Brazil, where close to 11,000 farming families were severely affected, or with the Tarbela and Kotri Dams in Pakistan, which led to the ruin of traditional pastoralist activities downstream, in the flood plains (WCD, 2000).

These impacts, serious as they are, seldom appear in official economic statistics, given that a large share of this food production is sold on local markets or used for personal consumption without entering the larger commercial circuits. It is even commonly argued that these production models dependent upon river cycles and employing artisan fishing techniques are low in economic efficiency. Nonetheless, if the environmental and social values at stake are taken into account and objectives of sustainability and equitable distribution are adopted, such alleged inefficiency is overshadowed by high eco-social efficiency. What seems to have a low productive efficiency in economic terms, from a market perspective, turns out to be highly efficient in terms of solving hunger problems.

Other Socioeconomic Impacts

It is difficult to understand conflicts over water without taking into account the complex connection between water ecosystems and the area they drain. Frequently, a key factor in degraded water quality is deforestation and the expansion of the agro-livestock frontier. Depredation of the territory, besides destroying ways of life and the traditional social fabric, introduces major changes into the continental water cycle. Deforestation usually causes a depletion of fertile soils (forests supported by these soils are as fragile as they are exuberant) and their subsequent erosion, accompanied by an increase in runoffs, decreased water infiltration into the aquifers,

as well as an increase in high waters and flooding of downstream riverbank regions.

A crisis in a water ecosystem is accompanied by significant socioeconomic problems, because it affects the complex set of environmental values, functions, and services provided by the ecosystem. One such service is the natural purification of water. Rivers in good ecological condition, and especially wetlands, are true natural water purification mega-plants that regenerate water quality. By degrading the life pyramid of water ecosystems, we degrade this capacity, making ecosystems fragile in the face of eutrophication (due to excess nutrients).

On the other hand, river flood areas are key to feeding aquifers and fertilizing land; but in a very special way, these flood zones, together with wetlands, are key to controlling sudden rises in water levels. A paradigmatic case for the world at large is the controversial Hidrovía project (involving Brazil, Argentina, Paraguay and Bolivia). Its successive versions over the years have continually threatened the complex water system that feeds the headwaters of the Plata river basin. Said project is based on draining the Gran Pantanal, the world's largest wetland system, with an area of 200,000 km². Studies conducted by the Inter-American Development Bank estimated that the drainage would extinction of some 600 fish species, 650 bird species, and another 80 mammal species. In addition, the disruption of that wetland's regulating function would increase flooding risks and the impact of drought throughout the basin (CEBRAC and WWF, 1994).

The construction of large dams throughout the world has not only disrupted the continuity of river habitats in the immense majority of rivers, but has drastically changed their natural characteristics (in terms of water flows, as well as solids and nutrients). This impacts biodiversity and river geodynamics (erosion, sedimentation, creation of meanders, etc.) irreversibly. Deposits of sediments in those reservoirs, which have fed deltas and offset their natural subsidence for millions of years, are causing their gradual sinking,

salinization, and disappearance. Said process, accelerated by rising sea levels owing to global warming, provides a glimpse into the future of severe socioeconomic consequences in the coming decades.

The Aswan High Dam and its impact on the Alexandria Delta and the North African shores is perhaps one of the most significant cases. Estimates by the Woods Hole Oceanographic Institute of Massachusetts indicate that Egypt could lose up to 19% of its inhabitable territories under the sea over a six-decade span, which would displace up to 16% of its population (ibid et al., 1989).

In the Mekong river basin the construction of large dams is clearing a way for an accelerated deforestation at the headwaters which brings about considerable erosion processes. This multiplies runoffs and accelerates river kinetics, thereby triggering the risk of disastrous floods, the consequences of which are already being felt. However, despite those massive erosion processes, the subsequent collapse of sediments in the reservoirs and the huge diversion projects that have been planned lead one to fear serious impacts on the delta due to the lack of sediments.

After the traumatic flooding of the Mississippi in Louisiana and the Rhine in Holland at the beginning of the 1990s, traditional flood prevention approaches employing levees and large dams to intensify control has given way to strategies based on new approaches in water ecology. Such strategies involve returning areas of soft flooding to the river's mid basin (even by moving back levees that have already been built), restructuring meanders that had been straightened, and reforesting groves and river banks. These strategies, in short, are aimed at dispersing flood energy by learning from natural dynamics, which frequently are more efficient and inexpensive than hydro-projects.

Crisis of the Structuralistic Model and Conflicts over Large Dams

The serious environmental impacts mentioned above are, of course, at the heart of countless conflicts and social struggles. Contrary to commonly held beliefs, the most active clusters of social mobilizations over environmental issues are not found in rich countries, but in impoverished and developing countries. In most cases, these are struggles for the survival of entire communities and peoples who are victims of these ecological disasters.

In the late 1990s, the World Bank, in light of acute conflicts brought about by large dam projects it was financing in developing countries, suggested the possibility to the International Rivers Network (IRN) of holding a broad worldwide debate on these issues. IRN's positive response, as a representative of a number of groups throughout the world affected by large dams, led to the establishment of the World Commission on Dams (WCD) chaired by Kader Asmal, then Minister for the Environment of the South African government of Nelson Mandela. After two years of work, the Commission presented its final report in London in 2000.

Said report evaluated significant socioeconomic victories achieved thanks to the development of large hydraulic projects. It also reviewed the dramatic projections by various international institutions of population growth and of the number of human beings without guaranteed access to potable water, along with the food crisis and increasing demand for electricity in the world. Based on those projections, from a traditional developmental perspective, it would seem necessary to persevere in developing new infrastructures that would allow for the exploitation of greater water volumes in rivers, lakes and aquifers. The report, however, underlined the key arguments that today call into question the validity of supply-side strategies based on new large hydraulic works:

- low efficiency and economic profitability problems;
- serious ecological and environmental impacts, often times

irreversible;

– serious social impacts and adverse impacts on the human rights of populations.

With regard to the first issue, the development of economic structures, both nationally and worldwide, created profound changes during the second half of the 20th century. Said changes led to a negative cost-benefit result for most large hydraulic projects.

With regard to the second issue, the report included the arguments and environmental impacts mentioned above, stressing the dire socioeconomic consequences, especially for the poorest communities.

But it is perhaps the last point that reveals the most shocking and moving data. After two years of work the Commission was able to determine the cubic meters of water that could be stored in the almost 50,000 large dam reservoirs built throughout the 20th century. Yet, notwithstanding the support received from the respective governments, the Commission stated that it was unable to determine the number of people forcibly displaced on account of the building of those dams. According to the report, an estimated 40 to 80 million people lost their houses and villages to flooding. This estimate has to be increased by a much higher number of persons displaced due to indirect consequences in the areas surrounding the flooded valleys. As reported by the Commission, the brunt of the socioeconomic impacts were borne by the poorest communities and most vulnerable sectors (particularly women and children), while the benefits went to the rich and powerful sectors of society and to more developed territories far away.

The extent of the human drama to date due to these forced displacements is shocking. However, the level of ignorance and silence that has and continues to be maintained regarding this type of hydraulic holocaust of the 20th century (as it is called by Prof. Martínez Gil) is even more shocking. Speaking in terms of «forty to eighty million» is tantamount to admitting that we don't know and

don't want to know. We are therefore faced with the drama of the victims' invisibility.

Over the past few decades the increasingly active and massive reaction of the affected populations has been chipping away at the broad social consensus that maintains this silence, even in the face of direct repression (which on occasion has been and continues to be brutal).

Although it varies from case to case, most of the time we are looking at poor rural populations, in many cases indigenous communities, with very little political power, who are marginalized or, in principle, easy to marginalize. What is at stake for those communities are often not water rights *per se*, but the very territory they inhabit. In mountainous regions, which tend to have the best canyons for building large dams, the most precious and scarce resource is not water, but the inhabitable and arable land of the floodplains in the valleys. What is called into question in these cases is the right to territory and to the very existence of the communities. Beyond any financial compensation, whether more or less in line with market values or a swindle, it must be understood that a village is much more than a group of houses to be expropriated. Given the sense of identity, and the cultural and emotional values at stake in this and many other cases, today, the collective right of peoples to their territories and their natural ecosystems is considered to be a human right in the debate over what are called the third generation of human rights currently taking place at the United Nations.

The right of communities to the sustainability of water ecosystems and to the territory that supports their existence are therefore key to the social mobilization that has put the prevailing water policies of the entire 20th century against the ropes. Those policies were based on resource management approaches and supply-side strategies, with huge public subsidies, that were as inefficient and financially irrational as they were unsustainable and socially and environmentally unjust.

Globalization's Controversial, Troubled Waters

Developing countries are often times wary of policies that promote sustainability objectives on an international level, because they see them as a cover for operations by rich countries to control new natural resources. Such operations could eventually challenge the sovereignty of developing countries over their own resources and territories... Such fear is not unfounded considering that, in the name of the good of humanity, in a world order dominated by the great powers, attempts are being made to impose denationalization policies over their natural heritage, at the same time as strong pressure is being exerted to privatize those resources (forests, land, rivers, water, genetic heritage, etc.).

However, notwithstanding maneuvers by the great powers to monopolize natural resources, the truth of the matter is that environmental impacts don't tend to respect borders. Hydrographic basins and cross-border aquifers offer natural territorial management frameworks for continental waters that also overflow political boundaries. A key challenge to be addressed for these types of basins and aquifers is shared ecosystemic management based on appropriate and fair international agreements and laws, under the umbrella of supranational organizations, which would be at least regional in nature.

The United Nations (UN) faces the challenge of creating international institutions that could oversee such shared cross-border management. However, in order for those institutions to exist, there needs to be a multilateral, democratic world order, which is still far away. Only with a democratized UN that would globalize guarantees for the weakest and impose fair rules and restrictions on the ambitions of the most powerful, can there be hope that such institutions can be developed on the basis of mutual trust.

In all events, it is necessary to at least include this matter on the agenda for regional international agreements and institutions. An example of this would be MERCOSUR, when it comes time to manage conflicts involving international river basins, such as the

one that arose regarding the Plata river basin between Argentina and Uruguay in relation to the paper mill industry.

The EU provides a very positive example in this regard. In fact, the new Water Framework Directive, approved in 2000, calls for the promotion of transnational institutions for European cross-border basins in order to organize sustainable, equitable management of river ecosystems.

Unfortunately, the current globalization model is not a democratic one that would globalize human and civil rights. To the contrary, the policies of the World Trade Organization (WTO) and the World Bank (WB) focus on expanding the frontiers of the free market to turn the environment and the most basic public services into a space for doing business.

It can be stated today that said policies not only have been proven inefficient in terms of reducing inequity and poverty gradients, but that, specifically, in regard to water issues, far from guaranteeing access to safe water for the poorest, they have contributed to worsening their situation and making them more vulnerable. The fact is that, following a free-market logic, the poor have never been good business.

One could say that we are witnessing a paradoxical schizophrenia of international financial institutions regarding water policies. On the one hand, liberalization and privatization of public water and sanitation services is being promoted in the name of economic efficiency. On the other hand, the World Bank recovers its credit lines for large waterworks despite being aware of their irrationality and economic inefficiency. In this way, while glorifying the market, condemning public protectionism in developing countries, and opening spaces for business to large multinational operators, it once again is pushing the old supply-side strategies, with huge public financing and subsidies. This benefits large multinational corporations and national pressure groups and is based on increasing the public debt of those countries.

Over the past two decades, within this confusing and troubled

international framework, massive movements have emerged against the privatization and commercialization of water and sanitation services. At the same time, mobilizations have intensified against public financing (with WB funding) of mega waterworks that violate the human rights of the affected populations and aggravate the crisis of unsustainability of continental water ecosystems.

The Complexity of the Values at Stake

As explained above, the crisis of unsustainability of water ecosystems and the breakdown of the water cycle have led to an increasing scarcity of quality resources. This has resulted in serious consequences for public health, especially in the poorest communities, towns and countries. These problems and the obvious inefficiency of traditional public administration models force us to think of new models for the future.

The need to consider water an active eco-social asset (with the root «eco» expressing both economic as well as ecological values) and not just a mere production input, is increasingly obvious. Changing this conceptual approach ultimately requires a shift from considering water as a simple resource (whether subsidized or not) to an ecosystemic management approach, which is undoubtedly much more complex. The Water Framework Directive, in effect in the EU since late 2000, promotes this new approach.

Just as anyone can understand the need to move from timber management (resource management) to more complex approaches in forest management (ecosystemic management), the need for a similar change with respect to water is ever more obvious. Restoring and preserving the good ecological condition of rivers, lakes, and wetlands is, indeed, the core objective of the Water Framework Directive. It is not only about the preservation of the physical and chemical quality of water (as a resource), but about caring for the health of water and riverbank habitats, by guaranteeing an adequate volume of water with the corresponding flow of solids and

nutrients.

Despite the consistency of the ecosystemic approach and its growing application in the legislation of the more advanced countries, production-oriented and resource management approaches are still influential. From the neoliberal standpoint of the current globalization model, far from questioning these approaches, what is being proposed is to strengthen them, by «rationalizing» them through liberalization, deregulation, and privatization policies. Said approaches, along with the concept that urban utilities are simple economic services, have contributed to building intense pressure in response to inefficiency problems in the public administration. The fact that everyone is completely dependent on these basic services (making willingness to pay unavoidable), combined with an increasing scarcity of quality water, contribute to the appeal of the sector as a space for doing business. The most relevant expression of this trend can undoubtedly be found in the policies of the World Bank and the WTO. Their loans in this sector are conditioned upon the privatization of urban supply and sanitation services in the major cities of developing countries.

Reducing the values at stake to water's value as a mere resource, increases the pressure for deregulation and reinforces a market economy approach. However, if the principle of sustainability is adopted as the foundation for water management, based on an ecosystemic approach, then public responsibility in this regard must be reinforced. The complexity of the present and future values and rights at stake under this approach, combined with an inability to break them down in order to assign them, turn the market into a tool that is too simple and insensitive to many of these values.

On the other hand, ethical problems related to principles such as equity or the right to life are surfacing with increasing strength, beyond the challenge of sustainability. Said problems call for a more in-depth reflection on the function of water, and the values and rights at stake.

Ethical Foundation: Functions, Values and Rights at Stake

The field of economics has conceptually blurred two terms borrowed from the Greek which were clearly differentiated by Aristotle: «economy» and «chrematistics». To Aristotle, «economy» was the art of administering household goods, whereas «chrematistics» only dealt with part of those goods: those on the market that could have a monetary value assigned to them. If we were to use the Aristotelian definition and substitute the word «planet» for «household», we would obtain a good definition of the modern ecological economy.

Adopting this conceptual approach, ever more economists are speaking out against the error of commodifying environmental assets as mere economic inputs. Daly, specifically, makes the following argument:

Some argue that manmade and natural capital are such good substitutes that the very idea of a limiting factor (in terms of production) is irrelevant. Nonetheless, I think it is sufficiently clear to common sense that natural and manmade capital are fundamentally complements and only marginally substitutable.

The commodification approach, applied to the management of water and basic services upon which the health and life of communities are based, is being demonstrated to be erroneous. Water is, certainly, a well-defined element: H₂O. It serves various functions, however, that, above all, are related to different ethical considerations and different categories of values. Some of these cannot be managed by means of simple economic exchange relationships, as they are not consistently interchangeable with capital goods. It is therefore fundamental to distinguish the various categories of values and rights that relate to said functions in order to establish appropriate priorities and management criteria (Arrojo, 2005).

– Water in its life-giving function: its basic functions for the survival of both humans and other living beings in nature

should be recognized and prioritized in order to guarantee the sustainability of ecosystems and access for all to basic quotas of quality water, as a human right.

– Water in its civic functions: activities in the interest of society, with functions serving health and social cohesion (such as urban water and sanitation services), should be given second priority, in connection with the rights of citizens and the interests of society.

– Water for growth: its economic functions, linked to production activities, should be recognized as a third priority, connected with each person's individual rights to improve his or her living standards. This is, indeed, the function for which most of the water obtained from rivers and aquifers is being used, and it plays a key role in the most relevant problems of scarcity and pollution in the world.

– The criminal use of water: illegitimate, if not illegal, use of water in production is increasing (toxic dumping, abusive extractions, etc.). Said usage should be avoided and prosecuted through strict enforcement of the law.

In the sphere of water's life-giving functions, since these are human rights, the top priority of governments and international institutions should be to effectively guarantee these rights. The argument of a lack of financial resources is unjustifiable, even for governments of impoverished countries, and is especially unjustifiable for those of richer countries and international institutions, such as the World Bank. After all, the «revolution of the free potable water fountain at the square, close to home...» was developed in many countries (like ours) when they were quite poor and the World Bank did not even exist. It was a political challenge, not a financial one. Public responsibility for providing free potable water at the fountain was assumed as a top priority for the community and the State. This happened even before the first street lights went up or streets and highways were paved.

When water usage is related to activities in the interests of society, such as residential water and sanitation services, besides access to basic quotas, which should be deemed a human right (the public fountain), the main objective should be to guarantee said usage to all, rich and poor, based on criteria of maximum socioeconomic efficiency. The principles of equity and social cohesion, linked to the rights of the citizenry, should be promoted by the public administration. In this case, however, in addition to the rights of the citizenry, their duties should be delineated as well. The application of sound tariff models should encourage such socioeconomic efficiency, promote responsible individual and collective attitudes, and guarantee cost recovery based on social redistribution criteria.

Most of the water extracted from rivers and aquifers, however, is not used for basic, life-sustaining functions, nor does it support services in the interests of society. Rather, it is used for production activities. Such activities, most of which are legitimate, should not be described as serving the interests of society, let alone be associated with human rights or the rights of the citizenry. Since this type of usage has strictly economic objectives, criteria of economic rationality, based on the principle of cost recovery, should be applied. Each user should unquestionably bear economic responsibility for the water he or she has used, and in this case, there is no reason to introduce direct or cross subsidies.

Public and Private Management: the Challenge of Participatory Governance

The privatizing strategy of the World Bank and the WTO has and continues to work towards ««thinning»» and progressively deactivating public functions at all levels, from the international to the local, including at the national level, where it works to open up more spaces for a management approach based on free market principles. The traditional functions of the State and of public institutions in general, as drivers of values of justice and social cohesion,

have been deteriorating under this pressure. The discrediting of public functions, branding them to be a source of inefficiency, opacity, and authoritarianism, leads to presenting policies of liberalization and deregulation as modern, flexible, efficient, economically rational alternatives.

With this approach, universal access to basic services in the interests of society, such as water and sanitation (or others such as health care and education), has been deemed to constitute interference by the State. Under this approach, these services, traditionally assumed to be rights of the citizenry in the «Welfare State», are economic services, which should be accessible to those who can and are willing to pay for them.

Privatization of the management of public water and sanitation services in major cities of impoverished or developing countries (operators are not interested in the privatization of such management in small cities and rural areas), under pressure from the World Bank, has provoked a strong social reaction, especially in the poorest communities and sectors. This reaction has caused these policies to fail in many countries (especially in Latin America), leading to a change of strategies for large operators. In recent years, the preference for so-called unregulated markets has been replaced by what are called reliable markets, which are principally available in Eastern European countries, including Russia.

- The assumption that the private sector will make the necessary investments that the public administration is lacking.
- The assumption that free competition should foster higher efficiency levels and more control by users, through exercising their rights as customers.

The truth of the matter is that the policy of large multinational operators, most of which are European, to expand into developing countries, has not distinguished itself for making large private investments in the development of networks and basic infrastructure in

those countries. Argentina, the country where privatization of urban water management in Latin America began (besides the very specific case of Chile), is a clear example of this. Large operators barely contributed a minimal proportion of the investments made during those years; the majority of investments continued to be made by the public sector. The business strategy of such operators has always considered it risky and not very profitable to invest heavily in basic infrastructure. That is why, in most cases, the only thing privatization has done is to unblock World Bank loans, which despite being charged against the public debt of a country are managed through private operators.

The second argument, which might be appropriate for other public services, is not applicable in this case. It needs to be stressed, above all, that this is what is called a «natural monopoly», which if privatized, at most allows for a competitive process «through the market» but not «in the market». In other words, the highest expectation is the ephemeral competition created through a public tender. Once the concession is granted, the service will start to be managed as a private monopoly for many decades, under conditions that are difficult to review or rescind. What actually happens in this context is that competition is reduced. In fact, when management is carried out at the municipal level or by a local or regional public company, the procurement of new technology, maintenance works, and upgrades, as well as many other specific tasks, are usually contracted for on the market where highly specialized small and medium-sized companies compete. However, when a service contract is awarded to one of the large multinationals that dominate the sector, the so-called «secondary input market» (which usually has a higher volume of business than the management of the service *per se*) is generally blocked and shielded from competition, to the extent that these companies have their own resources to meet those needs. The end result, paradoxically, is that market competition is limited.

In the case in question, citizens' are unable to exercise control

over the operator through exercising their rights as customers . It should be noted that such rights are usually exercised by switching to another operator when customers are dissatisfied. However, as explained above, that is not possible in this case, where there is a natural monopoly.

The alleged market transparency, as compared to the opacity of public management, is more a myth than a reality, especially when it comes to managing a natural monopoly, as in this case. It should be noted that private management is legally protected, of course, by the right to privacy of information.

Problems of administrative opacity, bureaucracy, and even corruption, are not solved by privatizing public administration, but by democratizing it. In fact, in those countries where such problems degrade public life to disgraceful levels, the arrival of private operators, far from solving such problems, has tended to aggravate them by feeding into the logic of the system in which they operate.

Nowadays, even in countries with advanced democracies, such as the EU, attempts are being made to encourage reforms to public administration that will promote new models of participatory management, guaranteeing transparency and healthy competition by providing information and comparing public services to other analogous ones. In short, whenever market competition cannot work, attempts are made to promote competition through information in what is known as benchmarking.

But, obviously, the most severe ethical and political problems arise in contexts of poverty, when the change from being a citizen to being a customer is equivalent to losing basic rights, which the market neither recognizes nor has any reason for doing so. In this regard, the words of Vinod Thomas, director of the World Bank in Brazil, are appropriate: «When there is a risk of a private monopoly being created, it is better to leave the services in the hands of the State...» (Folha de São Paulo, September 21, 2003).

In terms of basic services, the key is to promote new models of transparent, participatory governance. Deregulation and priva-

tization are words that are often confused with one another. Once public responsibility is assumed for these types of services, the possibility of franchising their management is one among many worth considering. However, this has to take place under strict conditions of public regulation that guarantee an effective control of these services. These are not the terms under which the World Bank has been promoting privatization in developing countries. There is a need for a broad, in-depth public debate regarding pressures for deregulation, both globally and in Europe. Such a debate should adhere to the concept of proactive participation embraced by the EU upon signing the Aarhus Convention. A decision to privatize these types of services should not be decided as simply one more administrative matter at a mayor's office or by a government team on a regional or state level. Even a debate at municipal or parliamentary meetings in full session is inadequate. Insofar as these decisions affect the rights of the citizenry, and even human rights, over several decades, it would be necessary to open up a broad public debate that would eventually lead to a referendum, as is suggested by the European Declaration for a New Water Culture.

Today, beyond the traditional formal understanding of public dominion over water and water ecosystems, we need to reflect on the challenges presented by the new sustainability paradigm, such as the obligation to guarantee access to potable water as a human right, as well as the need to develop global rights for the citizenry, including residential water and sanitation services.

The adoption of principles of intergenerational and intra-generational fairness in water management reinforces the need to rethink issues of public dominion and public or community management of water ecosystems and aquifers, based on new premises. Such premises need to prioritize the protection of life and human rights on the one hand, and the rights of future generations on the other. However, guaranteeing citizens' basic rights, such as access to quality residential water and sanitation services, requires that civic responsibility and ecosocial efficiency be encouraged when managing

water in its civic functions, through designing and developing new models of participatory public administration.

Over and above conflicts stemming from social opposition to privatization processes, a conflict, or at least a controversy, has arisen over the setting of prices by the public administration itself. Barcelona's so-called «water war» was a paradigmatic example of this. To accept that citizens' rights must always go hand-in-hand with civic duties requires a considerable cultural and socio-political change, especially in the Latin world. Said change cannot be achieved by decree. Rather, it requires a wide-ranging process of consciousness raising, awareness building, and civic responsibility, which can only be developed through a proactive process of civic participation.

It can be stated, in conclusion, that the key to resolving conflicts triggered by privatization pressures under the neoliberal model—promoted by international economic and financial institutions—is to design and develop new models of participatory governance at local and regional levels. This needs to take place within a globalization framework that guarantees human rights and develops the status of global citizenry as set forth by the Earth Charter.

Management of Water for Growth

Said participatory and sustainable governance, however, will be difficult to obtain unless there is a clarification of the management model to be applied in the realm of Water for Growth. Let us not forget that this aspect of water accounts for the majority of water consumption and water pollution.

First and foremost, we must clarify that not all production activities should be considered mere business. In many places in the world, undoubtedly, certain agricultural activities involving ancestral or historic rights to water resources are essential for the sustenance of indigenous or traditional communities, and should therefore be protected as usage and rights under the realm of Water in its Life

Giving Function.

In developed countries there are also economic activities that generate social and environmental benefits that are not valued by the market, which certainly deserve to be recognized as economic activities in the interests of society. A redefinition of the concept of the interests of society is therefore an urgent matter, especially relevant with regard to water management for agriculture in landlocked countries.

Once the specific sphere of economic activities in the interests of society has been defined, obviously most of the water taken from rivers and aquifers will be used for production activities perfectly integrated into the existing economic framework. The right that the concession of said volumes of water should protect is none other than the one stemming from each person's legitimate aspiration to be wealthier tomorrow than today, and to improve his or her standard of living. It is nonetheless obvious that the exercise of said right can never come before the interests of society and must not jeopardize human rights or civic rights, as has often occurred in the past and frequently continues to occur.

On the other hand, for these types of water uses, there is nothing whatsoever that would justify a water subsidy, just as there is no lumber subsidy for a carpenter or gasoline subsidy for a transportation company. Scarcity of water for growth must not be understood as a calamity or tragedy to be avoided, but as a reality to be managed. Such a reality is inherent to any economic asset, which by definition is useful and scarce. In this case it is necessary to apply criteria of economic rationality strictly tied to the context of relationships in the market where the production activities requiring water usage are managed.

It is often taken as understood that the fostering of economic rationality implies adopting market-based management models. However, in this case the complexity of the values to be managed, the systematic interaction among water's different functions, the impacts on third persons, and, above all, the need to apply prin-

ciples of ethical intra- and intergenerational equity, as mentioned above, turn the market into a tool that is too simple and too insensitive for many of the values at stake. We should therefore apply a more complex economic reasoning and sound public regulation frameworks. In addition to guaranteeing the above-mentioned priorities, this would allow the current concession model to become flexible, while also allowing for application of the principle of integral cost recovery.

The adoption of these economic rationality criteria in managing water for growth will undoubtedly meet with strong resistance from several economic sectors that so far have benefitted from traditional, heavily subsidized «supply-side» policies. It is therefore necessary to engage in a broad and patient process of social awareness raising that would allow said uses and rights to be distinguished from those associated with water in its life-giving function and water in its civic function. It is only in this way that the social and ethical coherence of this approach can be understood, avoiding the traditional manipulation of the concepts of «interests of society» and of «public realm», which ultimately benefit private interests.

References

- ABRAMOVITZ, J. N. (1996), «Aguas amenazadas, futuro empobrecido: el declive de los ecosistemas de agua dulce». *Cuadernos Worldwatch*, Bakeaz, Bilbao.
- ADAMS, W. M. (1992), *Wasting the Rain: Rivers, People and Planning in Africa*, Earthscan, London.
- ARROJO, P. (2005), *El reto ético de la nueva cultura del agua: funciones, valores y derechos en juego*, Paidós. Barcelona.
- CEBRAC; WWF (1994), «Paraná-Paraguay Waterway: Who Pays the Bill?» *Executive Summary de la Fundação Centro Brasileiro de Referencia e Apoio Cultural (CEBRAC) and World Wildlife Fund (WWF)*, Brasilia. September.

- NWCF (2005), *European Declaration for a New Water Culture*.
New Water Culture Foundation (Edt.). Zaragoza.
- GOULDING, M. (1995), «Flooded Forests and the Amazon»; *Scientific American*, March.
- HILL, M. T.; HILL, S. A. (1995), «Summary of Fisheries Resources and Projects in the Mekong River»; work presented at the seminar entitled *Mekong: International Seminar for Sustainable Development through Cooperation*; in Washington DC, November-December.
- HUBBEL, D. (1994), «Thailand's Pak Mun Dam: A Case Study»; *World Rivers Review*, final quarter.
- IBID; MILLIMAN, J.D.; BROADUS, J.M.; GABLE, F. (1989), «Environmental and Economic Implications of Rising Sea Level»; *Ambio*, Volume 18, No. 6.
- ICLARM (1995), *From Hunting to Farming Fish*, Consultative Group on International Agricultural Research (CGIAR). World Bank. Washington DC.
- MC. CULLY, P. (2004), *Ríos Silenciados: Ecología y Política de las Grandes Represas*, Proteger Ediciones, Argentina.
- MORETH, M. (1995), «Environmental Concerns Facing Cambodia»; work presented at the seminar entitled *Mekong: International Seminar for Sustainable Development through Cooperation*; held in Washington DC in November and December.
- POSTEL, S. (1996), *Reparto del agua: seguridad alimentaria, salud de los ecosistemas y nueva política de la escasez*; Bakeaz, CuadernosWorldwatch, Bilbao.
- WHITE, G. (1988), «The Environmental Effects of the High Dam at Aswan»; *Environment*, September.
- WCD (2000), *Dams and Development: A New Framework for Decision Making: the Report of the World Commission on Dams*. Earthscan Publications Ltd., London

II. NOTES ON THE COMMODIFICATION OF WATER: A HISTORICAL LOOK AT PRIVATIZATION

José Esteban Castro*

Introduction

Commodification of the elements of nature and of social relationships is the core characteristic of the expansion and consolidation of capitalist forms of social organization. Yet despite its steamroller advance throughout the world, such commodification is a very long-term process, not devoid of stumbling blocks and even setbacks. The case of water provides a very interesting, crystal clear example of this complexity of the commodification process, when examined from a historical standpoint. One small clarification: we are speaking in terms of commodification, which should not be confused with the application of economic principles, such as assigning prices to water management, a distinction that often fails to be made in these discussions. Commodification, in this context, refers to the circulation of water as a private commodity. Once commodified, the price of exchange of an item includes a profit appropriated by a private agent, who holds ownership rights over it. The most notable contemporary example is bottled water, which, with very few exceptions (for instance, if a public company pro-

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duces bottled water, but not with a commercial objective), circulates precisely as a commodity «produced» by private companies.

On the one hand, particularly as of the late eighteenth century, a change was seen involving certain uses of water, for example water distributed for domestic use in affluent neighborhoods of European cities such as London. Increasingly, water for such domestic use took the form of an item supplied by a private service provider that collected and distributed water based on commercial principles: water distributed by these companies is only for those who can pay the service, and water becomes a private asset. Of course, history provides many prior examples where certain uses of water were subject to similar treatment, but as of the late eighteenth century, a qualitative and quantitative leap was seen in the commodification of water, and not just in relation to the domestic use mentioned here as a mere example. One author who has documented this process most clearly is Jean-Pierre Goubert.¹ Nonetheless, this commodification process has also met up with powerful obstacles. Thus, even as we enter the twenty-first century, a substantial proportion of water use, globally, continues to be non-commercial, or at least not directly commercial. In other words, although water is a component of a large number of commodification processes, for instance those of agricultural exports or other products intense in water consumption, the organizational management of this element and its transformation into a productive resource continues, in large measure, to be a non-commercial process, barely, if at all, subject to the laws of the market. In fact, in many places production companies don't pay a thing for extracting water from water sources, or pay prices that fail to reflect the value of the water they extract. Moreover, in many cases water extraction is neither controlled nor regulated. This problem has been debated at length internationally, with certain sectors proposing that the solution to this problem lies in trea-

1. *The Conquest of Water. The Advent of Health in the Industrial Age*, Cambridge and Oxford: Polity Press and Basil Blackwell, 1986.

ting water as an economic item, through the market, for example, by creating markets founded on private water extraction rights that could be exchanged like any other merchandise. Nonetheless, in most cases, these attempts to commodify the management of water sources continue to confront enormous obstacles. In general, they have failed, as was eloquently demonstrated by Carl Bauer for the internationally showcased Chilean case, which was supposedly a successful example of efficient commodification of water sources.²

There are, in fact, certain uses of water, as is clear in most cases of bottled water, where the commodification process has appreciably grown and even reached a certain degree of sophistication. Yet in many other aspects water continues to pose enormous obstacles for the advance of commodification. A concrete example is that of water and sanitation services, particularly in urban zones, which historically have posed a formidable obstacle to the advance of commercial forms of organization and provisioning. In fact, in countries such as the United States, undoubtedly one of the world centers from which capitalism radiates, close to 85% of the population receives its essential water and sanitation services through public companies, and, according to recent studies, the chances that such services will be privatized in the near future are minimal. In reality, on a global scale, it is estimated that only 10-15% of the world's population receives essential water services from private companies, although this data surely excludes the case of bottled water, especially in the less developed countries. This, of course, was long ago explained with the argument that non-commercial provision of certain essential goods and services such as water and sanitation in the final instance is instrumental to guarantee the viability of capitalist accumulation at a systemic level. Accordingly, these services contribute to providing infrastructure when, due to high investment demands or a low rate of return, such activities are not viably profita-

2. Bauer, C. (2004), «Siren Song: Chilean Water Law as a Model for International Reforms», *Resources for the Future Press*, Washington DC.

ble for individual capitalists. Such services also help reduce the cost of reproduction of the workforce overall.³ In other words, although the system's general trend is towards increased commodification of the elements of nature, including water, there are still enormous obstacles to that process, and the specific case of water is an excellent example.

From another perspective, the first thing worth noting based on the foregoing data is that, on the one hand, not all private forms of provisioning water services are commercial, that is, aimed at accumulating profit in the capitalist sense. There are private forms, meaning that they are not organized by the State, geared towards providing the service without a profit motive, as occurs with certain cooperative forms or other non-public/non-State models. On the other hand, organization of these services by the State does not guarantee that they will be provided as a non-commercialized public service. In fact, there is a growing trend towards commercialization of public/State forms of organizing these services. For example, there have been various forms of partial privatization of public companies through sales of shares on capital markets, as is seen in Brazil with the SABESP company in São Paulo and the COPASA company in Minas Gerais. What this means is that there is no mechanical relationship between «public/State» and «non-commercial». Rather, what we are seeing is a dynamic, expanding process that takes on a variety of forms in each different space. What one could, in fact, state is that on a global level, despite the steamroller advance of capitalist forms, the case of water continues to be a difficult frontier to conquer and subordinate to a directly commercial dynamic.

3. See, among other sources, M. Decaillot, E. Preteceille, and J. P. Terrail (eds.), *Besoins et mode de production*, Editions Sociales, Paris (1977); M. Castells, «Equipements collectifs et consommation sociale», *International Journal of Urban and Regional Research*, v. 1, p. 101-123 (1977); J. Lojkin, *El Marxismo, El Estado y la Cuestión Urbana*, Siglo XXI, Mexico City, (1979).

A Historical Look at Commodification of Water and Social Identities

It is important to take a historical look at water's commodification, in particular in relation to the development of new social identities resulting from that process. Here, the case of England offers highly significant lessons of major relevance for the contemporary situation. In this regard, I would point out that in England, in the mid nineteenth century, during the heart of the industrial revolution, a new social identity arose, that of water thieves. Those were very interesting times, precisely when basic running water services were being developed in large cities, based on the premise that such services should be provided by private, for-profit companies. In reality, the companies were generally small and only served the cities' wealthiest neighborhoods, whose inhabitants were able to pay the cost of the service.⁴

Now then, this process was actually an experiment, in more modern terms, we could call it an experiment in social engineering, because the implementation and expansion of this privatizing model for organizing and providing basic water services demanded the creation of a new social identity: the water customer, the purchaser of commodified water. This did not yet exist, at least not on the scale that the experiment required.⁵ Now, such a social experiment does not occur in a vacuum. Rather, it takes place in a context where access to water has not previously been measured in terms of this newly sought social relationship: that of private property of water services for capitalist gain. Thus, together with the

4. This development has been well studied by several authors. See J. Hassan (1998), *A History of Water in Modern England and Wales*, Manchester University Press; A. K. Mukhopadhyay (1975), «The Politics of London Water», in *The London Journal*, 1(2), pp. 207–226.4.

5. This creation of the private water consumer in England was also studied in detail, for example, by F. Trentmann and V. Taylor (F. Trentmann, ed.), *The Making of the Consumer. Knowledge, Power, and Identity in the Modern World*, Oxford and New York: Berg, 2006.

introduction of privatized access to water for human consumption, a policy needs to be introduced, as Foucault would say, that disciplines bodies and creates a new order fomenting the development of commercial social relationships in relation to water access. A new situation needs to be created, where, in order to consume water, one must now first sign a contract with a private company and pay for the supply. Yet, either because they are unfamiliar with the new rules of play or because they consciously oppose privatization of water, certain sectors resist and try to continue accessing water without having to pay private companies for it. The initial response to such resistance was the creation of a new crime, «water theft», and a corresponding new social identity, the «water thief». In other words, those who tried to continue accessing water from a source controlled by the private company were prosecuted by the justice system as water thieves. Such history has been well documented.⁶

In reality, this policy failed in the mid term, because conditions to commodify basic water services were not present. Even in late nineteenth-century London, private water companies only served certain neighborhoods and were unable to respond to the growing demand for services created by escalating urbanization and high standards of living that demanded ever increasing quality and *per capita* consumption of water. In other words, we could argue that the expansion of commercial forms of water circulation for domestic urban consumption was unable to advance, because the social forms required, particularly that of the private water consumer, were limited to a small urban elite who could pay for such commodified services. The great majority of the population was left out of the model. In the case of other goods or services, this would not have been an obstacle, but in the context of nineteenth-century European cities, routinely plagued by water-related epidemics, par-

6. This was also studied in a certain degree of detail by anarchist historian Colin Ward (1997), *Reflected in Water. A Crisis of Social Responsibility*, Cassell, London and Washington, DC.

ticularly cholera, the provision of these services became a strategic issue and central policy. As a consequence, in the late nineteenth century, the experience amassed provoked a political debate. Several decades later, the debate concluded with the creation of a very broad consensus, across social classes and the various political parties and forces, even including notable business sectors, in accordance with which essential services such as water and sanitation could not be left in the hands of the market or organized as commodities, and direct governmental intervention was needed to ensure their supply. In 1902 in the city of London, for example, this led to a decision that terminated agreements with the eight private water companies serving the city and created a public company controlled by the metropolitan authorities.⁷

Commodification versus Universal Access to Water for Essential Human Uses

The case of water, particularly in relation to essential human uses, is excellent for exploring social forms developed to manage universally shared assets. We could state that the principle that access to water for essential uses cannot be restricted or limited is a universal legacy of humanity. For example, in Islamic tradition, it was permitted to sell water, and even today in the streets of Islamic neighborhoods in cities such as Cairo, people can be seen selling water. Nonetheless, one could not deny water to a person in need who could not pay for it. What's more, throughout the world's cultures, access to essential volumes of drinking water forms a part of the rules of courtesy and sociability in a myriad of ways. In Ibero-American tradition, such principles are reflected in the popular saying that «no one can be denied a glass of water». This is also reflected in law, where essential

7. Metropolitan Water Board, *Water Supply of London*, London: Staples Press, 1949.

human uses and water for animals constitute «priority» uses, particularly in times of drought. We could easily give other examples. While it would be mistaken to romanticize water management in the course of history, which has even been marked by mass murders and brutality, what we are noting here are ethical principles developed in one way or another in the world's civilizations that coincide on the notion that water for essential uses is an asset meant for universal access.

Now then, as stated above, the advance of capitalist forms of water appropriation and management involves the introduction of a different universe of social relationships (of ownership, of production, etc.) based on the logic of private accumulation of wealth and, consequently, the commodification of water's management and circulation. As we have said before, this process has been slow and incomplete, with major setbacks, such as the one mentioned above for the case of nineteenth-century England. Yet it should also be noted that the persistence of forms of shared water ownership and management is not necessarily incompatible with the development of capitalist relationships at the system level. In other words, the maintenance of shared, non-private forms of water ownership and management might not only coexist with capitalism, but might even be instrumental for capitalist development, for example, because it lowers the cost of the workforce or of infrastructure in general for capitalist interests at the system level. Of course, at some point these forms give rise to a contradiction, and capitalist forms tend to advance over pre-existing ones. There are those for whom it is just a matter of time before pre-capitalist forms will be overcome. For example, Nobel Laureate in Economic Science Douglass North, one of the classical scholars of institutional economics, argued that if shared assets such as water, forests, and other elements of nature still exist, it is because the technologies are yet to be developed to reduce the costs involved in managing those assets as private property.⁸

Nonetheless, we can see that neoliberal water policy, in large

measure inspired by the principles of neoclassical economics, —of which North forms a part— has patently failed in its attempt to complete this process of privatizing shared assets in the short term. In reality, we could state that social forms of non-capitalist water appropriation and management are deeply entrenched, in different ways in each different culture. And in conjunction with a host of other processes, they continue to pose one of the obstacles that holds back the advance of capitalist relationships in water ownership and management.

The Struggle for Democratization of Water Governance

This issue is temporary in scope, mostly limited to the present time. In reality, current forms of water regulation promoted at the international level reflect intense confrontation between capitalist and non-capitalist forms, as well as among capitalist forms themselves. Therefore, a distinction must be made between the rhetoric of democratic participation in water governance, as reflected in documents issued by international development agencies or governments, and concrete forms of building democratic participation in relation to water. If we remain at the level of the strategic discourse of official policies, we could state that on the one hand, the change in rhetoric is welcome, since it at least reflects a formal recognition of the need to democratize water governance, historically subject to vertical processes, often times frankly authoritarian, and other times at least not democratic in nature. On the other hand, it is clear that frequently the strategic discourse is simply a mechanism to deactivate resistance to official policies (for example, resistance to the construction of large water projects or to privatization) and facilitate cooptation of the agents of that resistance. This is nothing new. Yet it would be an error to reduce the debate over participation and

8. North, D. C., and R. P. Thomas (1973), *The Rise of the Western World*, Cambridge: Cambridge University Press.

democratic governance of water to the system's strategic capacity to dismantle and co-opt resistance. Today, we are witnessing an enormous variety of water-related social struggles at the international level, a large part of which directly involves resistance against the advance of forms of social injustice that are exacerbating inequality and poverty. The resistance movements distinguish quite well between the rhetoric of participation and democratic practice, even though, of course, many of those movements in the end get deactivated, co-opted, or directly overcome. But at a systemic level the resistance is quite strong and sustained. To give an example, at the most recent World Water Forum in Mexico City in March 2006 (an event that in theory stood as the bastion of multinational water companies in conjunction with the World Bank and other players promoting water privatization at a global level) the forms of resistance against those policies and institutions completely overwhelmed the process, despite the often successful attempts to manipulate, deactivate, and co-opt the resistance. In fact, in addition to the «official» forum, five simultaneous «alternative» forums were organized, and within the official forum itself, extensive avenues were opened to debate and intensify the struggle against privatization and advocate public and community water management.

Now then, getting back to the topic of official policy and of the difference between current forms and classic forms of «command and control», I believe that positive advances can be identified. Traditionally, management of goods and services such as those related to water was considered to be the purview of experts, «leave it to the experts», as John Dryzek would say⁹. This hierarchical and, in large measure, authoritarian model started to face increasing challenges, especially in the late 1970s. In following the debate, one particularly notes two fronts of attack against the vertical, hierarchical model of water management (but also against that same model

9. Dryzek, J. (1997), *The Politics of the Earth. Environmental Discourses*, Oxford University Press, Oxford.

for the provision of public goods and services in general). These two fronts are not mutually exclusive, and in reality have certain significant points of contact and convergence, but in principle have different starting points.

The first front of attack comes from the model loosely called «neoliberal», that is, the model that promotes dismantlement of the public management of goods and services and their transfer to private companies. We are all too familiar with this model, and there is no need for us to explain it here. In fact, extensive research has been conducted on the concept of participation promoted by these sectors, represented for example in the official policy of the World Bank¹⁰. Such research suggests that what these sectors mean by «participation» in practice is obedience to decisions made by experts, in particular by technical-financial experts, who in large measure have displaced those that classically held power in the water sector, that is, the engineers. In the final instance, it can be said that the neoliberal model promotes greater participation of non-governmental players in governance and water management, but does so by privileging those who represent capitalist monopolistic interests. This is patently clear in the case of privatization of water and sanitation services, where the principal players at a global level consist of a handful of private transnational water monopolies. In the neoliberal model, participation for everyday users of water and for the public in general is mere rhetoric. One fact that provides us with foundation for this assertion is that during the 1990s, as neoliberal water policy aggressively expanded through attempts at massive privatization of public companies, the role set not just for the users but even for the regulatory entities was mere rhetoric. Quite clearly, an attempt was made to establish a water policy focused on the private appropriation of profits, with extremely weak regulations, if any, and with no possibility for social democratic control of the pro-

10. See, among others, the results of the PRINWASS Project, <http://www.prinwass.org>

cess. The clearest examples of this are probably the privatizations of public water companies in Argentina and in Bolivia. But they are not the only ones, and the examples increase exponentially as more research is conducted.

On the other hand, continuing with what we call the second front of attack on the authoritarian, vertical model of water governance, we could state that a movement of struggle has been taking shape at the international level, which, despite its great heterogeneity, is moving in a clear direction. Diverse sectors of society participate in this movement, in confrontation with the forms of exclusion that have characterized water management. Moreover, this front of attack has a more ecologist type current, which in turn has distinct sub-currents, as analyzed by Martínez-Alier in relation to the environmentalist movement in general.¹¹ Within this ecologist trend, there are positions that converge with and mutually support the neoliberal attack front, such as those that advocate privatization of water as a solution to water management deficiencies, or the currents of ecological modernization that promote the greening of capitalism. Yet other currents in this international movement converge on critical positions and oppose the advance of capitalist water management forms, in particular privatization of water sources and water services. Among other fundamentals advocated by these currents are defense of water as a universal shared asset and defense of essential water services as an inalienable human right, which cannot be transformed into a commodity. These currents tend to come into conflict both with classic authoritarian forms of water governance, embodied in public technocratic management, and with neoliberal currents and ecological reformism, which aim to dismantle public water management capacity and establish a water governance model founded upon capitalist social relationships (of ownership, production, circulation, etc.).

11. Martínez-Alier, J. (2002), *The Environmentalism of the Poor. A Study of Ecological Conflicts and Valuation*. Cheltenham and Northampton, Edward Elgar.

A Brief Evaluation of Privatization of Water and Sanitation Services since the 1990s

In relation to the above, one of the recent processes with the most impact on the rules of play for governance of essential water and sanitation services is «privatization». Generally speaking, privatization of water and sanitation services, which reached its height in the 1990s, can be considered a failure, both from the point of view of the official policies that promoted this process and in terms of the interests of the major multinational water companies that participated. In the first place, a conceptual clarification might be in order: although in generic terms we speak of «privatization», in a more rigorous sense we would prefer to speak in terms of «private participation», one of whose forms is privatization. This is important and has a bearing on certain points already discussed in this article. In principle, in this more restricted sense, we would always reserve the concept of privatization for those cases where private property rights are created over water or over water and sanitation services. This, in principle, has only occurred in a few cases at the international level: in England and Wales; in Chile, where water and sanitation companies, including infrastructure, were transferred in their entirety into private hands, in what is known as «full divestiture», or in cases such as that of Cochabamba, Bolivia, where the private company obtained rights over water (which, in large measure, was the most interesting part of the deal). In general, in most of the cases we have studied, neither ownership of water nor of the companies was transferred into private hands; rather, they remained in the public domain. What were granted were concessions or contracts to operate the water and sanitation companies for certain periods, normally 20 or 30 years. We will not go into detail here for lack of space, but we believe that the distinction is important, at least in the more academic debate, when researching the process, for the sake of greater accuracy of analysis.

We were saying that the privatization policy failed. Why do we say this? It suffices to take a look at the objectives proposed with

this policy. Upon analyzing the documents of the World Bank, the Inter-American Development Bank, and successive governments in office, one finds that the objectives mentioned to justify privatization during the 1990s were basically: 1) that public companies are by nature inefficient, while the private sector is inherently efficient; 2) that the public sector lacks financial capacity to make the investments required for maintaining and expanding infrastructure, and that privatization is the solution to that problem, since private companies can replace the State in that function; 3) that, consequently, privatization would allow for a reduction in the public deficit and put an end to the State's subsidizing of these services. There were also other arguments, such as that privatization would be the best method to extend the services to the as yet unserved population, and even that privatization could reduce social inequality. Today, even the World Bank itself has recognized that these objectives were not achieved. For example, high-ranking officers of the bank have publicly acknowledged that even when privatization was being pursued most aggressively, the majority of investments to implement this policy (approximately 90%) came from the State, with private companies contributing a very small proportion of the capital involved. On the other hand, in terms of the scale of expansion, even today, after 20 years of privatization policies, only 10-15% of the world's population is serviced by private companies. In this regard, Argentina —once the prototype of the privatization program, where between 1990 and 1999 the population serviced by private companies reached 70% of the population— has embarked upon an accelerated deprivatization process, especially following the crisis of 2001. In Brazil, the percentage of the population directly serviced by private companies never exceeded some 4%. In Mexico, the percentage is similar.

Now then, as previously stated, we should not mechanically associate «public management» with «non-commercial management» of water and sanitation services. This is most important, because if we take into account the proportion of the country's

population, for example in Brazil, serviced by public companies operating under a commercial or quasi-commercial system, then the panorama changes. I have not seen studies in this regard, but, we are seeing public companies such as SABESP and COPASA being traded on the capital market, and, probably, a significant part of the surplus obtained from the services' charges is earmarked for remunerating private capital invested through the purchase of those companies' shares. If we assume that this implies a partial privatization of management, then we end up with a very different picture. It would be necessary to conduct in-depth studies in said regard.

We do not have precise information on the concrete impact of privatization in all its forms. Nonetheless, we could state at a hypothetical level that in countries such as Brazil, commercialized management of public companies is probably more significant at present than the privatization process itself during the 1990s. From our perspective, although the privatization policy of the 1990s failed, and many of the privatized companies have returned to public hands, as occurred in Argentina, Bolivia, and even Brazil, the inertial forces unleashed by such policies are still in place, and will continue to exert substantial influence in the management of these services. Precisely, commercialized management of public companies would be one of the manifestations of these inertial forces. Indeed, such an approach abandons the idea that water and sanitation services are a right of the citizenry and that public water and sanitation companies, rather than being geared towards producing a profit, should provide sustainable management of a public service under the democratic control of the citizenry.

If we now expand our vision to encompass the cases of the most developed countries, we find a situation that is not much different. I already mentioned the case of the United States, where the majority of the population is serviced by public companies. This is not due to a lack of attempts by privatizing sectors, but rather because a combination of factors has held back privatization there as well. For example, in 1999 the city of Atlanta had granted a concession

over the water and sanitation service to a subsidiary of the French monopoly Suez. However, in the year 2002, as a result of a broad-based mobilization of the citizens against privatization of the service, the city's mayor announced the contract's cancellation, and the municipality took back control of the company. In other cases, such as Washington, D.C., the municipality discussed the possibility of partially privatizing these services during the 1990s, but in the end decided that the necessary tasks could be perfectly accomplished by the public company. On the other side of the Atlantic, in England and Wales, privatization of the ten water and sanitation companies in 1989 by the Conservative Party government of Margaret Thatcher was questioned from the onset. As soon as the Labor government took office in 1997, significant changes were introduced in the service's regulation, which substantially changed the companies' operations. Currently, even some of those who promoted privatization of public companies in the late 1980s are recognizing that the future of those companies is uncertain. In particular, private companies face an extremely high nonpayment rate, since 15 to 20% of users do not pay their bills. This has become a structural problem since 1998, when the government prohibited private companies from cutting water services in the event of nonpayment. When the companies were in public hands, that rate, according to certain public officials interviewed, did not surpass 3-4%. On the other hand, the need to comply with quality standards and environmental protection regulations, which are increasingly strict in the European Community, means that companies must cope with very high investment requirements, in a context where it is not possible to significantly increase the already very high rates users are paying (and given such a high percentage of nonpayment), and in a framework where the private companies have an extraordinary high debt leverage. In this regard, when the companies were privatized in 1989, the British government assumed the public companies' debts and handed them over free of commitments. Nonetheless, by 2004 the private companies, considered as a whole, had once again amas-

sed a debt of some 19 billion sterling pounds. At our interviews during the research process, some private company managers told us that they would not be surprised if in five to ten years the companies were once again returned to public hands. In fact, this partially occurred in the year 2001 with one of the ten companies, the water and sanitation company of Wales, which decided to deprivatize the service and try out an alternative management model under public control.

The Cases of Buenos Aires, Tucumán and Cochabamba

These cases differ from one another, but at the same time share certain very similar aspects¹². On the one hand, Tucumán was one of the first private concessions to be canceled, merely lasting some two years, from 1995 to 1997. This case provides an example of broad-based social resistance to privatization. At its peak, the mobilization for the concession's cancellation protested outlandish rate increases (the private company's first action was to increase rates, which, if one includes the tax to finance the regulator, amounted to an instant 106% increase) and denounced corruption, given the form in which the concession was awarded to a subsidiary of the French Vivendi company. At the time, the protest movement, which included a decision not to pay the bill for the service, was supported by 86% of the users, including private companies, agencies of the provincial and municipal governments, and obviously household users. Finally, after long negotiations, the concession was canceled in 1997 and the private company sued the Argentine federal government based on an existing agreement between France and Argentina in which Argentina agreed to protect French investments in its territory. The case was filed with the International Centre for Settlement of Investment Disputes (ICSID), part of the World Bank's

12. See the detailed reports of these and other cases studied in our PRINWASS project [<http://www.prinwass.org/>].

institutional network. Although the private company did not make investments in the brief period of its operations, it sued the Argentine government for 300 million dollars, which included a claim for compensation of projected future earnings over the course of the 30 year concession. After a long dispute, in 2007 ICSID issued a decision in favor of the private company, ordering the Argentine government to pay 106 million dollars in compensation for canceling the concession. The Argentine government has moved to quash the decision, and the litigation is still pending.¹³

The case of Cochabamba is quite different in several key aspects. In the first place, at issue is the illegality and illegitimacy with which the concession was granted to the private company, a subsidiary of the Bechtel group of companies of the United States. When the concession was granted in 1999, the law allowing the granting of concessions had not yet passed; it only passed after the concession had been confirmed. On the other hand, the law itself stipulated that at least two companies needed to compete for the concession, but in fact there was only one company interested in participating. Finally, the company that did participate in the tender process, Aguas del Tunari, was created in the Cayman Islands, a tax haven, to elude Bolivian law. Aguas del Tunari was created with liability capital in the amount of 2,000 dollars, provided to it by a publically listed company whose value was estimated at approximately 100 million dollars. The series of illegalities and illegitimacies is long, and these are only the most prominent aspects.¹⁴ Finally, as is well known, the concession was canceled in the year 2000 on

13. This case was studied in detail by Emilio Crenzel, of Universidad de Buenos Aires, Crenzel, E. A. (2003), «Tucumán-Argentina Case Study Report», in J. E. Castro (coord.), PRINWASS Project, Oxford, University of Oxford.

14. This case was studied in depth by Carlos Crespo of Universidad Mayor de San Simón in Cochabamba in collaboration with Nina Laurie of Newcastle University, Crespo, C., N. Laurie, and C. Ledo (2003), «Cochabamba-Bolivia Case Study Report» in J. E. Castro (coord.), PRINWASS Project. Oxford, University of Oxford, among others.

account of a number of problems. As in Tucumán, such problems included a sharp rate increase. This provoked a massive popular mobilization that ended up forcing the entire federal government cabinet to resign, with the sole exception of the President of the Nation. Aguas del Tunari filed suit against the Bolivian government before the ICSID to claim compensation, in a manner similar to the Tucumán case.

The third case mentioned, Buenos Aires, is really two stories in one, since water and sanitation services were privatized in two separate parts. In 1993, the concession was granted for services in the Federal Capital and certain sectors of the Province of Buenos Aires, in the metropolitan zone. The concessionaire was Aguas Argentinas, a consortium headed up by the Suez group. This concession was actually showcased by the World Bank and other players as a successful, model pilot, to be replicated in other countries. The other, less known side of the story is the concession granted in 1999 to the Azurix company, a subsidiary of Enron, a U.S. group, to provide water and sanitation services in the Province of Buenos Aires, including part of the metropolitan area and the provincial capital, La Plata. This concession collapsed in the year 2001, among other reasons due to the private operator's inefficiency. In fact, the operator did not even have experience in water and sanitation management; it was actually an energy sector company trying to expand into the water and sanitation sector, with disastrous results. Nonetheless, the most interesting case is unquestionably that of Aguas Argentinas.¹⁵ Among several other things, this company's case reflects many of the issues commented upon above. First in line is what we call the

15. This case was studied in great detail by Daniel Azpiazu and his team from the Latin American School of Social Sciences (FLACSO), together with Juan Carlos Marín and his team at Universidad de Buenos Aires and colleagues from Universidad Nacional de General Sarmiento. Azpiazu, D., A. Catenazzi, E. E. Crenzel, N. Da Representação, G. Forte, K. Forcinito, and J. C. Marín (2003), «Buenos Aires-Argentina Case Study Report», in J. E. Castro (coord.), PRINWASS Project. Oxford, University of Oxford.

myth of private investment, which privatization had promised. In the period of 1992-2001, when the financial crisis hit Argentina, only 2.6% of total investments that the company made came from its own capital, that is, in the form of private investment from the company itself. The rest came from the company's billing revenues, along with a substantial part from bonds floated on international markets when the peso was one-to-one with the dollar. Following the country's financial debacle in 2001, the company became insolvent, and finally, after long negotiations, the Argentine government canceled the concession in March 2006. Both Azurix and Aguas Argentinas have sued the Argentine government before the ICSID, pursuing compensation for the cancellation of their concessions.

Of the cases considered, only that of Aguas Argentinas expanded the system's connections. Elsewhere, infrastructure investments were practically null. Nonetheless, even in the case of Aguas Argentinas, where financing for the recorded expansion came almost entirely from rates charged to users and from bonds floated on international financial markets (in other words, its own investment was practically null); according to the regulator, ETOSS, between 1993 and 1998 the company defaulted on 42% of the investments agreed to in the contract, and between 1999 and 2002 it defaulted on 33%. Meanwhile, the company obtained an annual rate of return in dollars ranging between 12 and 20%, depending upon how the calculation is made.

Now then, the true impact of these privatizations has yet to be measured in all its intensity, and will probably last many years. As for the lawsuits filed by private companies against countries such as Argentina or Brazil, leaving aside the problem of the litigations' legitimacy, the impact will probably be minor, and sooner or later, the cases will settle. But in countries such as Bolivia, one of the most impoverished in the region, the impact is much more significant. Imagine if Bolivia were obligated by the ICSID to compensate a private company for loss of earnings due to the concession's cancellation. Bolivia is in urgent need of investments to improve

its infrastructure and extend services to the unserved population. Nonetheless, it is being threatened with lawsuits for tens of millions of dollars filed by private companies whose concessions were canceled by the government. Another very important aspect is that during the privatization process in our countries, the public companies' capacity was dismantled; in many cases they even lost a large part of their expert staff. In Buenos Aires, for example, at one point the regulatory entity did not have experts capable of carrying out its mandate, since most of the technical personnel had gone to work for the private company. The State's supervising and regulatory capacity was significantly reduced. Such a process has also occurred in many other cases. The rebuilding of such capacities could take a long time. This means that the post-privatization process, through which public companies must resume their management roles, will face enormous obstacles left behind by the policy of stripping and reducing the role of the State.

One last important point I wish to underscore here is that the privatization policy was, in fact, successful in one core aspect: initiating, and in some cases consolidating, a change in the approach to water management and essential water services. In my opinion, this change has two major components: a) eliminating the concept that water services are a social asset, a public asset, or a right of the citizenry (the only rights that users are recognized as having are consumer rights), b) introducing and strengthening the notion that these services are a private asset, whose organization and provision ought to focus on business principles. Thus, even though the privatization policy promoted since the 1990s in Latin America has failed, and even though the large multinational companies are withdrawing from the region in search of more favorable territories, in reality the privatization dynamic was successfully set in motion. Currently, many public companies are being managed based on the new management framework that abandons the idea of these services as a right and places greater emphasis on the companies' economic and financial efficiency. In summary, what we

have illustrated in these final comments is that privatization gave tremendous momentum to what we call inertial forces, such as the commodification dynamic for water and services. Such forces will continue exerting enormous influence over governance and water management in the coming years.

III. THE ROLE OF DONORS AND AID IN PUSHING WATER PRIVATISATION IN DEVELOPING COUNTRIES

Vicky Cann*

The fact is that utilities in developing countries need private financing to maintain and expand services to the poor.¹

FRANCOIS BOURGUIGNON, Senior Vice President and Chief Economist, World Bank - 2004

Privatisation is the only way to get the investment that [poor] countries need in things like banking, tourism, telecommunications and services such as water under good regulatory arrangements.²

CLARE SHORT, UK Secretary of State for International Development, 2002

Aid flows are massive; in 2004, total development aid had risen to US\$80 billion worldwide.³ With this amount of money changing hands every year, there is no doubt that the aid business is big business.

And these financial flows have led to the inevitable political influence of the powerful over the powerless. There is a distinct imba-

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1. [<http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/EXTPROGRAMS/EXTMACROECO/0,,contentMDK:20284204-pagePK:64168182-piPK:64168060-theSitePK:477872,00.html>]. Viewed on 17 August 2007.

2. Rt Hon. Clare Short MP (2002). Debate on International Trade. House of Commons Hansard. 19 June 2002. Column 297.

3. World Bank official spokesman in Mathiason, N. (2005). «Consultants pocket US\$20bn of global aid». *The Observer*. London. 29/05/05.

lance of power between the governments and funding organisations and the recipient developing countries, whose people struggle to survive on US\$2 a day.

The World Bank, for example, has an annual budget of US\$23 billion, and employ some 10,000 people in 100 countries. Its power comes from these billions disbursed as aid, but also from the billions of dollars of debt it holds from poor countries. Political control of the Bank rests mainly with rich countries, which are disproportionately represented in its decision-making structures.

Whether it is the World Bank, the International Monetary Fund, the regional development banks of Africa, Asia and Latin America, or the national aid agencies of the US, Japan, the UK and other wealthy countries, these institutions are in a dominant position when it comes to taking decisions about the development of the world's poorest countries.

The Washington Consensus

The late 80s and early 90s saw the start of a push by international donors to promote water privatisation as the solution to the global water crisis. Following a decade of right-wing governments in the US and UK, the «Washington Consensus» emerged promoting private sector control of services which were traditionally organised in the public domain —with water services amongst them. And in the name of providing a better service to consumers, profiteering from the provision of such services would be allowed.

Donors talked up the value the private sector would bring to struggling public water systems in poor countries. The apparent superior technology, management and more efficient operating systems of private corporations were all championed —together with the huge investment potential for multinationals. The public sector was criticised as weak, corrupt, over-staffed and unwilling or unable to change. In contrast, the general impression was generated that

privatisation would create a win-win situation to benefit both poor countries and private shareholders alike.

Of course, the reality of water privatisation on the ground was very different to the rosy picture painted —where price rises, disconnections and a reluctance to invest, not surprisingly, failed to make a dent in the global water crisis.

Nonetheless, the water corporations must have been pleased with the emerging worldview of donors. Newly privatised water companies in England, as well as established water corporations in France were on the lookout for new markets, and it very much suited them to have such powerful allies making the case on their behalf in Washington and elsewhere.

Belief in the Washington Consensus was probably genuine at the time; however, it also conveniently masked a reduction in aid flows from the World Bank and other donors for major infrastructure projects in developing countries —including water. Indeed, contrary to the belief that the private sector would invest more in infrastructure, the total sum invested by all development banks and donors actually fell by a third between 1996 and 2002.⁴

Throughout the 90s and again more recently, the privatisation strategies of international aid donors have involved manipulation, persuasion and outright arm-twisting —all of which rely on the rich dominating the poor.

Aid and Conditions

In certain cases, the pressure on developing countries to implement privatisation strategies has been much more defined and clear-cut. In Tanzania, for example, a US\$143 million package from donors

4. Briceño-Garmendia, Estache and Shafik. (2004). *Infrastructure Services in Developing Countries: Access, Quality, Costs and Policy Reform*. World Bank Policy Research Working Paper 3468. World Bank. Washington DC. December 2004.

to improve water in Dar es Salaam was only available to the government if it brought in a private water operator.⁵ In Ghana, the UK government tried to use almost £10 million of funding to ensure Ghana remained serious about their proposed water privatisation policy, and only relented when the scandal was exposed.⁶ Under privatisation in Guinea, water prices rose by 500 percent over seven years, so in 1999 the country decided they were not going to renew their privatised water contract. As a consequence, the World Bank and IMF suspended funding to the country, setting the sell-off of the utility as a condition for further assistance.⁷

There are countless other examples of such pressure being exerted on apparently sovereign nations. The upshot is that, with little access to other sources of revenue, desperately poor countries feel they have little other choice but to bite the bullet and accept the funding - together with the corresponding conditions.

And even larger developing countries have not been spared the pressure of international donors. In Recife, Brazil, officials negotiating an US\$84 million loan were told in no uncertain terms by the World Bank, that if they did not commit to privatising their water, the loan would be cancelled. It was only when the Brazilians threatened to walk away from the negotiations that the Bank relented.⁸

The trouble is, by the time a country actually reaches the negotiating table for a multi-million dollar loan or grant from a donor, they are often already between a rock and a hard place when it

5. Greenhill, R. and Wekiya, I. (2004). *Turning off the Taps*. Action Aid international. London. September 2004

6. Joy, C. and Hardstaff, P. (2005). *Dirty Aid, Dirty Water - The UK Government's push to privatise water and sanitation in poor countries*. London. World Development Movement. March 2005.

7. Hall, D. and Lobina, E. (2006). *Pipe dreams: The failure of the private sector to invest in water services in developing countries*. WDM, PSIRU and Public Services International. London. March 2006.

8. Balanya, B., Brennan, B., Hoedeman, O., Kishimoto, S. and Terhorst, P. (2005). *Reclaiming public water: Achievements, struggles and visions from around the world*. Transnational Institute and Corporate Europe Observatory. January 2005.

comes to privatisation. After all, impoverished nations are heavily reliant on good credit ratings from the IMF to be eligible for such loans and financing from international donors. And to achieve such ratings, the IMF's programmes demand that economies produce balanced budgets by restricting public borrowing and expenditure, abolishing price controls and reducing the role of the state, whenever necessary. This, in turn, undermines the existing public services and makes privatisation an even more likely outcome.

Debt Burden Boosts Pressure

The debt burden on many of the world's poorest countries has mounted considerable pressure on them to implement privatisation policies. And while campaigns have gathered pace demanding debt relief —and ultimately cancellation of the illegitimate debts owed by many developing countries, the donors have responded by developing new initiatives to ease debt burdens. However, since the donors have traditionally controlled massive quantities of the debt, they have also maintained a strong position when it comes to using their cancellation processes to impose privatisation requirements.

The debt relief initiative for Heavily Indebted Poor Countries (HIPC) was generally well received, and finally acknowledged that the debts of the world's poorest nations were unsustainable; however, the process itself created yet another opportunity for donors to impose privatisation policies. The «Decision Point» documents (debt relief agreements) required by governments of HIPC, have often included privatisation as a condition —as was the case in Tanzania and Sierra Leone, for example.⁹

Meanwhile, Poverty Reduction Strategy Papers (PRSPs), which

9. Hardstaff, P. and Jones, T. (2005). *One size for all: A study of IMF and World Bank Poverty Reduction Strategies*. World Development Movement. London. August 2005.

are also required of HIPC countries, have often included endorsements for water privatisation. PRSPs are supposedly drawn up by the poor countries themselves and are, in theory, «country-owned»; yet the uniformity of policies contained within them have raised serious questions over the extent to which they are truly free of donor influence. Of the 50 PRSPs reviewed by the World Development Movement in 2005, 90 per cent included privatisation, and almost two thirds specifically included water privatisation or greater private sector involvement in water supply services.¹⁰

Privatisation Advice

A more subtle influencing strategy comes into play to add clout to the donor-imposed conditions on aid and debt relief - a strategy created by donors and intended to increase the pressure to privatise. By the end of the 90s, some multinationals began to indicate that their interest in developing countries was waning; this was due to problems related to the scale, risk and difficulty in making profits from operations there.

However, this was not the view of donors like the World Bank and the UK's DFID (Department for International Development), who both wished to maintain their strategy of extending private sector management of water supply and sanitation services; to that end, they began developing a strategy that aimed to facilitate the re-engagement of multinationals in the water services of developing countries.

10. Hardstaff, P. and Jones, T. (2005). *One size for all: A study of IMF and World Bank Poverty Reduction Strategies*. World Development Movement. London. August 2005.

11. Cann, V. and Jones, T. (2006). *Down the Drain – how aid for water sector reform could be better spent*. World Development Movement. London. November 2006.

There are currently several aid-funded institutions using private sector consultants to offer developing countries advice and technical assistance on how to privatise sectors such as water and energy. One such agency is the Public Private Infrastructure Advisory Facility (PPIAF), which is housed within the World Bank. Research carried out by the World Development Movement shows that the PPIAF has funded water privatisation consultancies in at least 24 of the world's poorest countries.¹¹

The PPIAF exists alongside several other international mechanisms who promote privatisation initiatives such as the Private Infrastructure Development Group (PIDG), which was created by the UK's DFID and supported by the national aid agencies of Switzerland, Sweden and the Netherlands. The European Union created its own version of the PPIAF called the Private Sector Enabling Environment Facility (PSEEF), which has received 20 million over five years.¹² There is no evidence that any equivalent agency exists to serve the public sector.

Indeed, of the US\$80 billion spent on aid in 2004, some US\$20 billion was spent on technical assistance.¹³ The UK's DFID alone spends circa £100 million a year on consultancy services; however, the World Development Movement is concerned about the pro-privatisation bias of some of these consultants.

Between 1997 and 2004, the DFID awarded technical assistance contracts totalling £1,514,676 to consultants Adam Smith International (ASI) for specific water works. The DFID also paid ASI £12,434,817 for consultancy services in privatisation projects,

12. [<http://www.corporateeurope.org/murkywater.html>]

13. World Bank official spokesman in Mathiason, N. (2005). Consultants pocket US\$20bn of global aid. *The Observer*. London. 29/05/05.

14. DFID. (2004). *Procurement contracts 1997-2004*. Obtained by WDM from DFID through the Code of Practice on Access to Government Information. Received 19/10/04.

some of which included water supply services.¹⁴ Adam Smith International is a spin-off of the right-wing British think tank, the Adam Smith Institute.¹⁵

In 2006, the DFID awarded a £2.6 million contract to PricewaterhouseCoopers (PwC) to advise the Sierra Leonean government on restructuring various state-owned sectors; this included a recommendation for the water supplier in the city of Freetown. According to PwC's website:

PricewaterhouseCoopers has been providing leading-edge advice on privatisation and project finance to governments and the private sector in Central Africa for over 15 years and we are the market leader in the field.¹⁶

Public Relations

Donor funding has been used to pay several consultants to «sell» privatisation schemes to communities or particular stakeholder groups such as parliamentarians, journalists or workers. In Ghana, the DFID financed a «public awareness programme» about the benefits of privatisation.¹⁷ And in India, Adam Smith International was paid to produce a documentary about the benefits of privatisa-

15. Joy, C. and Hardstaff, P. (2005). *Dirty Aid, Dirty Water - The UK Government's push to privatise water and sanitation in poor countries*. London. World Development Movement. March 2005.

16. [<http://www.pwc.com/Extweb/service.nsf/docid/4343C1F2A3736C0185256CE60052A874>] Viewed on 20 September 2006.

17 Martey, E. (2001). *The Ghana Experience: Initiating and managing the reform process in the water sector*. Vol II, Papers and Presentations, Reform of the Water Supply & Sanitation Sector in Africa. County Report: The Political Economy of Water Sector Reform study. [http://www.wsp.org/events_archive/v2_ghana.pdf].

tion.¹⁸

The UK also used donor funding to pay for ASI's public relations campaign in Tanzania, which featured a national comedian in a series of TV ads, as well as a pop video—all promoting the country's privatisation programme.¹⁹ This included a payment of £273,000 in 1999 for the world's first «pro-privatisation» pop song:

Young plants need rain, businesses need investment. Our old industries are like dry crops and privatisation brings the rain. When the harvest comes, there is plenty for everyone.

The PPIAF, meanwhile, were busy working on their «consensus building» project programme—a programme which now included water privatisation on the agenda, meaning they were likely facing some form of resistance from governments, national parliaments, civil societies, trade unions or citizens. These «consensus building» projects use consultants to try to overcome opposition to privatisation, i.e., consultants are paid to try to generate support for particular privatisation options or to change the opinion of parties not currently in support of privatisation plans.²¹

In February and March 2000, the PPIAF financed a programme for African journalists covering water issues. The aim of this programme was «to increase press coverage related to water issues in Africa and to improve the quality and objectivity of this coverage».²¹ The programme included a workshop in Durban,

18. Joy, C. and Hardstaff, P. (2005). *Dirty Aid, Dirty Water - The UK Government's push to privatise water and sanitation in poor countries*. London. World Development Movement. March 2005.

19. Watt, P. (2004). *Whose reform is it anyway? How development aid is driving water privatisation in the world's poorest countries*. Tribune. London. 30/01/04.

20. Cann, V. and Jones, T. (2006). *Down the Drain – how aid for water sector reform could be better spent*. World Development Movement. London. November 2006.

South Africa, which covered areas including: «Understanding the Roles of the State; the Private Sector and Civil Society; Paying for Water; Changing Institutions and Involving the Private Sector; and Providing Services to the Poor»²² According to the PPIAF, the idea of the workshop was to «discuss private participation in water, sewerage and other infrastructure sectors».²³

In 2007, a new PPIAF project in Malawi set about gaining stakeholders' support for already-approved water sector reforms; this followed a previous PPIAF project in Malawi which advocated lease contracts for the two main public water suppliers.²⁴

Supporting Domestic Corporations

Key private water multinationals active in the international arena tend to come from rich western countries —France, the UK, Spain, Germany and the US, and donor governments have not been shy about promoting their home-grown industries abroad.

As an example, while one part of the UK government —DFID, uses aid money to fund consultants, another part of the government called UK Trade & Investment (UKTI) uses taxpayers' money to promote UK consultants and businesses abroad. According to

21. WUP, WBI and ZET. (2000). *Making water everybody's business: A knowledge programme on water for African journalists*. Water Utility Partnership for Africa, World Bank Institute and Zamcom Educational Trust. Partnership for Africa, World Bank Institute and Zamcom Educational Trust.

22. PPIAF. (2002). *Gridlines summary: Making water everybody's business: Training African journalists to improve reporting on water issues*. PPIAF. Washington DC. April 2002.

23. *PPIAF Activity Summary: Africa – Making water everybody's business: Training African journalists to improve reporting on water issues* [<http://wbln0018.worldbank.org/ppiaf/activity.nsf/7222a622d843d5a6852571ea00685a52/954c0cb03688dbd852571ea0070b734?OpenDocument>].

24. [<http://www.wdm.org.uk/resources/briefings/water/ppiafparaguaycasestudy15052007.pdf>].

UKTI: «The UK has a great deal of practical knowledge and expertise to offer with regard to the expansion, maintenance and management of complex infrastructure systems and in particular with regard to private sector participation in the same... The long term future of these companies is crucially dependent upon their expanding worldwide operations».²⁵

With regards to the work it carries out in the various sectors, UKTI is kept up to date with information from several sector-driven private groups. These groups help to identify both the priority markets and the priority activities within those markets for a given sector. The group chairman for water services is Tony Allum, who is also the chairman of a company called Halcrow. The latest UKTI annual report states that, with UKTI support, Halcrow had achieved corporate success through winning a ««significantly valuable»» project funded by the World Bank.²⁶

Donor-backed conferences can be useful opportunities for companies entering markets. In February 2007, the PPIAF partially funded a major conference entitled: «Meeting India's Infrastructure Needs with Public-Private Partnerships (PPPs)». At the event, Praful Patel, the World Bank's vice president for South Asia, was quoted as saying: «Public-private partnerships have to play a much bigger role in meeting India's infrastructure needs than they have to date... The World Bank stands ready to expand its assistance to India in developing and financing public-private partnerships, building on experience here as well as from other countries that have benefited from well-designed and robust PPP programs».²⁷

Prior to embarking on a water privatisation scheme in Tanzania,

25. [<http://www.tradepartners.gov.uk/infrastructure/profile/index/overview.shtml>] Viewed on 13 January 2005.

26. [https://www.uktradeinvest.gov.uk/ukti/fileDownload/SectorsAnnualReport_07FINAL.pdf?cid=404422] Viewed 20 August 2007.

27. [<http://www.ifc.org/ifcext/media.nsf/content/SelectedPressRelease?OpenDocument&UNID=AAC87DCE99AE50D18525727A0076F0AC>] Viewed 29 August 2007.

the UK water company Biwater secured an insurance policy from the UK government's Export Credit Guarantee Department. This policy offered protection from political risks such as expropriation, war and breach of contract, and serves as yet another example of how major donors support domestic companies operating abroad by reducing their risks.²⁸

Resistance to Privatisation

As previously mentioned, international donors have used a clear-cut strategy to promote water privatisation by means of the global aid architecture; this fact has left developing countries who accept aid and debt relief under huge pressure to privatise their water services. And with public funding for infrastructure services dwindling, developing countries seeking investment to improve services are encouraged to consider the private sector all the more.

As detailed elsewhere in this book, once privatisation has been agreed, it can then be locked in by international trade agreements, which are negotiated either multilaterally or bilaterally. Indeed, the World Trade Organisation's General Agreement on Trade in Services (GATS) seeks to «lock in» foreign private participation in domestic services such as water. Meanwhile, bilateral investment treaties offer private companies added protection and rights when operating abroad. Both types of agreement promote the privatisation of services such as water.

However, the international donors have not been entirely successful in implemented their strategy. Not surprisingly, the governments and civil societies of developing countries have not just accepted this strategy lying down. Over time, a lot of opposition has built up against both water privatisation as a policy in itself, and

28. [http://www.ecgd.gov.uk/2003q2_web.pdf]

the pressure that donors exert on poor countries to impose it.

In September 1999, a private international consortium took on a 40-year concession to manage the water services in Cochabamba, Bolivia. This led to an almost overnight hike in water rates by up to 200 percent. A wave of mass protests erupted in response to the rising prices, which were met with military force. One person died and many more were injured. The concession was terminated in April 2000, and water returned to public hands.²⁹ Meanwhile, water services in Mali, Guinea, Uganda, Tanzania and parts of Latin America such as Buenos Aires Province have also been successfully re-nationalised.

This resistance has shaped the rhetoric of donors by forcing them onto the back foot over their actions, which has greatly influenced how they respond to their many critics. Nowadays donors downplay conditionality wherever possible, and emphasise state-ownership of development plans and practices. The term «privatisation» itself is now even avoided, with terms like «public-private partnerships» or «private sector participation» the new preference. And while we may be rightly sceptical of whether these changes in language equate to any major policy changes on the ground, there have been some clear and concrete campaign successes in recent years.

In March 2005, the UK government announced a new policy whereby it would no longer attach damaging economic policy conditions to the aid it directly grants the governments of poor countries—including water privatisation.³⁰ In September 2006, the UK government temporarily withheld £50 million of its latest annual

29. Joy, C. and Hardstaff, P. (2005). *Dirty Aid, Dirty Water - The UK Government's push to privatise water and sanitation in poor countries*. London. World Development Movement. March 2005.

30. DFID, *Foreign and Commonwealth Government and HM Treasury*. (2005). *Partnerships for poverty reduction: rethinking conditionality*. Department for International Development. London. March 2005.

allocation to the World Bank, pending adequate implementation of the Bank's conditionality review.³¹ The UK also implemented a policy of not tying aid to the purchase of British goods and services. And lastly, since the World Development Movement launched its campaign against the DFID's support of water privatisation, there has been a significant drop in such funding. All of these changes are very welcome developments.

In Norway, the centre-left coalition government elected in October 2005 issued the Soria Moria Declaration. This included the statement that «Norwegian aid should not go to programmes that contain requirements for liberalisation and privatisation».³² In February 2007, Norway announced it was withdrawing its support of the PPIAF —a move the Italian government followed suit with soon after.

As poor countries successfully complete debt cancellation processes, it is hoped that their dependence on international donors will be reduced as a result.

The «Washington Consensus» Lives on

Despite these key developments, however, international financial institutions remain a serious concern, and continue to use their political and economic clout to impose water privatisation projects via their aid and cooperation programmes.

In 2007, the Nepalese government came under intense pressure from the Asian Development Bank (ADB) to award a water priva-

31. DFID. (2006). Benn considers withholding £50 million from World Bank. Department for International Development. London. 14 September 2006. [<http://www.dfid.gov.uk/news/files/world-bank50.asp>].

32. Norwegian government. (2005). The Soria Moria Declaration – International Policies. Viewed on 2 April 2006. [<http://www.arbeiderpartiet.no/index.gan?id=47619&subid=0>].

tisation contract to a UK multinational. The new water minister in Kathmandu expressed certain doubts over the contract tendering process, so the ADB threatened to pull out of the country if the contract was not awarded.³³ The contract was cancelled in the end, and negotiations are now underway between the government and the ADB in the hope that the latter will remain a financier.

In Malawi a new US\$50 million World Bank project will inject significant investments into the water sector of this impoverished nation. However, tucked away in the project paperwork on the World Bank's website is a «clause» which requires «a mid-term review to include a decision on the shift to a lease (or similar) contract».³⁴

From these two recent examples alone, it is clear to see that major challenges lie ahead in turning aid and the huge influence of international donors into progressive forces that serve as all-round positive contributions to tackling the global water crisis, rather than using them as tools to impose water privatisation on poor countries.

Conclusion

Whether through direct conditions attached to aid and debt relief, the pressure to control public spending and manage debts, the receipt of aid-funded advice and pro-privatisation PR campaigns, or the promotion of multinationals in donor countries, the aid architecture has been continuously used to promote water privatisation in poor countries —despite the lack of evidence showing it

33. [<http://www.wdm.org.uk/news/severntrentwithdraw24052007.htm>].

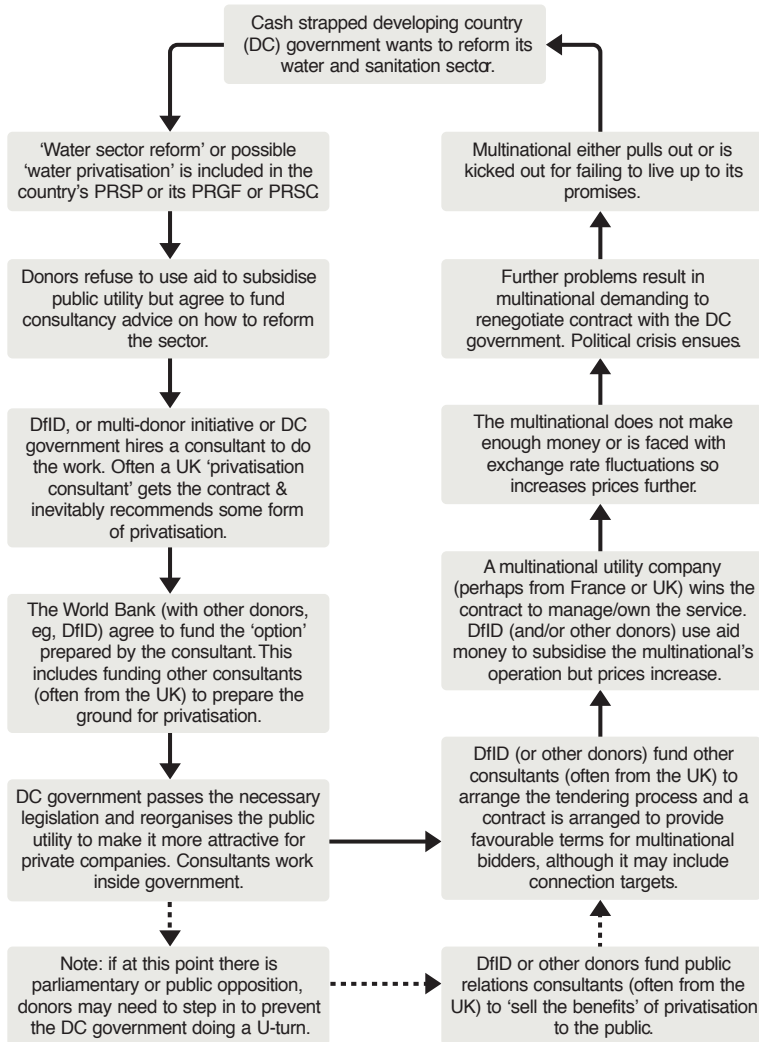
34. [<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/MALAWIEXTN/0,,contentMDK:21348010-pagePK:2865066-ipk:2865079-theSitePK:355870,00.html>].

benefits the poor.

The solutions to the global water crisis require that aid be used to build strong, efficient, transparent and participatory public utilities —managed by the public sector. In countries where aid and debt relief have been used to directly benefit public utilities, such as Uganda, water users have benefitted from better access to water and a greater number of connections.

As a Brazilian public water manager recently told me: ««The public sector can do everything the private sector can, and more»», and for that very reason, we should fully support it.

A typology of the privatisation process



PRSP = Poverty Reduction Strategy Paper: Supposedly country owned strategies that are heavily influenced by the IMF and World Bank.

PRGF = Poverty Reduction and Growth Facility: IMF loans with conditions attached

PRSC = Poverty Reduction Support Credit: World Bank loans with conditions attached

IV. THE FAILURE OF WATER PRIVATIZATION

Eloi Badia, Lluís Basteiro and Ana Gris*

Introduction

Ever since the nineteen eighties, the problem of water has been on development agendas. Yet even so, there are presently 1.1 billion people in the world who do not have access to potable water and 2.6 billion who do not have sanitation systems. This is the cause of 80% of diseases and deaths of 2.2 million persons each year, the majority of them children under the age of 5. Women and girls often devote more than 5 hours per day traveling 10 to 15 km to retrieve water, with obvious adverse impacts on their schooling. And on each trip they transport 15 to 20 liters of water, far below the 50 liters per person per day considered to be a minimally reasonable allocation. Unquestionably, the shortage in these basic services, water and sanitation, decisively influences other processes directly related to the development of individuals and communities.

The Committee on Economic, Social, and Cultural Rights of the United Nations Economic and Social Council, in its General Comment No. 15, declared that water is a human right, because it is an indispensable factor for life with dignity and a prerequisite for

* Engineering Without Borders

the realization of other rights. Governments have even made commitments to reduce lack of access to water and sanitation as part of the Millennium Development Goals (MDGs). Yet, currently, there has been no significant progress. In fact, the problem is being aggravated by a lack of political will. Among other aggravating factors is the commodification of water, promoted by the International Financial Institutions (IFIs) as a recipe for meeting the MDGs through privatization processes.

Commodification and Privatization of Water¹

Traditionally, in both the northern and southern hemispheres, the public sector has administered most of the world's water supply systems. Currently, nearly 90% of those who have access to water services receives them from the public sector, with funding for investments in water and sanitation services obtained through traditional public credit and taxation mechanisms, in addition to the collection of user fees.

Not until the 1980s, well into the implementation of the Washington Consensus, with its goal of reducing public-sector spending, was private-sector participation in water and sanitation services first suggested. Then, as of 1990, private-sector participation became truly prominent. In the end, such a leading role became particularly conflictive in the countries of the south, given that the multinational companies were exclusively guided in their activities by commercial interests and the profit motive.

This change in option, from the public sector to the private sector, was founded, among other things, on the principles develo-

1. The term *privatization of water* refers to the process through which private for-profit companies assume responsibility for managing the service under different forms; on the other hand, *commodification of water* is understood to mean that water is being priced at its rate on the free market, governed by the law of supply and demand, where the possibility for speculation is present.

ped at the International Conference on *Water and the Environment in Dublin, Ireland (1992)*, which specifically stated that *Water has an economic value in all its competing uses and should be recognized as an economic good*. The World Bank, the regional development banks, the World Trade Organization (WTO) and the International Monetary Fund (IMF)², immediately adopted this position, furthering reforms in the water sector along with other neoliberal policies, which gave birth to the water privatization process in Latin America and Asia.

One such policy, perhaps among the most decisive, is the Structural Adjustment Program (SAP), promoted by the IMF, aimed at reducing public spending and increasing revenues earmarked for payment of the foreign debt. Such an approach often demands that public operators be sold off; in other words, it promotes the privatization of water. In order to assess the impact of SAP programs, it suffices to bear in mind that 90% of countries where more than 25% of the population lacks access to water are Heavily Indebted Poor Countries (HIPC). In fact, in 30% of cases where the IMF directs a country to implement its *recommendations*, it includes conditions aimed at some form of privatization.³ This may take a subtle form, such as requiring reforms to the domestic water laws, or forcing a decentralization of government operators open to private intervention.

But the World Bank, the principal financing agent for the majority of impoverished countries, is not about to be left out of the picture. In the year 2002, for example, it conditioned more than 80% of its loans in the water sector to some form of privatization.⁴ Then there's the Inter-American Development Bank (IDB), which

2. To get a better feel for the impact of the World Bank, IMF and WTO, see *The Roles of the IMF, the World Bank, and the WTO in Liberalization and Privatization of the Water Services Sector*, Nancy Alexander, Citizens Network on Essential Services, 2005.2

3. *IMF Forces Water Privatization on Poor Countries*, Sara Grusky, Globalization Challenge Initiative, 2001.

between the years 1993 and 2005, conditioned 66% of its loans in the water sector to the promotion of private participation⁵. Last but not least are the constant efforts engaged in by the WTO to have the provision of water included as a commodifiable service within the General Agreement on Trade in Services, where the interests of the multinational companies formally and effectively prevail over those of the State.⁶

In response and in opposition to this consideration of water as an economic good, several social movements have demanded access to water as a universal right. That position was reinforced in the year 2002, when the United Nations Economic and Social Council issued General Comment 15, which states that:

[...] Water is a limited natural resource and a public good fundamental for life and health... It should be treated as a social and cultural good, not as a fundamentally economic good. The human right to water is indispensable for leading a life in human dignity and is a prerequisite for the realization of other human rights. In other words, water is a right and not a commodity.

But does everyone agree that water is a right, not a commodity? One group that doesn't, or at least hints that it doesn't, is the World Water Forum,⁷ where private financing for the development

4. World Bank and Center for Public Integrity Analysis.

5. *Sedientos. El BID y las políticas sobre el agua*, Food and Water Watch, 2007.

6. For more information see, *La inclusión del agua en el Acuerdo General de Comercio y Servicios*, Engineers without Borders Lluís Basteiro, Chapter V of this book.

7. The World Water Forum is an international meeting held every three years to discuss water-related policies. Organized by a group that calls itself the World Water Council, it is comprised by representatives of the industry's principal multinational companies and has the explicit support of the United Nations system. Its current president is Loïc Fauchon, CEO of Société des Eaux de Marseille (which belongs to Suez and Veolia-Vivendi). Obviously, the policies proposed at these forums fall in line with the interests of this social and business sector, while the social movements denounce this body's lack of legitimacy.

of the water sector is ever present on the agenda.

As early as the First World Water Forum in Marrakech (1997), the Ministerial Declaration made it quite clear that water *is a basic need*, placing it at the same level as access to energy, communications, or transportation.⁸ At the Third Forum, in Kyoto (2003), the situation deteriorated even further, with the final declaration defining access to water as simply a *driving force*.

At the Fourth World Water Forum in Mexico City (2006), the European Union⁹ (EU) unilaterally took charge of the draft of the final declaration, delegating this task to an executive of Ondeo-Suez who was the President of AquaFed,¹⁰ a new pressure group of the water industry, half lobby, half think-tank, which acts as a type of business association for the sector's multinational companies. Under such circumstances, the draft version could hardly be expected to incorporate any definition of water as a universal, basic right. Bolivia, Cuba, Venezuela, and Uruguay argued for an amendment aimed at including such recognition, but the host, Mexico, argued to close the debate, that *such an amendment was an obvious truth, and therefore there was no need to include it*. Although certain European countries made the gesture of supporting the initiative, such as Sweden and Spain, the EU closed ranks and the amendment was blocked. This was a lost battle for many, but marked a change in direction for others.

One aspect systematically addressed at the World Water Forums is the issue of the financing needed to attain the MDGs. Prior to Kyoto (2003) the corresponding strategy document,

8. In fact, the World Bank groups water, energy, and transportation within the same Department, and this connotation of a *need* as opposed to a *right* justifies the World Bank's failure to give access to water top priority.

9. The interest of the EU is clearly understood considering the fact that 9 of the 10 leading multinational companies in the industry are European.

10. The objective of AquaFed, created in 2005, is to *promote private-sector participation in water and sanitation management... and to represent private operators at the international level*.

Financing Water for All, was entrusted to Michel Camdessus, former director of the IMF, a person close to Suez. In drafting that document, Michel Camdessus formed a team comprised, among other persons, by the President of AquaFed and all the regional development banks, faithful followers of the doctrine laid out by the World Bank. This document advocated that the private sector should clearly take the lead and attain a minimum market share of 15%. *The Camdessus Report*, among other things, suggested providing coverage to the multinational companies through several measures aimed at decreasing risks detected when investing in the water sector of impoverished countries.¹¹ Concretely, it called for setting rates of return, anchoring rates to stable currencies, guaranteeing total recovery of costs, and consolidating decentralizations so as to identify the most profitable markets.¹² It also sought to place the new forms of privatization on a pedestal, at a time when such a concept has been seriously undermined due to recent occurrences in Latin America: Public-Private Partnerships (PPP), an interesting collaboration formula, where the public sector gets to build the infrastructure and is left with the debt, while the private operators get to handle the management and are left with the profits.

What's behind this interest in promoting for-profit private enterprise in the water sector? As we stated above, in the early 1980s the doctrine born of the Washington Consensus started to be rolled out like a steamroller. In the water sector, that doctrine is perfectly summarized by the following 4 points:¹³

11. An analysis of this report can be seen in *Financing Water for the World – an Alternative to Guaranteed Profits* (2003), and in *Water Finance. A Discussion Note* (2004), both by David Hall, Public Services International Research Unit (PSIRU), University of Greenwich.

12. For example, in the case of government-owned operators, this means that they rid themselves of the commitment to serve rural areas or serve unprofitable zones along the urban periphery.

13. Esteban Castro, 2005.

- Water resources should be allocated following market principles;
- As stated in the Dublin Declaration, water and sanitation services should be considered an economic good;
- Users of these services are consumers, and have a right to this service as customers;
- Water and sanitation services should be supplied by private operators, who will always be more efficient than public operators: the fewer the regulations, the more efficient the private operator.

In this context what does a private operator provide us with? Allegedly, introducing the possibility of doing business with water ought to bring all sorts of benefits:

- Efficiency derived from competition, with improved human resources and great technical and technological capacity;
- Fresh investments, which ought to lead to an expansion of the systems;
- Much better rates;
- A reduction of the burden on public finances, since the State will no longer have to provide services at a deficit;
- Finally, an efficient, transparent management.

Obviously, according to the dominant mindset, public operators are incapable of offering the same degree of service. As the Public-Private Infrastructure Advisory Facility (PPIAF) describes so perfectly,¹⁴ this is because public operators have the following pro-

14. Another think tank created under the World Bank, and sponsored by the EU. *New Designs for Water and Sanitation Transactions: Making Private Sector Participation Work for the Poor*, PPIAF, 2002.

blems:

- Inefficiency derived from monopolization, with low-skilled human resources and an obsolete technological base;
- Lack of investments and deplorable maintenance;
- Bad rate policies;
- Chronic economic deficit;
- Bureaucratized management and widespread corruption.

Water Privatization's Failure to Attain the MDGs

The above-mentioned precautions and guarantees proposed by the *Camdessus Panel* are not arbitrary, but are the result of international experience amassed by the multinational water companies. Indeed, even though initially the risks were considered assumable, reality has demonstrated that the benefits obtained do not correspond to the expectations that had been created. This has been demonstrated, among others things, by the evolution in contract types, from concessions over the system, to BOT (*Build-Operate-Transfer*) contracts, to leasing, and then to management contracts, which are aimed at minimizing investments and, therefore, risks.

Throughout the 1990s the privatization model grew. Yet since the year 2000, multinational water companies have faced growing opposition to their activities, and several of their contracts have been rescinded in truly significant cases such as Buenos Aires, Cochabamba, Manila, and Jakarta. Presently, the multinational companies prefer to focus their activity on China, the EU and its neighboring countries, as well as the Middle East and North Africa. And they're taking financing from the International Financial Institutions with them to these zones, while reducing their presence in lower-income countries, so as to limit losses and risks. In fact, nowadays the general policy of multinational companies in the water sector is based on reducing levels of indebtedness by selling

off unprofitable contracts, reducing costs, capping new investments at the results of the cash flow, and drastically reducing investment in impoverished countries.¹⁵

This circumstance, this failure of the privatization model, has been clearly demonstrated in a number of documents, among which one could cite the 2004 report of the European Parliament's Development Commission regarding the Impact of the Lending Activities of the European Community in developing countries, which states that:

[...] Strict emphasis on developing income from private investment... has proved ineffective, particularly in the area of services of general interest. The European Investment Bank (EIB) itself considers that there has been a widespread withdrawal of investors in the water and electricity sectors in the interim. Attainment of the Millennium Goal... will be possible only if the public sector is given responsibility for provision and put financially in a position to do so.

It is evident that this crushing affirmation runs counter to the proposals and expectations of the *Camdessus Report* regarding the importance of private financing to attain the MDGs, since attaining them would mean that each day between 2006 and 2015 some 270,000 persons would obtain access to safe water sources. Yet direct private investment has only extended the service to 900 persons per day over the past nine years.¹⁶ Perhaps we should have paid more attention to the CEO of Saur, the third leading multinational company in the sector, who stated: «to expect that the private

15. *Water Multinationals in Retreat*, David Hall, PSIRU, University of Greenwich.

16. *Pipe Dreams. The Failure of the Private Sector to Invest in Water Services in Developing Countries*, PSIRU and World Development Movement, 2006.

sector will offer connections to the whole world... is an unrealistic demand!»

Now, after more than 15 years of experience with the private sector as a water and sanitation provider in developing countries, we have sufficient empirical proof to conclude that the privatization process has been a failure. What was supposed to be good rates and fresh investments has ended up being something very different:

- Private for-profit operators have not proven to be more efficient than public operators, in fact, the opposite is true;¹⁷
- Investments have turned out to be mere promises, far below projected levels, and have failed to extend the systems to non-profitable zones;
- Higher rates;¹⁸
- Private water companies have not contributed new financing sources. Rather, they heavily depend on the same sources used by the public sector. In fact, the public sector has often acted as a guarantor of the loans, in direct application of the Public-Private Partnerships (PPP) operating scheme, thus increasing the burden on public finances;
- Cases of corruption, both in contract awards and in systems management: «transnational firms are just as likely to pay administrative bribes and to try to capture the state as other firms and... transnational firms headquartered abroad are more likely than other firms to pay public procurement kickbacks».¹⁹

17. D. Hall and E. Lobina made an extensive compilation of reports and studies that confirm this statement. *The Relative Efficiency of the Public and Private Water Sector*, PSIRU, University of Greenwich, 2005.

18. The UNDP itself, in its 2006 report, estimated that private operators, on an average, are nearly 20% more expensive than public operators.

19. Taken from a Report for the World Bank. *Are Foreign Investors and Multinationals Engaging in Corrupt Practices in Transition Economies?* Hellman, Jones, and Kaufmann, 2000.

Finally, water privatization has not provided the promised investments. Worse yet, at the same time as international donors have fomented the private sector's role as a water-services investor, these donors have substantially reduced their own investments in such services. Meanwhile, many countries, conditioned by the IMF's demands to reduce public sector spending, have decreased infrastructure investments, including those in water infrastructure. These reductions, both by donors and by States, far outweigh the private sector's investments.

Several reports²⁰ and investigations conducted by the World Bank itself for its *Economic Review* indicate that the private sector's efficiency does not significantly differ from the public sector's.²¹ When it comes to financing, the fact is that private administration of water mainly uses the same financing sources as the public sector: the surplus generated by supplying water, aid from national or foreign governments, loans from development banks, and commercial bank loans and bonds.²²

The World Bank summarized this failure in the year 2003, indicating that the lack of investment as of the year 2000 has been accompanied by:

A reduction in investor appetite... a shift in public opinion against the private provision of infrastructure services. The

20. *The Relative Efficiency of the Public and Private Water Sector*, PSIRU, University of Greenwich, 2005.

21. Estache, A. and Rossi, M. (2002), How Different is the Efficiency of Public and Private Water Companies in Asia? *The World Bank Economic Review Vol. 16 No. 1*. Oxford University Press. Oxford. June.

22. *Pipe Dreams. The Failure of the Private Sector to Invest in Water Services in Developing Countries*, PSIRU and World Development Movement, 2006.

23. Harris, C. (2003), *Private Participation in Infrastructure in Developing Countries: Trends, Impacts and Policy Lessons*, C. Harris World Bank Working Paper No. 5.

current sense of disillusionment stands in stark contrast to what should in retrospect be surprise at the spectacular growth of private infrastructure during the 1990s.²³

Privatization, by Region

Since the 1990s, the private sector has opened new markets and new contracts. In order to understand these privatization processes we must first differentiate between the different types of contracts that exist:

- *Concession*: This type of contract grants a private company a license to administer the water system and charge customers for the service in exchange for a profit. The private company is responsible for all investments, including new pipes and sewer systems for domestic units not yet connected to the system.
- *Leasing*: This type of contract stipulates that the company is responsible for administering the distribution system and for making the investments necessary to repair and restore existing assets; but the public authority continues to assume responsibility for new investments.
- *Management*: Under a management contract, the private company is responsible for administering the water service, but is not responsible for making any investments, and not usually responsible for hiring the personnel.

Analyzing the contracts entered into, we will observe this global pattern.

Sub-Saharan Africa

Sub-Saharan Africa is home to 25% of those who need water-supply connections in order to meet the MDGs. In this region, we note that 80% of concession and leasing agreements have been sus-

pended prematurely or have triggered major conflicts (over levels of investments, between the public authorities and the company operating the service).

In addition, the concessions have been few in number and all their investments have been below projections. The most successful contracts have been leasing agreements, where public authorities take charge of expanding the system.

Asia

In the South Asia region, including India, Pakistan, Bangladesh, and Sri Lanka, not a single concession or leasing agreement has been entered into with the private sector. In a zone inhabited by 23% of the world's population, no private water-service company investments have been made to expand the distribution systems.

In the East Asia region, there have been a total of 15 concession agreements of which four are in Jakarta and Manila, and all but two of the rest are in China. One of the six concessions outside of China has been rescinded and three are facing serious problems. Little information is available on how the concessions in China are doing and, accordingly, there are no detailed studies on those contracts.

Latin America

Latin America has become the testing center for privatization. While on other continents privatization processes did not play a leading role, in Latin America the exact opposite occurred. This was fundamentally due to three factors,²⁴ to which one could add a component of cultural affinity, which is not seen in Asia or Africa:

24. Budds, J.; McGranham, G. (2003), *Privatization and the Provision of Urban Water and Sanitation in Africa, Asia and Latin America*, International Institute for Environment and Development.

- The existence of a large middle class, highly attractive for private investment;
- Numerous highly leveraged public operators, short on funds, making the private alternative easily justifiable;
- Widespread application of neoliberal policies, through Structural Adjustment Programs (SAPs) and conditioned loans.²⁵

There is also significant participation by Spanish companies that focus on the Americas to project themselves abroad. Currently, few private concessions remain in effect in their original form. In conclusion, close to 62% of the private contracts that went into effect in the 1990s have been modified and/or canceled for one reason or another, and of them, 57% ended up being transferred back to public sector control. The following table illustrates these figures:

Country	Total Multinational contracts	Spanish multinational companies	Contracts terminated or changed	%	Returned to public sector	%
Argentina	9	7	7	78%	6	86%
Bolivia	2	1	2	100%	2	100%
Brazil	7	4	4	57%	0	0%
Chile	10	7	7	70%	0	0%
Colombia	8	8	2	25%	1	50%
Ecuador	2	1	0	0%	-	-
Guyana	1	0	1	100%	1	100%
Peru	1	0	0	0%	-	-
Uruguay	2	2	2	0%	2	100%
Venezuela	3	3	3	100%	3	100%
Total	45	33	28	62%	16	57%

By 2007 only 17 international contracts remained, 14 of which involved Spanish companies, accounting for more than 80% of existing contracts. Two Spanish groups dominate the panorama in

25. Almost all the private concessions in Latin America were financed, at least in part, with multilateral loans. In certain contracts, such as Buenos Aires or La Paz, the financial institutions even appear as interested parties or partners.

the region today: Aguas de Barcelona (AgBar) and Proactiva Medio Ambiente, both of which are French capital. But even these companies are abandoning contracts: AgBar, for example, left its contracts behind in Brazil, Uruguay, and Argentina; and «Proactiva Medio Ambiente» has lost its contracts in Argentina and Venezuela.²⁶ In fact, they have no plans for expansion in the region and are not expected to enter into any new contracts.

The AgBar experience has been highly conflictive, especially in Uruguay²⁷ and Argentina. All its Argentine concessions: Buenos Aires, Santa Fe and Córdoba, have ended with social protests and suits at ICSID against the State. AgBar has also rid itself of a good part of its concessions in Chile, including 49.9% of its star participation, Aguas Andinas, in Santiago de Chile. It has also unsuccessfully attempted to sell off part of its business in Cartagena de Indias.²⁸ Proactiva only maintains activities in Colombia and Brazil, but is working to sell off its participation in the zone of Paraná, Brazil.

But there are other Spanish companies operating in South America. One of them is the Basque electricity company Iberdrola,²⁹ which, after being driven out of Uruguay, maintains just one concession in Puerto Mont, Chile, despite attempts to sell its participation to Thames Water or Anglian Water. Two of the principal construction firms of Spain, Sacyr Vallehermoso and ACS, have a

26. The Catamarca contract, in Argentina, is technically rescinded, but has been extended through the spring of 2008; in Venezuela the company has a systems maintenance contract in certain Caracas neighborhoods.

27. In 2004, a popular referendum secured a constitutional reform aimed at considering water as a basic universal right. As a consequence, AgBar, Aguas de Bilbao, and Iberdrola withdrew from the country.

28. Breaches have been detected in this contract regarding investment in the poorest neighborhoods. See *Cartagena: Joint Venture Achievements but Fears for the Future*, Save the Children, 2003. *Efectos de la privatización de los servicios de agua en los niños y niñas colombianos*, CINDE and Save the Children, 2004. *Water and Privatisation in Latin America*, 2002 and *Water, Privatisation and Restructuring in Latin America*, D. Hall and E. Lobina, PSIRU, 2007.

few isolated contracts: Sacyr has a few in Brazil, and ACS, working hand-in-hand with its affiliate Dragados, has some in Argentina.

Also curious is the case of the public company of Madrid, Canal Isabel II, which initially, working in partnership with the Valencian private company TECVASA, under the umbrella of Canal Extensia, had control over the Colombian operator Sociedad de Acueducto, Alcantarillado y Aseo de Barranquilla S.A. E.S.P. (known as AAA). Canal Extensia started its operations in Colombia based on the former AgBar concession in Barranquilla, and in the period of 2000-2005 expanded to the cities of Santa Marta, Soledad, Puerto Colombia, Sabanagrande, and Santo Tomás, where it still provides water and sanitation services. It is also offering the same services in Ecuador, through the Samborondón concession. This situation, where a Spanish public company acts like a private company in South America is not so rare. In fact, precedent was set by the public company Aguas de Bilbao, which had to make a sudden departure from Uruguay and Argentina.³¹

But these cases of a public company operating outside of its country of origin as a private company are not the only ones in South America. Acea, the semi-privatized operator of Rome, is holding on to Aguas de Chillón, in Peru, though not without problems, together with the Italian construction firm Impregilo.

It is also interesting to note that Bechtel, a U.S. company, and Italy's Edison (the same construction firms that, in partnership with

29. Endesa, another electricity company, also in Chile, bought a stake in Valparaíso, but in the year 2000 it sold that stake to Anglian Water. It also had a concession in Santiago, which it ended up selling to AgBar.

30. The conglomerate ACS-Dragados-Urbaser continues operating Aguas de Misiones, but along the way has abandoned a few contracts in Argentina that have ended up at ICSID in the wake of sustained pressure from the public: Tucumán and the province of Buenos Aires.

31. Aguas de Bilbao entered Argentina in the year 1999, through Aguas de Gran Buenos Aires, together with Dragados and the Italian company Impregilo. It left, with an ICSID lawsuit pending, in the year 2006. In Uruguay it held a stake in Uragua, but withdrew from the country in 2005 following the constitutional reform.

the Spanish firm Abengoa established the rather unpleasant experience of Aguas del Tunari in Cochabamba), is still holding on to the Guayaquil contract under the umbrella of Interagua, despite the growing controversy.

Apart from all this, one cannot omit Marubeni, a Japanese group, and the Ontario Teachers' Pension Plan (OTPP), of Canada, in Chile.³²

As a result of this withdrawal of multinational companies from South America, a certain phenomenon is emerging: a proliferation of South American private companies. We have already cited one, Colombia's AAA, though it is controlled by Spain's Canal de Isabel II. But these companies are emerging above all in Argentina, Brazil, and Chile. In some cases, as occurs with the Roggio Group, they already participated in the Córdoba contract with Suez and AgBar, and now that those companies have gone home, the Roggio Group has stayed in the city, despite major grassroots pressure. Or the Fernández León – Hurtado Vicuña group, which is a partner of AgBar in a contract or two in Chile.

Finally, on a handful of occasions, these South American companies are spilling over their countries' borders. The few documented cases include Argentina's Latinaguas, operating in Tumbes, Peru, in partnership with the Peruvian company Concisa, and also in Brazil, where it has a technical services contract with the State of Goiás.³³ Another case is the Chilean company SEINCO, operating Aguas of Cajamar in Brazil. The Brazilian semi-privatized companies COPASA (Minas Gerais) and SABESP (São Paulo) have operations in Paraguay and Peru, respectively.

32. Concessions bought from other companies that also withdrew from the region: Thames Water and Anglian Waters.

33. LatinAguas has submitted a bid in the tender for the concession of Piura-Paita, in Peru, and in October 2006 was pre-qualified to bid on the Quito concession, but privatization of Empresa Metropolitana de Alcantarillado y Agua Potable de Quito (EMAAP) was suspended in March 2007 in the wake of major opposition from the public.

The multinational companies' withdrawal from Latin America was conflictive and, in many cases, has resulted in the multinational companies taking their case to the International Centre for Settlement of Investment Disputes (ICSID). ICSID, created in 1965 as an entity of and presided over by the World Bank, plays the role of an illegitimate international court. The multinational companies petitioned to ICSID on the grounds of suspension of the contracts (though, in many cases, the contracts were breached), seeking a total of 3.3 billion dollars in compensation. The table on the following page illustrates this situation:

Country	Concession	Plaintiffs C	Claim D (millions of dollars)	Decision
Argentina	Tucumán	Aguas del Aconquija (Vivendi)	375	105M \$
Argentina	Province of Buenos Aires	Azurix/Enron	400	165M \$ (appealed)
Argentina	Mendoza	Saur	300	Pending
Argentina	Mendoza	Azurix/Enron	-	Pending
Argentina	Santa Fe	Aguas Provinciales de Santa Fe (Suez and AgBar)	300	Pending
Argentina	Córdoba	Aguas Cordobesas (Suez and AgBar)	108	Pending and/or suspended
Argentina	Buenos Aires	Aguas Argentinas (Suez, AgBar, and Vivendi)	1.700	Pending
Argentina	Province of Buenos Aires	AGBA (Impregilo, Dragados, and Aguas de Bilbao)	100	Pending
Bolivia	Cochabamba	Aguas del Tunari (Bechtel, Abengoa and Edison)	50	2 Bolivianos
Bolivia	La Paz / El Alto	Suez	Lawsuit threatened	
Uruguay	Maldonado	URAGUA (Aguas de Bilbao, BBK and Iberdrola)	Lawsuit threatened	

Agua Argentinas: The case of Suez and AgBar in Buenos Aires

Agua Argentinas was the pioneer in water privatization. In 1993 the concession for the city of Buenos Aires was awarded to a consortium formed by Suez, Vivendi, AgBar, and Anglian Water, though Suez and AgBar controlled 65%. The water and sanitation concession commenced in May 1993 and benefitted 10 million people. In September 2005, its private shareholders decided to terminate the agreement, which should have continued for an additional 18 years, given that it was not possible to reach an agreement with the government on the rate review in the wake of Argentina's financial crisis of December 2001. Agbar has filed suit against the Argentine State at ICSID, a judicial entity of the World Bank that works to protect the interests of private investment-making companies. Some of the experience's dark moments have been:

- Breach of contractual commitments to make investments. Between May 1993 and December 1998, Agua Argentinas made only 54% of the originally agreed-upon investments to expand the water supply system and 43% of those agreed upon to expand the sewer system. Even after several renegotiations of the investment milestones, Agua Argentinas continued to fall short on its commitments. It failed to make 39% of scheduled investments to expand the water supply system and 60% of those projected to expand the sewer system. This was one of the reasons why President Néstor Kirchner ordered the contract's rescission.
- Outrageous rate increases. Average rates for water in Buenos Aires increased by 88% between May 1993 and December 2001, as compared to an increase of 7% in the consumer price index.
- Onerous financial burdens. Between 1994 and 2001, three loans that we know of were made by the World Bank and the IDB for the privatization process, in the amount of 260 million dollars, using the dollar as the exchange currency. Agua Argentinas also filed an ICSID suit for 1.7 billion dollars.
- Failure to comply with quality standards. The Argentine government filed suit for failure to comply with the limit on nitrates in

potable water, as well as flaws in civil works that caused leaks and system-wide loss of pressure. According to the Minister of Planning, 43 of the 131 supply wells operated displayed higher-than-allowable levels of nitrates (indicative of contamination by fecal matter or from the food and agriculture industry).

Alternatives to the Privatization Model

Bearing all of the above in mind, there is a growing awareness that public water operators, responsible for close to 95% of the world's water supply, deserve full attention and support. One of the keys to improving the systems' expansion is to start working through public companies, improving their operations, with political, technical, and economic support, administrative reforms, and reinforcement from regulatory and standard-setting entities.

In the countries of the south, a wide range of innovative approaches are starting to be seen aimed at reforming public urban supply systems.³⁵ In many cases, the reforms are based on civic participation and other forms of democratization. Often, the objective is to eliminate bureaucracy, corruption, and other problems at the root of the public service's failure, while guaranteeing potable water accessible for all through companies that are truly public, not just in name, but also in terms of participation.

In many cases, new forms of cooperation or of local associations have developed between public water operators, communities, trade unions, and other key groups. Increasing attention is also being paid to partnerships among public water companies. Such

35. See *Por un modelo público de agua: triunfos, luchas y sueños*, VV.AA., El Viejo Topo, 2005.

partnerships have led to a dialogue between public companies doing well and others doing poorly, allowing them to share their knowledge and thus improve the quality of the more troubled companies.

Partnerships among public agencies are slowly but surely gaining high-level political support. In this regard, a major step forward was taken when the UN Commission on Sustainable Development (CSD-13), at its 2005 summit, included partnerships among public agencies in the list of measures for implementation.

The great challenge is now to translate this support for partnerships among public agencies into concrete political and economic support commitments from donors, for example. With this aim, the United Nations Secretary General's Advisory Board on Water and Sanitation, through the Hashimoto Plan of Action, has established a working group on public-public partnerships (PUPs), which is analyzing practical measures to develop such partnerships as a method for accelerating progress towards the MDGs. In this context, the Water Operators' Partnerships Alliance (WOP) is being created, under the umbrella of UN-Habitat.³⁶ As initial experiences, one could note the work of the Associação Nacional dos Serviços Municipais de Saneamento (ASSEMAE) in Brazil; collaboration among the public companies of Huancayo, Peru; as well as the new public operator in the province of Buenos Aires, Aguas Bonaerenses S.A. (ABSA); the Uruguayan government operator,

36. Nonetheless, the same old threats are hovering over this new tool, and the multinational companies of the sector are making their moves to co-opt the WOP: «...Cooperation between water operators, or Water Operators Partnerships (WOPs) can be useful mechanisms for providing support for capacity building of public water operators. Given the preponderance of public sector undertakings, it is envisaged that most operating partnerships will be between public operators. However, we do not exclude private sector operators, NGOs or those who can contribute to the performance of public water undertakings on a not-for-profit basis». Hashimoto Action Plan, Compendium of Actions, United Nations Secretary-General's Advisory Board on Water and Sanitation, March, 2006, p. 3.

Obras Sanitarias del Estado (OSE); and the Bolivian city of Potosí. Nonetheless, as of today, although the WOP says that it pursues facilitated interaction and discussion among water operators, the process does not allow for active involvement of public operators' administrators, who should clearly be contributing to its design.

Conclusions

As has been demonstrated in this study, at present, many persons in the world do not have secure access to potable water and to basic sanitation. This problem is not due to a lack of resources, but to a lack of political will, and setbacks are occurring. It is therefore necessary to become familiar with the policies promoted to date by the development banks and the principal donor agencies, in order to reformulate them.

It is vital that this change of approach start with donor organizations and governments, who must stop pushing the myth that the private sector will facilitate the new connections needed to attain the MDGs. Indeed, reality has shown otherwise: the investments necessary to fulfill the MDGs have not been made, and most of the investments have been financed with public, not private funds. Actual private-sector contributions for improving lack of access to water have been scant. It is calculated that privatization has only made 0.3% of the new connections needed to attain the Millennium Development Goals. Some 600,000 residential connections have been made in Sub-Saharan Africa and Asia, extending water services to 3 million people; the rest of that 0.3% is attributable to Latin America. In total, some 5 million persons have been covered, out of the 1.6 billion who need to be by 2015.

We can also see that privatization has not covered the zones in greatest need of water investments. Geographically, it has focused on Latin America and East Asia, with much less activity in Sub-Saharan Africa and South Asia, though it could be noted that

following privatization's failure in Latin America, new markets are opening in Asia and Africa. At the country level, we find that participation in the expansion of systems is strong in urban zones but neglected in the surrounding neighborhoods and null in the rural zones.

Therefore, we believe that international financial institutions and governments must stop promoting a sector whose only concern so far has been to do business with the water crisis. We would ask governments to take a clear, firm stand, promoting universal access to water as a human right, and that public management, with social participation and control, be put in charge of overseeing the fulfillment of the right to water.

Currently, satisfactory results are being seen in public management models with civic participation. Attention needs to be paid to improving these dynamics, because water is not a commodity, water is a human right; water is of the people and for the people.

V. THE INCLUSION OF WATER IN THE GENERAL AGREEMENT ON TRADE IN SERVICES

Lluís Basteiro*

The World Trade Organization (WTO) is the multilateral body whose mission is to establish and enforce the rules of international trade. Its principal objective is *to help trade flow as freely as possible*, eliminating barriers that States have created to protect their economies. Such free trade applies not only in the realm of goods, but also services, where the water sector would basically be included.

In 2007, the WTO was formed by 151 member States, who together account for more than 95% of international trade. Another 30 countries have applied for membership.¹ There are also several international observer entities, including the United Nations, the International Monetary Fund (IMF), and the World Bank.

Water and the General Agreement on Trade in Services (GATS)

The GATS promotes the marketing and liberalization of services

* Engineering Without Borders

1. Russia, Iran, and the Ukraine are among the countries currently applying for membership in the WTO. The complete list of member countries can be found at www.wto.org.

under successive rounds of multilateral negotiations. It is a binding agreement, which means that any member country that fails to perform the obligations it has undertaken may be sanctioned.

The GATS process aims to open the services sector to international competition, allowing multinational companies to invest and do business in any sector, in any country, with a minimum of regulation and control. Once these sectors are open, it would be hard to turn back the clock and re-regulate. The European Commission itself has gone so far as to declare that «The GATS is not just something that exists between governments; it is first and foremost an instrument for the benefit of business».

The GATS's importance cannot be overstated. The services sector is large, much larger than other sectors capturing the attention of the WTO summits. The services sector represents 60% of global production and 20% of trade (while agriculture accounts for 7% of trade). In the European Union (EU), the services sector represents nearly 70% of the Gross Domestic Product, while agriculture, the bone of contention at the recent Hong Kong (2005) summit, only represents 2%. In reality, services were the true prize coveted by the wealthy countries in Hong Kong.

Seen from this perspective, it stands to reason why the EU is willing to sacrifice agricultural aspects in exchange for loans in the services sector, above all with respect to water. The EU, through its trade commissioner, Peter Mandelson, is using the opening of services as a bargaining chip to get reductions in agricultural subsidies and tariff cuts, one of the principal points of conflict with the G20.²

The GATS encompasses «any service in any sector except services supplied in the exercise of governmental authority», which, in turn, is defined as «any service which is supplied neither on a commercial basis, nor in competition». This definition, given its high

2. This group brings together such important States as Brazil, India, Argentina, Cuba, Bolivia, South Africa, Mexico, Chile, Venezuela, and China.

degree of ambiguity, has unleashed a debate over which services are or are not covered by the GATS, since, in certain sectors traditionally managed by the State the supply of services on a commercial basis and in competition has been partially introduced. Such would be the case of water, especially in the supply sector (anywhere from residential services to the construction of large dams) and in the sanitation and wastewater treatment sector.

But residential use only accounts for 8% of total water usage on the planet. Industrial activities, accounting for 22%, can use intensive quantities of water, for example, in generating hydroelectric energy, and many extractive industries can provoke widespread, intense water contamination. Agriculture, the sector that consumes the most water, accounts for another 70%. Such industrial and agricultural use is encompassed within the WTO in other negotiations, separate from the GATS. Other crucial aspects for the sector are also addressed outside of the GATS, such as bottled water, river transport, or the exportation of water. This means that there is no one unified relationship between free trade agreements and water, but a web of relationships.

But is water really a commodity? A commodifiable service? Or is it a basic service, a universal human right? Obviously, the WTO has already made its choice. The GATT Harmonized Tariff Schedule³ uses confusing language in its inclusion of water as a commodity: «other waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavored; ice and snow». It would appear at first that this basically refers to bottled water; but when mention is made of ice and snow, the outlook expands considerably.

In fact, trade in bottled water is one of the most rapidly expanding industries, growing from an annual volume of 900 million

3. GATT is the acronym for the General Agreement on Tariffs and Trade. This entity was created in the year 1947 in Bretton Woods (together with the World Bank and the IMF). It was replaced by the WTO in 1995.

liters in the 1970s to more than 25 billion today. On the other hand, international trade in water under block rates is in an incipient stage, for which protection is being sought within the framework of free trade agreements.

In all events, a myriad of international declarations, the first of which dates back to 1948, consider water to be a fundamental right for life and health, defining its public nature. But the WTO has no ties to the UN legal system and no need to recognize Human Rights or international covenants that protect water as a right, with all the consequences this might entail.

The water sector principally falls under the sector of *environmental services*, one of the 12 contemplated in the GATS (telecommunications, energy, education, health, transportation...). These 12 sectors are subdivided into 163 subsectors, for which the countries may «table offers and undertake commitments». One of these subsectors is sanitation and wastewater treatment, but there is nothing along the lines of supplying water. The EU, taking advantage of the ambiguity of the *other environmental services* sub-sector, and arguing that the schedule of services is antiquated, is pressuring to introduce a new schedule where a new sub-sector would be listed, that is: *water collection, treatment, and distribution*. In fact, the EU is already approaching the rest of the WTO members with this new schedule of services.

It must be borne in mind that the leading water supply and sanitation companies are European.⁴ Under this new approach, the GATS would open the door on distribution of water to the industry's giants, such as Suez and Vivendi (70% of the world's water market). In fact, since 2001, the European Commission has been getting advice from the European Services Forum,⁵ a lobby

4. Nine out of 10 of the largest multinational companies in the water sector are European.

5. Created in the year 1999 by the trade commissioner of the time, Leon Brittan.

created by the EU with the specific objective of responding to the private sector's concerns in the GATS negotiations. As part of this lobby's work, Suez, Vivendi and, initially, RWE,⁶ collaborated in the year 2002, identifying the principal barriers to trade (literally, the European Commission said, «we very much appreciate your input in order to focus our negotiating efforts in the area of environmental services», when asked, among other things, «whether they considered the universality of the water supply to be a problem»). The European Services Forum has participated in meetings with WTO delegates from different countries,⁷ preparing very aggressive requests to 72 countries to open their respective markets for the supply and treatment of water within the GATS framework.⁸ Definitively, the European Commission «considers that, properly managed, the GATS negotiations can contribute to achieving the Millennium Development Goals in the water sector.»⁹

Thus, although the GATS would not automatically privatize all public services, it would lead to a progressive liberalization. In the case of water, this could result in a situation where a State would not be able to protect its right to use and regulate water resources. In order to better understand this risk, one must understand in a certain degree of detail how the GATS functions.

How the GATS Functions

The GATS is not a closed agreement; rather, it provides a legal framework based on which the WTO member countries undertake liberalization commitments on such services as they agree to libe-

7. In Geneva, July 2003.

8. This position reached the height of hypocrisy when, in the year 2002, owing to pressure from a number of groups, the EU declined to make commitments within the GATS to liberalize the health, education, and water sectors of the member countries, but continued to demand commitments in these sectors from the rest of the countries.

9. Letter from the European Commission to Thames Water, March 2005.

ralize. Outstanding among the GATS' water-related provisions still pending completion are the following:

– *Principle of most-favored nation and of national treatment:* A good summary would be that foreign companies with a presence will be benefited with the same treatment as national companies. There are exceptions, but their conditioning terms are very ambiguous, opening the way for certain arbitrariness in interpretation. Unquestionably, when an impoverished country, for example, opens its wastewater treatment market, its companies would have to compete with the much more powerful European companies under the same conditions.

– *Principle of market access:* calls for eliminating any barriers or regulations that hinder entry of foreign service providers to domestic markets; national regulations cannot block GATS benefits. Service providers may call certain rules or regulations into question if, in their opinion, they are discriminatory or create unnecessary barriers to trade in services. In other words, the GATS might eventually limit a government's capacity to regulate a foreign company's activities and ways of doing business. Though exceptions are made to this principle, as always, they must be specified at the time of the negotiations and never later.

– With respect to supplying water, especially relevant is the principle under which transactions prices cannot be limited, because, for example, measures cannot be taken aimed at preserving the volume of water reserves, or to control a given volume of extraction.

– For wastewater, all rules and regulations established by a State (for example, following a change in administration subsequent to an agreement reached under the GATS framework) to control certain concentrations of effluents could be sanctioned under the GATS if they limit a company's profits.

- *Subsidies*: Subsidies are considered to have potential distortive effects on trade in services. If a member believes that it has been adversely affected by another member's subsidy, it could request a review of said situation. We are reminded that subsidies are a relatively common practice in the water supply sector in impoverished countries, especially in rural areas, and are also widely used in urban areas (cross-subsidies), where more affluent neighborhoods, with greater water consumption, often subsidize poorer neighborhoods through quotas. Furthermore, the national treatment principle will mean that foreign providers would be able to benefit from any subsidy regimes.
- *Exceptions*: Although this GATS article is quite broad, it makes reference to those measures *necessary to protect the life and health of persons*. This is one of the main legal arguments for those working to keep water out of the GATS.
- Restrictions to safeguard the balance of payments: In order to encourage participation by impoverished countries in the GATS negotiations, certain leeway has been built into the conditions so that these countries might open their services. But these measures, once again ambiguous and highly controversial, have a core objective: that the impoverished countries be able to *protect* their balance of payments, a euphemism meaning maintain their commitments with the IMF, which often precisely promotes privatization of many services.

Negotiating Mechanisms

Current GATS negotiations revolve around the principle of *commitment*. One government requests that another government place a given sector of services under the GATS, and offers that government its own services. As a first step, the WTO member countries decide which service sectors they will make available under the GATS, with their limitations and conditions. Once the schedules

for each country are complete, negotiations begin for closing the agreement on a given service.

Upon conclusion of the round of negotiations, the member countries submit the definitive schedules of offers, which are attached to and become a part of the GATS. In those schedules, the member countries undertake specific commitments in reference to different sectors, specifying limits or commitments.

For this reason, the GATS is considered to be a *flexible* agreement. Nonetheless, such flexibility is relative; there are strict norms to secure liberalization. When a government places a service under the GATS, it is very difficult to back out, since stiff penalties are included. Though the possibility exists for a member to withdraw commitments from its schedule, the modification process must respect certain requirements:

- Members cannot withdraw a commitment until three years have elapsed.
- The modification must be notified three months in advance.
- Members affected by the modification, even those affected at a future point under certain hypothetical circumstances with respect to highly debatable benefits, may request that the case be submitted to negotiation. If an agreement is not reached, the conflict is taken to the Dispute Resolution Body, which has sanctioning powers and can determine compensations.

This means that if the GATS had already been operative, Tanzania would not have been able to drive Biwater out following two years of poor performance. Nor would Argentina have been able to do so with Aguas de Barcelona. Nor would the referendum against water privatization have been binding for the Uruguayan government, to mention just a few examples. Given the wave of privatizations that are collapsing in the water sector, it will be necessary to keep on top of what will be discussed at the upcoming summits of the WTO.

So, what was discussed at the 6th Ministerial Conference in Hong Kong?

GATS Round 2000 commenced in January 2000 and was to have finalized five years later, but difficulties in the negotiations pushed that date back beyond 2007. As of July 2005, no impoverished country had responded to the EU's demands regarding the sub-sector of *collection, treatment, and distribution of water for human use*. There are even 45 countries—all of them newly impoverished countries—that have yet to submit a first schedule of offers. Some of them have stated that they do not intend to submit their schedule until substantial movements are made in agriculture. According to the WTO Council for Trade in Services, liberalization of services is not progressing as expected: apart from the 45 schedules never submitted, those that were submitted have been low in quality, that is, their liberalization commitments are laden with limitations and are in sectors of little relevance.

To resolve these problems, the EU has pressured for a change in the GATS negotiations. The European proposal aims to establish reference quotas guaranteeing a quality and quantity floor for liberalization offers, in order to pressure reluctant countries to open their services. Moreover, for the EU, water is a quality sector, included in 66% of its demands. In fact, a good part of the EU proposal was included in the Final Hong Kong Declaration.

This change in methodology was one of the stellar issues in Hong Kong. The proposal, if applied, will have serious adverse effects on the majority of countries of the South, rendering useless that the impoverished countries acceded to the GATS' creation on the condition that it be flexible. Indeed, their services sectors, especially in relation to water, are very weak, incapable of competing with the Europeans.

Despite all this pressure, the majority of countries of the South have kept protection mechanisms on the agenda aimed at creating leeway for withdrawal from a commitment to liberalization prior to a given period. But affluent countries argue that these issues should

be discussed after Hong Kong. As noted above, it is necessary to stay on high alert in this regard, since the liberalizing wave over water supply and sanitation (promoted, for example, by the World Bank, which has conditioned 30% of its loans along these lines in the water sector)¹⁰ is turning out to have a very poor success rate, and in many of the world's cities the leading multinational water companies are being forced to abandon their concessions after a few years.

Finally, the great issue to be resolved in Hong Kong is whether supplying water should or should not be considered a commodifiable service. So far, no matter how disagreeable it may be to the EU, water is not formally included in the GATS; but strong pressure is still being exerted to reclassify environmental services in such a way that water management for domestic use would, in fact, become a new subsector of the GATS.

It would be good if the EU member countries followed the example of Norway, which just prior to the Hong Kong summit withdrew water from its schedule of commitments.¹¹ And they just might be doing so, since the pressure placed on Brussels by the social movements looks like it's starting to bear fruit. Indeed, at the most recent round of *commitments* that closed in February 2007, the European Commission provisionally withdrew its *demands* in the sector with respect to supplying potable water, although it maintains those made in the realm of wastewater treatment.¹²

10. In the year 2002 this percentage rose to 80%.

11. As background, prior thereto the German and Belgian parliaments had directed their governments to encourage the EU to withdraw its commitments in the water sector.

12. The declaration literally states that the EU is not participating in any request addressing... water.

VI. RIGHT TO WATER

Maude Barlow*

Thousands have lived without love; not one without water.

W. B. Auden, *First Things First*.

A fierce resistance to the inequitable distribution of water has grown in every corner of the globe, giving rise to a coordinated and, given the powers it is up against, surprisingly successful global water justice movement. «Water for all» is the rallying cry of local groups fighting for access to clean water and the life, health and dignity that it brings. Many of these groups have lived under years of abuse, poverty and hunger. Many have already been left without public education and health programs. But somehow, the assault on water has been the great standpoint for millions. Without water there is no life, and for many communities around the world, the struggle over the right to their own local water sources has become a politically galvanising milestone.

A mighty contest has grown between those (usually powerful) forces and institutions that see water as a commodity, like running shoes or Coke, to be put on the open market and sold to the hig-

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hest bidder, and those who see water as a public trust, a common heritage of people and nature, and a fundamental human right. The origins of this movement, generally referred to as the global water justice movement, lie in the hundreds of communities around the world where local groups and communities are fighting to protect their local water supplies from pollution, destruction by dams, and theft —be it from other countries, their own governments, or private corporations such as bottled water companies and private transnational utilities providing water on a for-profit basis.

From thousands of local struggles for the basic right to water, galvanised through international resistance to the denial of these rights, a highly organised and mature global water justice movement has been forged and is shaping the future of the world's water supplies. This movement has already had a profound effect on global water politics, forcing global institutions such as the World Bank and the United Nations to address the inadequacies of their policies, and has helped formulate water policy inside dozens of countries. The movement has forced open a debate over the control of water and challenged the «Lords of Water» who have set themselves up as the arbiters of this dwindling resource. The growth of a democratic water justice movement is a critical and positive development that will bring needed accountability, transparency and public oversight to the water crisis as conflicts over water loom on the horizon.

It is Time for a United Nations Covenant on the Right to Water

Increasingly, this global water justice movement is demanding a change in international law to settle once and for all the question of who controls water. It must be commonly understood that water is not a commercial good, although of course it has an economic dimension, but rather, a human right and a public trust. What is needed now is binding law to codify that states have the obligation to deliver sufficient, safe, accessible and affordable water to their

citizens as a public service. While «water for all, everywhere and always» may appear to be self-evident, the fact is that the powers moving in to take corporate control of water have resisted this notion fiercely. So have many governments, either because, in the case of rich governments, their corporations benefit from the commodification of water, or, in the case of poor governments, because they fear they would not be able to honour this commitment. So groups around the world are mobilising in their communities and countries for constitutional recognition of the right to water within their borders, and at the United Nations for a full treaty that recognises the right to water internationally. (The terms covenant, treaty, and convention are used interchangeably at the UN).

Rosmarie Bar of Switzerland's Alliance Sud explains that behind the call for a binding convention or covenant are questions of principle that must be decided soon as the world's water sources become more depleted and fought over. Is access to water a human right or just a need? Is water a common good like air or a commodity like Coca Cola? Who is being given the right or the power to turn the tap on or off —the people, governments, or the invisible hand of the market? Who sets the price for a poor district in Manila or La Paz —the locally elected water board or the CEO of Suez? The global water crisis is crying out for good governance, says Bar, and good governance needs binding, legal bases that rest on universally applicable human rights. A UN covenant would set the framework of water as a social and cultural asset, not an economic commodity. As well, it would establish the indispensable legal groundwork for a just system of distribution. It would serve as a common, coherent body of rules for all nations, and clarify that it is the role of the state to provide clean, affordable water to all of its citizens. Such a covenant would also safeguard already accepted human rights and environmental principles in other treaties and conventions.

Michigan lawyer Jim Olson, who has been deeply involved in the fight against Nestlé, says that the point must be «repeated and repeated» that privatisation of water is simply incompatible with

the nature of water as a commons and therefore, with fundamental human rights.

Water is always moving unless there is human intervention. Intervention is the right to use, not own and privatise to the exclusion of others who enjoy equal access to use water. It is important to distinguish between sovereign ownership and control of water, enjoyed by states or nations through which water flows or moves, and private ownership. Sovereign state ownership is not the same and has to do with control and use of water for the public welfare, health and safety, not for private profit.

If however, says Olson, the state sides with the World Bank and negotiates private rights to its water with corporations, that state has violated the rights of its citizens who would have redress under the principle of human rights if the covenant is well crafted.

A human rights convention or covenant imposes three obligations on states: the Obligation to Respect, whereby the state must refrain from any action or policy that interferes with the enjoyment of the human right; the Obligation to Protect, whereby the state is obliged to prevent third parties from interfering with the enjoyment of the human right; and the Obligation to Fulfil, whereby the state is required to adopt any additional measures directed toward the realisation of that right. The Obligation to Protect would oblige governments to adopt measures restraining corporations from denying equal access to water (in itself an incentive for water companies to leave) as well as polluting water sources or unsustainably extracting water resources.

At a practical level, a right to water covenant would give citizens a tool to hold their governments accountable in their domestic courts and the «court» of public opinion, as well as seeking international redress. The World Conservation Union says:

Human rights are formulated in terms of individuals, not in terms of rights and obligations of states vis-à-vis other states as international law provisions generally do. Thus by making water a human right, it could not be taken away from the people. Through a rights-based approach, victims of water pollution and people deprived of necessary water for meeting their basic needs are provided with access to remedies. In contrast to other systems of international law, the human rights system affords access to individuals and NGOs.

The Union also states that a right to water covenant would make both state obligations and violations more visible to citizens. Within a year of ratification, states would be expected to put in place a plan of action, with targets, policies, indicators, and time-frames to achieve the realisation of this right. As well, states would have to amend domestic law to comply with the new rights. In many cases, this will include constitutional amendments. Some form of monitoring of the new rights would also be established and the needs of marginalised groups such as women and indigenous peoples would be particularly addressed.

A covenant would also include specific principles to ensure civil society involvement to convert the UN convention into national law and national action plans. This would give citizens an additional constitutional tool in their fight for water. As stated in a 2003 manifesto on the right to water by Friends of the Earth Paraguay:

An inseparable part of the right is control and sovereignty of local communities over their natural heritage and therefore over the management of their sources of water and over the use of the territories producing this water, the watersheds and aquifer recharge areas.

A right to water covenant would also set principles and priorities for water use in a world destroying its water heritage. The cove-

nant we envisage would include language to protect water rights for the earth and other species and would address the urgent need for reclamation of polluted waters and an end to practices destructive of the world's water sources. As Friends of the Earth Paraguay put it:

The very mention of this supposed conflict, water for human use versus water for nature, reflects a lack of consciousness of the essential fact that the very existence of water depends on the sustainable management and conservation of ecosystems.

Progress at the United Nations

Water was not included in the 1947 United Nations Universal Declaration of Human rights because at that time water was not perceived to have a human rights dimension. The fact that water is not now an enforceable human right has allowed decision-making over water policy to shift from the UN and governments toward institutions and organisations that favour the private water companies and the commodification of water such as the World Bank, the World Water Council, and the World Trade Organisation. However, for over a decade, calls have been made at various levels of the United Nations for a right to water convention. Civil society groups argued that, because the operations of the water companies had gone global and were being backed by global financial institutions, nation-state instruments to deal with water rights were no longer sufficient to protect citizens. International laws were needed, we argued, to control the global reach of the water barons. We also noted that at the 1990 Rio Earth Summit, the key areas of water, climate change, biodiversity and desertification were targeted for action. Since then, all but water have resulted in a United Nations convention.

This lobbying started to pay off and the right to water was recognised in a number of important international UN resolutions and declarations. These include the 2000 General Assembly

Resolution on the Right to Development; the 2004 Committee on Human Rights resolution on toxic wastes; and the May 2005 statement by the 116-member Non-Aligned Movement on the right to water for all. Most important is General Comment Number 15, adopted in 2002 by the UN Committee on Economic, Social and Cultural Rights that recognised that the right to water is a prerequisite for realising all other human rights and «indispensable for leading a life in dignity». (A General Comment is an authoritative interpretation of a human rights treaty or convention by an independent committee of experts that has a mandate to provide states with an interpretation of the treaty or convention. In this case, the interpretation applies to the International Covenant on Economic, Social and Cultural rights). General Comment Number 15 is therefore an authoritative interpretation that water is a right and an important milestone on the road to a full binding UN convention.

But as John Scanlon, Angela Cassar and Noemi Nemes of the World Conservation Union say in their 2004 legal briefing paper, *Water as a Human Right?*, General Comment Number 15 is an interpretation, not a binding treaty or convention. To clearly bind the right to water in international law, a binding covenant is needed. So the pressure for a full covenant intensified. In early 2004, Danuta Sacher of Germany's Bread for the World and Ashfaq Khalfan of the Right to Water program at the UN Centre on Housing Rights and Evictions called a summit and a new international network called Friends of the Right to Water was born. The network set out to mobilise other water justice groups and national governments to join the campaign to strengthen the rights established in General Comment Number 15 and put in place the mechanisms to ensure implementation of the right to water through a covenant.

In November 2006, responding to a call from several countries, the newly formed UN Human Rights Council requested the Office of the High Commissioner for Human Rights to conduct a detailed study on the scope and content of the relevant human rights obligations related to access to water under international human rights

instruments, and to include recommendations for future action. While the request does not specifically refer to a covenant, many see this process as having the potential to lead to one. In April 2007, Anil Naidoo of the Council of Canadians' Blue Planet Project, another founding member of Friends of the Right to Water, organised to present a letter of endorsement calling for a right to water covenant to Commissioner Madame Louise Arbour, signed by 176 groups from all over the world.

It has been essential to gain the support of governments in the Global South, many of whom fear that their citizens could use a covenant against them if they are unable to immediately fulfil their new obligation. Proponents of a covenant emphasise that the application of a new human rights obligation is understood to be progressive. States without the power to implement the full right are not held accountable for not immediately delivering. What is required is the need to rapidly take minimal steps for implementation that will increase as capacity increases. But some governments are using their incapacity as an excuse to cover real priorities, such as funding the military rather than public services. A rights-based approach to development distinguishes between inability and unwillingness. As agreed at the 1993 UN World Conference on Human Rights, «While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognised human rights». A government that fails to ratify a right to water covenant should not try to hide behind capacity arguments.

Nor should relatively water-rich governments like Canada hide behind a false fear (which Canada is doing) that they will be forced to share the actual water supplies within their territories. A human rights treaty is between a nation-state and its citizens. Recognition of the right to water in no way affects a country's sovereign right to manage its own water resources. What will be expected of First World governments and their development agencies is adequate aid to help developing countries meet their goals and ensure that

their aid, and that of the World Bank, is directed toward non-profit public water services.

Duelling Visions

While the global water justice movement is excited and encouraged by these developments, there is a growing concern that this process could be high-jacked by the water corporations, some northern countries, and the World Bank, and used to create a convention that would enshrine the inclusion of private sector players. There is now a widespread understanding that the call for the right to water is an idea whose time has come and some who opposed it until very recently have decided to drop their opposition and help shape both the process and the end product in their image. The irony here is that this new scenario may just have arisen out of the very success of the global water justice movement's hard work. Until recently, the global institutions and the big water companies adamantly opposed a right to water convention. So did many European countries such as France, England and Germany, home to the big water companies (The two countries that spearheaded the November 2006 request for the study by the Office of the High Commissioner for Human rights were Germany, home to RWE, and Spain, home to Agbar.) At the World Water Forums in The Hague and Kyoto, World Water Council members and governments refused civil society calls for a right to water convention and said that water is a human need not a human right. These are not semantics: you cannot trade or sell a human right or deny it to someone on the basis of inability to pay.

At the 4th World Water Forum in Mexico City, the Ministerial Declaration once again did not include the right to water. But the World Water Council did release a new report called *The right to Water: From Conception to Implementation*, a bland restatement of many UN documents with almost no mention of the private sector (except to say that the right to water can be implemented in a «variety of ways») and with no reference to the public/private

debate raging around it. While the report falls far short of recommending a convention on the right to water, the first words of the forward (written by Loic Fauchon, president of the World Water Council and senior executive with Suez) capture the essence of the situation in which these corporations and the World Bank now find themselves: «The right to water is an element that is indissociable from human dignity. Who today, would dare say otherwise ». Who indeed?

The World Water Council is working with Green Cross International, an environmental education organisation headed up by Mikhail Gorbachev, which has launched its own high-profile campaign for a United Nations convention on the right to water, and it is just the sort of convention that Loic Fauchon could live with. Although the Green Cross draft convention admits that there is a problem with «excessive profits and speculative purposes» in the private exploitation of water, it nevertheless places the commercial and human right to water on an equal footing, sets the stage for private financing for water services, allows for the private management of water utilities and says that water systems should follow market rules. In a legal analysis of the Green Cross draft convention, Steven Shrybman, a Canadian trade expert and legal counsel to Canada's Blue Planet Project, says it is «so seriously flawed as to represent a retreat from current international legal protection for the human right to water». Yet Gorbachev defended his pro-corporate proposal in an interview with *The Financial Times* (April 17 2006) when he said that corporations are the «only institutions» with the intellectual and financial potential to solve the world's water problems and that he is «prepared to work with them».

The Global Water Justice Movement would never endorse a convention or covenant of this kind. In submissions to the High Commissioner, hundreds of groups have urged the United Nations to take a clear stand in favour of a public view of water. For them, a covenant must explicitly describe water not only as a human right but also as a public trust. As well, a United Nations covenant on

the right to water will have to address the two great shortcomings of existing human rights law if it is to be accepted by civil society. Those shortcomings are their failure to establish meaningful enforcement mechanisms and the failure to bind international bodies.

In his submission to Madame Arbour, lawyer Steve Shrybman said that the most significant development in international law has not been taking place under the auspices of the United Nations, but rather, under the world Trade Organisation and the thousands of bilateral investment treaties between governments that have codified corporate rights into international law.

Under these rules, water is regarded as a good, an investment and service, and as such, it is subject to binding disciplines that severely constrain the capacity of governments to establish or maintain policies, laws and practices needed to protect human rights, the environment or other non-commercial societal goals that may impede the private rights entrenched by these trade and investment agreements.

Moreover, states Shrybman, these agreements have equipped corporations with powerful new tools in asserting proprietary rights over water with which the state cannot interfere. «The codification of such private rights creates an obvious and serious impediment to the realisation of the human right to water». Private tribunals operating under these treaties are now engaged in arbitrating conflicts between human rights norms and those of investment and trade law – a role they are ill-suited to serve. He goes on to challenge the High Commissioner to recognise the need to deal with this reality and warns that unless UN bodies are able to reassert their role as the fundamental arbiter of human rights, they risk becoming bystanders as private tribunals operating entirely outside the UN framework resolve key questions of human rights law. To be effective, the Covenant must assert the primacy of the human right to water where there is a conflict with private and commercial interests. As

well, this instrument must apply to other institutions beside states, most importantly, transnational corporations, the WTO, and the World Bank.

Grassroots Take the Lead

Clearly, the stage has been set for another form of contest. Having been successful in forcing the United Nations to deal with the right to water, the global water justice movement must now work hard to ensure it is the right kind of instrument. There are many good signs. While several important countries remain opposed to the right to water, most notably the United States, Canada, Australia, and China, many more have come on board in recent years. The European Parliament adopted a resolution acknowledging the right to water in March 2006, and in November 2006, as a response to the 2006 UN Human Development Report on the world's water crisis, Great Britain reversed its opposition and recognised the right to water. As Ashfaq Khalfan of the Centre on Housing Rights and Evictions explains, most countries in one form or another have supported the notion of the right to water in various resolutions at the United Nations and can be counted on to do so again. The challenge is to get support for a covenant that will really be able to deliver on the promise. This is where civil society groups can be so effective. In many countries, water justice groups are hard at work to convince their governments to support the right kind of tool.

But they are not waiting for the United Nations. Many are also working hard within their countries to assert the right of water for all through domestic legislative changes. On October 31 2004, the citizens of Uruguay became the first in the world to vote for the right to water. Led by Adriana Marquisio and Maria Selva of

the National Commission for the Defence of Water and Life and Alberto Villarreal of Friends of the Earth Uruguay, the groups first had to obtain almost 300,000 signatures on a plebiscite (which they delivered to Parliament as a «human river»), in order to get a referendum placed on the ballot of the national election calling for a constitutional amendment on the right to water. They won the vote by an almost two-thirds majority, an extraordinary feat considering the fear mongering that opponents mounted. The language of the amendment is very important. Not only is water now a fundamental human right in Uruguay, but also social considerations must now take precedence over economic considerations when the government makes water policy. As well, the constitution now reflects that «the public service of water supply for human consumption will be served exclusively and directly by state legal persons», that is to say, not by corporations.

Several other countries have also passed right to water legislation. When apartheid was defeated in South Africa, Nelson Mandela created a new constitution that defined water as a human right. However, the amendment was silent on the issue of delivery and soon, the World Bank convinced the new government to privatise many of its water services. Several other developing countries such as Ecuador, Ethiopia and Kenya also have references in their constitutions that describe water as a human right but they too do not specify the need for public delivery. The Belgium Parliament passed a resolution in April 2005 seeking a constitutional amendment to recognise water as a human right, and in September 2006, the French Senate adopted an amendment to its water bill that says that each person has the right to access clean water. But neither country makes reference to delivery. The only other country besides Uruguay to specify in its constitution that water must be publicly delivered is The Netherlands, which passed a law in 2003 restricting the delivery of drinking water to utilities that are entirely public. But The Netherlands did not affirm the right to water in

this amendment. Only the Uruguayan constitutional amendment guarantees both the right to water and the need to deliver it publicly, and is therefore a model for other countries. Suez was forced to leave the country as a direct result of this amendment.

Other exciting initiatives are underway. In August 2006, the Indian Supreme Court ruled that protection of natural lakes and ponds is akin to honouring the right to life – the most fundamental right of all according to the Court. Activists in Nepal are going before their Supreme Court arguing that hiring a private firm to manage the drinking water system in Kathmandu violates the right to health guaranteed in the country's constitution. The Coalition Against Water Privatisation in South Africa is challenging the practice of water metering before the Johannesburg High Court on the basis that it violates the human rights of Soweto's citizens. President Evo Morales of Bolivia has called for a «South American convention for human rights and access for all living beings to water» that would reject the market model imposed in trade agreements. At least a dozen countries have reacted positively to this call. Civil society groups are hard at work in many other countries to introduce constitutional amendments similar to that of Uruguay. Eco-fondo, a network of 60 groups in Colombia, has launched a plebiscite toward a constitutional amendment similar to the Uruguayan amendment. They need at least one and a half million signatures and face several court cases and a dangerous and hostile opposition. Dozens of groups in Mexico have joined COMDA, the Mexican Coalition for the Right to Water, in a national campaign for a Uruguayan-type constitutional guarantee to the right to water.

A large network of human rights, development, faith-based, labour and environmental groups in Canada has formed Canadian Friends of the Right to Water, led by the Blue Planet Project, to get the Canadian government to change its opposition to a UN covenant on the right to water. A network in the United States led by Food and Water Watch is calling for both a national water trust to ensure safekeeping of the nation's water assets and a change of

government policy on the right to water. In the summer of 2007, the Italian Water Movements Forum delivered over 400,000 petitions to the Italian Parliament calling for the right to water and a return to public control of Italy's water services. By law, the Parliament must now debate this issue.

The right to water is a fundamental right. It is a right whose time has come. Let us commit to a water secure future based on the principles of water protection and watershed renewal, equity and justice, and the right of all living things to water for life.

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VII. POLITICISING PARTICIPATION IN URBAN WATER SERVICES

Philipp Terhorst*

Introduction

Until now, the debate on how to substantially improve water services has hardly recognised the politicised form in which social movements participate in the reform of governance and management of urban water services (water and sanitation). As will be discussed below, this is due to the contested hegemony of commercialisation and private sector participation in water reforms. But there are numerous examples of effective social struggles, citizen and stakeholder participation in governance and management of water systems and otherwise functioning public utilities that suggest that broad-ranging qualitative changes can be achieved beyond hegemonic, neoliberal development agendas (e.g. Balanyá et al., 2004).

The declaration of a «Global Water Movement» was symbolically announced at a civil society conference held in Delhi in January 2004. It was a result of and stands for the strengthening of global networks and manifold local manifestations of water movements across the globe. This movement acutely raises the question of the

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impact of social struggles over water, and represents a rock-solid opportunity to transform the paths of development of urban water and sanitation; however, its properties, ramifications and potential, and its notion of a progressive public service remain hidden.

For this reason, the paper problematises urban social movements and their transnational networks in terms of the politicised form of participation they engender in the reform of governance and management of urban water and sanitation. I conclude by arguing that water movements can have a proactive and constructive role in the reform of management and governance of urban water, and as such, are key players in transforming the paths of development of urban water and sanitation.

The Contested Urban Water Sector

There has been much mention of the 1.1 billion people without access to improved water supply, and the 2.4 billion people without adequate access to improved sanitation. Something you will hear far less about, however, is the poor management, inefficient investment, social inequalities and dysfunctional politics that represent some of the key reasons responsible for this situation (WHO, 2000). Although there has been an obvious ongoing failure to meet the emerging challenges, the areas of urban water and sanitation remain in a stalemate. The main reasons behind this is the constraints exerted on them by a neoliberal political economy and the cultural impact of capitalist globalisation; that is to say, predominant development institutions such as the World Bank still decide the central discourse, how problems are perceived, as well as their proposed solutions. These institutions consider liberalisation, commercialisation, privatisation and other forms of private sector participation as the sole path towards efficient water governance and management. As a result, meaningful debate on alternative policy options and the role of organised citizens and workers rarely enters the policy debates in any significant way.

However, the paths of reform are highly contested by trade unions, NGOs, consumer organisations and social movements. This social contestation is intertwined with a minority voice in professional and academic debates which also asserts that public sector reforms without recourse to commercialisation of water are better placed to deal with the (urban) water crisis. The key divide for the future development of public policy on water is, without doubt, the question whether water is a commodity or a common good (Rosenberger et al., 2003). Indeed, privatisation or other forms of commercialisation cannot and should not deliver the required improvements to water services.

Essential debates on other public policy options are required, particularly on the construction of democratic, public, people-centred water services. Despite the often hostile environment for public service delivery (Swyngedouw, 2004), over recent years a wide range of innovative approaches, many based on the active engagement of citizens, have resulted in substantial improvements in public water and sanitation services in developing countries (Balanyá, 2005, Hall, 2001, 2003). In this context, this paper draws attention to the fact that struggles against privatisation open a window of opportunity for the democratisation, and thus improvement of water management and governance.

Urban Water and Sanitation Reform as a Politicised Process.

The concern of this paper is to develop a tentative conceptual framework for urban water and sanitation as a politicised process, and to thereby investigate the role and impact of urban social movements and their transnational networks in the reform of governance and management of urban water and sanitation. I explore changing roles, possible impacts and potentials of the «movement sector» in the reform and transformation of urban water management and governance, and aim to develop a critical-supportive approach.

A basic hypothesis throughout the text is that water movements have critical potential to impact on the path of development for urban water and sanitation because they develop progressive forms of public service delivery and thus transform public sector institutions. They could have a wide ranging impact on the serious but preventable problems of urban water and sanitation if they succeeded in the development and implementation of effective democratic socio-economic systems that are relevant and suitable to their subjectivities and environments.

To view urban water and sanitation reform as a politicised process is founded on a critical view of the subjects and their agency, especially in local social struggles, and could help to undo the current impasse between theory and practice, or policy and implementation of water governance and management. This is because the urgent requirement to find effective solutions for water and sanitation problems is linked to broader societal questions of political struggle for a democratic public. In this way, politicised participation builds on the role of autonomous citizen agency and the relation of citizens to the state and to public service delivery in particular.

Approaching Social Movements

Social movements are powerful alliances, gathered across classes and around issues of collective consumption (Castells, 1983). Water movements, understood here as urban social movements relating to water service delivery, are understood for the purpose at hand in an expansive sense: As those actors who work for or demand the protection of the public character of water and the human right to water in opposition to privatisation and commercialisation of water services. I conceptualise an urban water movement sector that includes transnational, national and local NGOs, local and national social movement organisations and trade unions as the primary actors. Secondary actors can be, amongst others, sub-elements of

state administrations, such as a public water utility, and non-state actors such as foundations, research institutes, and epistemic communities. They form 'mixed actor coalitions', an abstraction that points to the complexity of involved organisations, epistemological differences and forms of action (Shaw as quoted in Khagram et al., 2002).

Urban water movements appear in the context of a crisis in urban services and are unified by a common mobilisation and political consciousness. They are autonomous political actors whose emphasis is on the organisational change of the public sector. According to Rao et al. (2000), the focus of the urban water movement sector is the behaviour of industry, in this case water and sanitation services, and related political structures and processes. Even though a basic feature of these movements is a non-hierarchical mode of organisation,—notwithstanding traditional unionism as a key driver in many struggles— their purpose of public services reform, in other words cultural innovation of urban services, means that these movements are inherently linked to formal political institutions of the state. This means that the micro-political level, for example a public utilities company, while remaining the key level, is extended because governance systems of public services are linked at state and increasingly international levels. This expansion of focus is reflected in the transnational character of the water movement even though the key level remains the local.

Water Movements and their Agency

On the 14th of January 2004, the Global Water Movement was launched during the Peoples' World Water Forum in Delhi. It was one of a series of events which have consolidated the transnational networks in recent years. The networks organise relatively straightforward transnational campaigns against multinationals like Suez or Coca-Cola. Campaigns against international institutions like the World Bank are more complex and full of asymmetric

civil society strategies ranging from critical engagement to confrontational opposition. Despite this transnationalisation, structurally speaking, water movements remain highly focused on the local and national.

The movement sector contains three overall strategic approaches. Firstly, the strategy of the human right to water, which aims at norm creation. Secondly, local or national anti-privatisation campaigns, which are mostly defensive strategies. The third is a constructive strategy, which explicitly explores democratic public sector reform as alternatives to privatisation, and aims to progressively transform and democratise failing public institutions. Localised struggles against water services privatisation have erupted all over the world and have led in many cases to cancellations, re-nationalisations or stalemates in privatisation processes. By and large, they have engendered some valuable processes of democratisation of public service institutions around the world, such as the city of Huancayo in central Peru, for example.

Social movement organisations can sometimes even turn into implementing agencies, as occurred in the year 2000 in the city of Cochabamba in Bolivia, where the local social movement organisation took over partial control of the utility in an interim process to reconstitute the public utility. Without the space to explain the complex process and results of the social struggle in Cochabamba, the crucial lesson to be drawn from the case of Cochabamba is that movements can indeed turn into effective agents in sector reform. However, the creation of a public alternative that improves water and sanitation delivery through the participation of a social movement is highly problematic and poses a formidable challenge to social movement organisations and the movement sector in general (Terhorst, 2003).

Water movements politicise water and sanitation, and can influence, for example, a utility to perform better or a national policy to take into account the needs of the urban poor. Where there is a public utility under pressure to be privatised it is often

driven by central government legislation, which is often encouraged and conditioned by international donors. Or local governments are under fiscal or legislative pressure or are run by certain political forces that favour privatisation. The result is that different government levels become focal points of campaigns and struggles, as can international organisations if they exert pressure to privatise. Anti-privatisation remains the main mobilisation issue for the movement sector at this point in time, although working conditions, access and quality of service, public participation and sustainability—in other words, the more complex and relevant set of movement demands—are also moving into the centre of debate.

I argue that the movement sector is undergoing a qualitative turn from the limited focus on the opposition to privatisation towards a generalised challenge in favour of improved publicness in the provision of public services. Privatisation becomes the precipitating factor for politicisation that increasingly confronts long standing grievances in public service delivery and constitutes a vision and capacity to propose and enforce functioning public services. As a result, movements are increasingly affecting how problems are perceived and the proposed solutions, and influencing international and national norms and legislation. In some instances, they participate in the establishment of public solutions in a direct way, generating a dimension of proposing, developing and implementing 'alternatives', in both normative-legislative and institutional terms. For example, the collective publication project and network called 'Reclaiming Public Water' (Balanyá et al., 2004) collects examples of a renewed vision of public service in water provision. This includes calls for the human right to water, public ownership and control, public participation and international solidarity, and new policy tools like public-public partnerships. The publication and network of the same name are important articulations between the local and the global. They address the problem that local campaigns often still do not articulate specific alternative policies for the reform of utilities, because the cost of the information to do so

are high (Hall et al., 2005).

Politicised Participation

Movement organisations are considered protectors and transformers of public water, and to achieve this, social movements need to participate in public administration. More specifically, horizontal networks of water movements are required to interact with hierarchies of state institutions. This is a specific feature of water movements that stems from the fact that their protagonism focuses on transforming a public service that is constituted in state institutions, legislative frameworks and sector organisations. It means that there is a need for collaboration and productive engagement with the institutions of the water sector in general, and the relevant stakeholders and local government in particular. In order to become relevant and effective agents in water sector reform, water movements have to develop new capacities and forms of organisation in order to engage public authorities and sector organisations autonomously and constructively. The challenge in conceptualising politicised participation lies in thinking of horizontal networks and hierarchical organisations such as public utilities, working together in movement-led, pro-public water reform projects.

The inherently political character of water sector reform means that politicisation and constructive participation of movements in water management and governance is an element that a) cannot be neglected as a determining factor in sector reform, though it all too often is; b) should be seen as an opportunity for progressive approaches rather than being an obstacle, though certainly politicisation is exactly that for market-driven reforms, and c) this politicisation occurs in the appearance of new politics, as part of alter-globalisation dynamics mostly on the basis of movement action by social movements, local and international NGOs and the networks of these on the transnational and global level.

Participation is a key concept within several sub-fields of

international development and governance, including decentralisation, social capital and social movements (Mohan and Stokke, 2000). Social movements are considered to play a key role in extending citizenship status and rights to marginal groups (Hickey and Mohan, 2003) and cannot be excluded from perspectives on participation. Nevertheless, «development theory and practice has been wary of engaging directly with social movements, preferring the more orderly and ‘makeable’ world of NGOs» (Hickey and Mohan, 2003, p.24).

The focus of politicised participation lies on citizenship and state-society relations and requires conceptual advances that consider popular agency beyond top-down or pre-arranged interventions under the header of participatory governance or development. What is needed is an understanding that brings together participation and popular agency. According to Bruns (2003), the general public, citizens and users need to be engaged in water management in better ways. He argues that increasing competition for water and institutional mandates for increasing participation require new capabilities and new institutional arrangements. Although he refers mainly to resource management, urban issues can be considered along the same lines.

Institutional options for participatory governance, he maintains:

Can cover a full range of levels of participation. Analysis and reforms concern choices not only about the possibilities for making government decision-making more transparent and accountable, engaging citizens and sharing power, but also ways in which governments can act to empower user organizations with authority, establish suitable regulatory arrangements for autonomous action, and provide advice to support empowered decisions. (Bruns, 2003, p.19)

With this, Bruns (2003) expresses a repeatedly voiced notion

that collective and autonomous action by citizens is a necessary element for the consideration of participation. Thereby, the depoliticised nature of the liberal and populist traditions and the instrumentalist, neoliberal application of participation are opened to critique and change. This moves into focus the links between participatory development theory and political action and the ways in which new political spaces are imagined and constructed.

Politicised participation is considered an adequate conceptualisation to consider the necessity of social movements critically and autonomously engaging in public institutions in order to reform public service delivery. It is a useful conceptual and strategic framework for water movement engagement in public service reform that refers to mobilised and politically conscious citizens, who organise in different social movement organisations and constitute a movement sector in a specific locality and polity. Their collective and autonomous action aims to impact on water sector reform, for example a water utility, in order to transform society-state relations in such a way that it moves popular agency to the centre of the debate.

Conclusions

Given the systemic failure to provide adequate water and sanitation to billions of people, it is clear that the debate over paths of development is not over. Especially regarding the dichotomy of private or public, which should be at the heart of the debate because of its ramifications for the capacity and agency of citizens to address their own realities through a democratic public. The paper has argued that the movement sector has potential to affect a redirection of the path of development of urban water and sanitation away from commercialisation, liberalisation and privatisation towards the creation of new organisational forms for democratic public sector management and governance. A detailed critical evaluation of this potential remains a future task.

Globalisation from below takes the form of an urban water movement sector that is shifting its discourse from anti-privatisation to a challenge for democratic public water services. This movement sector understands itself as an agent for change and intends to participate in the reform of management and governance of water services. Social movements therefore not only resist privatisation and commodification of water services but endeavour to create political space for non-immanent transformation of urban water and sanitation. They aim to redefine the character and relevance of public service, which includes a preoccupation with effective forms of public administration. In that way, water movements envision and work towards a democratic publicness of water.

If challenges by the movement sector were to be translated on the basis of an understanding of politicised participation into the domain of participatory governance and management, that would foster the capability of water professionals, institutions, and policy to work with the movement sector in order to better achieve water for all. As described above, a global process of exchange of experiences and debate between progressive forces is emerging. Further investigation needs to occur on this process of collective learning between public utility managers and water professionals, civil society, trade unions, social movements and governments, because it offers an essential tool for overcoming obstacles for progressive public water. What is required is an attempt to stimulate not only academic, but also 'collective research' (Lelio Basso) that aims to be an exchange process between theory and political practice in which water movements and public utilities can find new ways to empower themselves and thus impact on urban water systems in a constructive way. This involves, in the sense of Pierre Bourdieu, the development of collective intelligence. In other words, further research needs to be sensitive to and focused on creating opportunities for public service on the basis of social movement protagonism.

References

- BALANYÁ, B., BRENNAN, B., HOEDEMAN, O., KISHIMOTO, S., TERHORST, P. (ed.) (2005). *Reclaiming Public Water, Achievements, Struggles and Visions from Around the World*, Corporate Europe Observatory, Transnational Institute Amsterdam.
- BRUNS, B. (2003). «*Water Tenure Reform: Developing an Extended Ladder of Participation "Politics of the Commons: Articulating Development and Strengthening Local Practices"*», RCSD Conference, July 11-14, 2003, Chiang Mai Thailand.
- CASTELLS, M. (1983). *The City and the Grassroots: a Cross-Cultural Theory of Urban Social Movements*, Edward Arnold London.
- GIDDENS A., DUNEIER M., APPELBAUM V. (2001). *Introduction to Sociology*. 4th edition, W W Norton & Co Inc.
- HALL, D. (2001) *Water In Public Hands*, PSIRU, University of Greenwich.
- (2003) *Public Services Work! Information, insights and ideas for our future*, Public Services International.
- D., LOBINA, E., DE LA MOTTE, R. (2005). *Public Resistance to Privatisation in Water and Energy, Development in Practice*, Vol. 15, Nr. 3 and 4.
- HICKEY, S., MOHAN, G. (2003). *Relocating Participation Within a Radical Politics of Development: Citizenship and Critical Modernism*, Draft working paper prepared for conference on 'Participation: From Tyranny to Transformation? Exploring New Approaches to Participation in Development'.
- S., MOHAN, G. (ed.) (2005). *Participation: From Tyranny to Transformation? Exploring New Approaches to Participation in Development*, Zed Books.
- JUBILEE SOUTH AND FREEDOM FROM DEBT COALITION (2004). *People's Resistance and Alternatives to Privatization of Water and Power Services*, Quezon City, Philippines. 2004.

- KHAGRAM, S., RIKER, J. V., SIKKINK, K., (ed.) (2002). *Restructuring World Politics, Transnational Social Movements, Networks and Norms*, University of Minnesota Press, Minneapolis and London.
- MOHAN, G., STOKKE, K. (2000). «Participatory Development and Empowerment: The Dangers of Localism». *Third World Quarterly*, Vol 21, No 2, pp. 247–268.
- RAO H., MORRILL C., ZALD, MAYER (2000). Power Plays, How Social Movements And Collective Action Create New Organizational Forms. *Research in Organizational Behaviour*, Vol. 22, pp. 239–282.
- ROSENBERGERH., GERMINALR., ORDIGUERA., GAVALDÀ, M. (2003). *Agua, mercancía o bien común?* [Water: Commodity or Common Good?], Alikornio Ediciones, Barcelona.
- SWYNGEDOUW, E. (2004) Privatising H2O - Turning Local Waters into Global Money, *Journal fur Entwicklungspolitik*, Vol. 19, Nr. 4, 10-33.
- TERHORST, P. (2003). *Public-Popular Organisations, The Case Of Cochabamba, Bolivia*, MSc thesis WEDC, Loughborough University.
- WHO (2000). *Global Water Supply and Sanitation Assessment 2000* Report. [http://www.who.int/docstore/water_sanitation_health/Globassessment/GlobalTOC.htm], retrieved 15.10.2006.

VIII. PUBLIC MANAGEMENT WITH SOCIAL PARTICIPATION AND CONTROL: A CALL FOR THE HUMAN RIGHT TO WATER

Jaume Delclòs y Ayats*

Access to water and basic sanitation is vital for a life with dignity of individuals and peoples, and is indispensable for good governance. Water for basic human and residential needs, in sufficient quality and quantity, is considered a Human Right by the United Nations Human Rights Council.

Access to water and sanitation is unequal from one part of the globe to another, marked by great gaps within one-and-the-same country. The States have major internal inequalities between urban and rural regions, with coverage up to 7 times higher in urban areas than in rural ones. Coverage also varies by income levels: ranging from 90% among the high-income population to 14% among the low-income population.¹

The situation is deteriorating over time in low-income areas, as they have not been reached by water and sanitation coverage programs. The water crisis at a global level has been approached as attributable to a lack of economic resources. The UNDP Human

* Engineering Without Borders.

1. Human Development Report 2006. United Nations Development Programme. (Spanish version) p. 54, 2006

Development Report 2006 listed the core themes of the world water crisis as: power, governance, and water resources management. On too many occasions, the issue of water at a global level has been declared a purely economic problem, involving infrastructure alone, but the heart of the problem is actually a failure to prioritize it in policy making. Public spending on the military in some States is thirteen times higher than on water and sanitation, even though water and basic sanitation has achieved a coverage of less than 30%.² This failure to prioritize universal access to water and sanitation means that we are regressing in our attempts to achieve universal access to water.

It should be noted that prices for Basic Water Supply and Sanitation Services (BWSS) are much higher in impoverished countries than in the countries referred to as «rich»³, sometimes as much as 10 times higher, with the aggravating factor that these are countries whose peoples' buying power is much less. The type of BWSS operator and form of access involved also influence pricing. A cubic meter of water is most economic when supplied by public operators through residential distribution systems. Next come private operators through residential distribution systems (20% more expensive than such public operators), followed by water sales points. Water provided by cistern trucks is even more expensive, while the highest price per cubic meter corresponds to that of water transportation companies.

In territories and countries where universal access to water has been achieved, it has principally been the product of public sector efforts,⁴ with the exception of very few States. Recent decades have witnessed the implementation of one strategy after another based

2. *Ibid.*, p. 49 (Spanish version).

3. *Ibid.*, p. 52 (Spanish version).

4. Esteban Castro, presentation at the *Public Water System Operators Seminar*, entitled «*El porqué de la gestión pública del agua en el contexto internacional*». [http://catalunya.isf.es/NOVA/seminari_aigua07/ponencias.htm]

on the dominant policies of the International Financial Institutions (IFIs). Such policies have promoted private-sector participation in extending basic water services, with the alleged purpose of achieving universal access to water. Yet upon application (in Argentina, Bolivia, Uruguay, and elsewhere), this political strategy has proven to be inefficient, with non-transparent award processes and breaches on the part of the concession awardees. Moreover, in many cases it has exacerbated lack of access to water and sanitation for the population.

The very same International Financial Institutions that promoted privatization of BWSS services —under the pretext that the private sector would attract the capital needed for such investments —have recognized that they were wrong. The World Bank’s representative at the Fourth World Water Forum, Katherine Sierra, declared:

In the 1990s, due to the intense amount of funding needed, we believed that the private sector could make private investments; 90% of the funding continues to come from the public sector, even in the strongest periods of private participation.⁵

Under the privatization approach for BWSS services, concessions are awarded for their management, as part of the dominant policies of the IFIs. This leads to fragmentation in the management of the integral water cycle, and limits the capacity for action of the appropriate public water-policy authority.

It should be stressed that despite the IFIs’ efforts to promote BWSS privatization, today, at a global level, the public sector still manages more than 90% of such services. The former president of the United Nations Secretary General’s Advisory Board on Water and Sanitation gave the following synopsis within what was called the Hashimoto Action Plan (HAP):

5. *La Jornada*, Mexico City, March 17, 2006.

Publicly owned and managed water operators currently provide more than 90 percent of the world's piped water, and even small managerial improvements could yield major benefits. The Board recommends a new mechanism: water operators' partnerships. This would be a structured programme of cooperation among water operators, based on mutual support and a not-for-profit basis.

While the IFIs are promoting a privatized water management approach, the social movements on water are proposing that universal access to water be attained through a public management model with social participation and control. They call for public management with an approach that puts management capacity and decision-making back in the hands of the services' users. BWSS services should be kept in the public sphere, without external influence from the private for-profit sector. The public sector is also in need of control mechanisms to maintain and improve its efficiency. The opinions of users must be considered and borne in mind, and users must be provided with a clear and transparent accounting of the service's management and the use of BWSS resources.

In order to attain the United Nations Millennium Development Goals, whose weak Target 10 is to: «Halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation», we need to learn how universal access to water was achieved in the States where it was accomplished: in most of them it was achieved through the public sector. This fact, together with the World Bank's recognition that 90% of the funds it uses in promoting BWSS privatization come from the public sector,⁶ lead us, as a solution for universal access to water, to propose public management with social participation and control as a

6. Esteban Castro, presentation at the *Public Water System Operators Seminar*, entitled «*El porqué de la gestión pública del agua en el contexto internacional*». [http://catalunya.isf.es/NOVA/seminari_aigua07/ponencias.htm].

tool to improve the efficiency of water and sanitation services.

Public Water and Sanitation Services: A Tool for Governance

Basic water and sanitation services should be the driving force behind a new form of governance, where all the networks of players, from a relative plurality of sectors, are able to participate in developing public water policies. It should be borne in mind that the central core of this new conceptual paradigm of governance:

Calls for the recognition, acceptance, and incorporation of complexity as an intrinsic element of the political process; it calls for a system of governance through the participation of a diversity of stakeholders in the framework of pluralistic systems; it calls for a redistribution of public power in governance processes, opting to create new roles and new governance instruments.⁷

Above all, there should be a clear prioritization of water usage within this new form of governance over water through pluralistic networks:

Water in its life-giving function: revolving around values linked to Human Rights, in relation to access to potable water and the sustainability of ecosystems.

Water in its civic functions: revolving around values linked to the Rights of the Citizenry, in order to develop public services in the interests of society, such as water and sanitation services.

Water in its economic development function: revolving around uses linked to the right to progress and improve the standard

7. Blanco, Ismael; Gomá, Ricard (2002), *Gobiernos locales y redes participativas*. Ariel S.A.

of living of each individual.⁸

BWSS management by public institutions represents an opportunity to improve governance through increased interaction with the citizenry. In countries with weak governance, BWSS services provide a wonderful opportunity to improve governance. The public sector, in addressing water's accessibility, quantity, and quality, must ensure the human right to water and manage these public services under criteria of social, environmental, and economic effectiveness.

Fragmentation of the Integral Water Cycle

Pressure to privatize water stems from the dominant policies of the water sector's major multinational companies and the IFIs' promotion of such policies. The private water sector's objective to derive economic benefits from its activities is legitimate. The problem comes when basic services are involved that guarantee rights, as is the case of the human right to water (water with sufficient accessibility, quantity, and quality for a life with dignity of persons), when that right is treated as if it were an economic good. The social movement on water⁹ considers that the management of basic services guaranteeing human rights cannot apply a market approach, as is done by the private for-profit corporations in the BWSS sector and certain companies that are public in name, but operate using commercial criteria.

It is our understanding that there may be a place for the private sector in limited spheres of water management, providing the service with support. But the private sector focuses on zones where the potential for doing business is high, leaving unprofitable zones to be dealt with by the public sector. This means that the public sec-

8. Arrojo Agudo, Pedro (2006) *El reto ético de la nueva cultura del agua*, Barcelona, Ediciones Paidós.

tor, which is obligated to ensure universal access to water, keeps the zones where the system has a very low earnings potential, but where the service is indispensable for the population. Therefore, fragmented management of the integral water cycle and of BWSS services leads us to a situation of private-sector operations in profitable zones and public-sector operations in unprofitable zones, under a «privatize profits» and «socialize losses» approach.

The neoliberal system that boasts so loudly about the free market and free competition, which supposedly lead to improved water services, has failed. In privatization processes, there is no free competition. There is only one initial tender phase for awarding the contract, after which the companies operate under a monopoly regime for the number of years and under the conditions set forth in the concession agreement, which, in a large part of the cases, takes a completely mercantilist approach to water and water services. According to the studies conducted, there are no appreciable differences between the economic efficiency of the public sector and the private sector.¹⁰ If we analyze this using criteria of social, environmental, and economic effectiveness, the public sector is more effective.

The characteristics and dynamics of basic water and sanitation services are analogous to the features of such systems. Water and sanitation systems are not static. They tend to grow and form monopolies. They pursue majority usage by the population and call for a major initial investment, (in order to increase coverage) that the private sector is not willing to make, given the risk entailed in the investment.

Access to water and sanitation through BWSS services, inas-

9. We understand the social movement on water to be the web of players in civil society who promote improvements for managing the integral water cycle.

10. Lobina, Emmanuelle; Hall, David, (2007) *Water Privatization and Restructuring in Latin America* 2007. Public Services International Research Unit (PSIRU), Business School, University of Greenwich, September.

much as they are systems, can be characterized by distinct phases, some of which entail a greater economic risk than others. Four phases have been identified:¹¹ The first phase is implemented for a small group of people, is manageable and economically profitable. But it only covers the small percentage of the population who can pay for the service. Private initiatives have only taken charge of supplying water; they've never taken charge of wastewater treatment. In the second and third stages, the systems grow, seeking to cover the largest possible percentage of the population. These phases require major economic investments. They depend upon recovery of operating and system-expansion costs through the users' payment of utility bills as more users connect to the system. The fourth phase is understood to be the one where the BWSS system tends to provide universal coverage. There, the return on investment, through the payment of user rates, is very high.

The for-profit sector, such as private water management corporations, has seldom shown an interest in Phases 2 and 3; its occasional involvement in these phases has been financed by loans from the World Bank using public funds, because such business is not profitable. This means that, at the point where the private sector is interested in water management, the bulk of the investment has already been made by the public sector, through taxing the entire citizenry.

Public Management of Water with Social Participation and Control

The international community opted to debate measures that fed obsolete models, and failed. In contrast to such posturing, the social movements on water have waged a series of struggles, making demands and proposals to transform the situation in a real way.

11. Magrinyà, Francesc «*Urbanisme de les xarxes: Instrument de lectura de l'ecosistema urbà*» – [<http://www.itl.upc.edu/publics/24/10.pdf>]

Below, we touch upon the principal social mobilizations that have marked a turning point in international civil society. Such is the case of Cochabamba (Bolivia), Buenos Aires (Argentina), and Uruguay.¹² We consider these cases to be worth mention because of their prominence in the struggle against violations of absolutely basic rights. They have even played a powerful role in overturning decisions of International Financial Institutions made with the complicity of governing elites. These conflicts are perhaps the most significant examples, but not the only ones. Work is being done and is spreading across the globe to build other water management models, with the participation of civil society. These social mobilizations are the seed from which civil society alternatives for attaining universal access to water have sprouted.

As mentioned above, the call to attain universal access to water and sanitation through public management comes in answer to the question, «How has universal access to sanitation and water been accomplished in those places where it has, in fact, been attained?» Such universal access was achieved through the public sector, using public funds, and only in a few isolated cases was it achieved with private-sector participation. After the Second World War the idea spread that there are certain services that cannot be governed by market forces; rather, they should be managed and controlled through the public sector, based on the criteria of efficiency and universal coverage.¹³ Water is basic for the life of living beings on the planet, be they persons, plants, or animals. Therefore, the public sector is obligated to ensure and prioritize such uses.

The Building of Social Movements on Water

The call for public management with social participation and con-

12. Uruguay provides one of the most emblematic cases of civil society's alternative proposals in defense of the public sector.

13. Esteban Castro, 2007.

trol grew out of contacts made at the World Water Forums, best described as illegitimate gatherings organized by the World Water Council. The presence of social movements on water at the World Water Forums principally commenced at the Second World Water Forum in the Hague in the year 2000. In 2003, at the Third World Water Forum in Kyoto, a somewhat more coordinated action of these movements was seen. Their objective was to bring issues that were not addressed in the discussions to light and propose other ways of managing BWSS services.

The social movements' proposals and alternatives and their denunciations of injustices have principally taken shape at the gatherings listed in the table on the following page.

The World Social Forums have been very significant meeting places for the social movements on water, who had their own meeting agendas.

How Proposals and Denunciations made by Social Movements on Water at the International Level have Developed over Time

Below, we take a look at the final declarations from the meetings of the social movements on water. In them, one can observe the main features of how their proposals and denunciations have evolved between 2002 and 2008. An analysis is made of declarations from the First Alternative World Water Forum (AWWF) (2002), the International Forum in Defense of Water - IFDW (2006), and the World Water Assembly for Citizens and Elected Officials - WWACE (2007).

At the AWWF it was agreed to «Promote the Right to water for all and recognition of water as a shared good, which therefore belongs to all living beings of the planet.» The most recent WWF commenced with a verbal statement that water is a right, but its closing declaration contained no commitment from the ministerial delegations present there, only a reference on the agenda to such a

declaration promoted by Bolivia, Venezuela, and Cuba. The final declaration of the IFDW demanded «Access to water in sufficient quality and quantity to satisfy basic human needs».

Year	Meeting
2002	First Alternative World Water Forum (Florence) AWWF
2003	Actions at the World Water Forum (Kyoto)
2004	World Social Forum (Mumbai)
2005	<ul style="list-style-type: none"> • World Social Forum (Porto Alegre) • Second Alternative World Water Forum (Geneva)
2006	<ul style="list-style-type: none"> • World Social Forum (Caracas) • International Forum in Defense of Water and Life (Mexico) IFDW - Summit of Social Movements at the Fourth World Water Forum. • Linking Alternatives 2: Social Encounter of Civil Society Organizations from the European Union and Latin America and the Caribbean (on the occasion of the Fourth Summit of EU-LAC Heads of State).
2007	<ul style="list-style-type: none"> • World Social Forum (Nairobi) • World Water Assembly for Citizens and Elected Officials (Brussels) WWACE
2008	<ul style="list-style-type: none"> • European Social Forum – Launching of the European Network for Public Water

Source: Prepared by the author

The AWWF recognized access to water as an indivisible, perpetual right at the level of Treaties and Conventions. Then, after more than 4 years in which no progress was made, the WWACE’s closing declaration again stated that access to water must be recognized as a universal, indivisible, perpetual human right, declaring, «Opposition to all forms of privatization and commodification of water, and frontal opposition to listing water services on the schedule of tradable services of the World Trade Organization (WTO) and the General Agreement on Trade in Services (GATS)». This declaration was endorsed at the AWWF, and has been sustained throughout these years with more forcefulness. In fact, the legitimacy of the WTO itself has been questioned. As for the IFDW and the WWACE, the following was proposed:

To denounce governments that wish to include water services as a tradable item under the WTO. Water is not a commodity; much less are water and sanitation services.

The IFDW went much further in its final declaration. It called for abolition of the International Centre for Settlement of Investment Disputes (ICSID), and at the same time demanded reparations for environmental, human, and economic damages from industries and corporations that cause them.

The AWWF declared that it was necessary to «Promote democratic, participatory practices in the water sector». This aspiration was concretely defined and supplemented at the IFDW: «To promote the public, social, community, participatory, and integral management of water».

The IFDW indicated that public-private collaborations are nothing more than a form of privatization of water and sanitation services. The WWACE declared its opposition to the way public powers operate, given that they tend to make investments in infrastructure and public services dependent upon private capital, all under a strained financial and speculative logic.

Both the public sector, entrusted with water management, and the WWACE have recently incorporated a series of proposals that seek:

- Reinforcement of the role of public water companies.
- A major mobilization in favor of collaborative programs among public water entities (Public-Public Partnerships) whether North/South, South/South, or North/North.

Water affects a great variety of stakeholders. The AWWF called for strengthening synergies between Human Rights organizations and civil society, including environmentalists, ecologists, and those who promote democracy. Ever since the AWWF, social movements on water have been working with this outlook.

Principles for Public Management of Water

When civil society speaks of attaining universal access to water and sanitation, it proposes a model that takes the citizenry into account. This model breaks with the old idea that water management is the purview of experts and that the population cannot give an opinion, because they don't understand. Civil society takes as its starting point that collective participation of the citizenry in the management of BWSS services can contribute new ideas. This type of management calls for a new way of understanding the relationship between users, managers, and those formally entrusted with providing BWSS services. Furthermore, it calls for management to take place with the participation of the population, not behind their backs.

BWSS services are natural monopolies, whether they are public or private. There is no free competition among the service providers, given that they operate based on long-term concessions between the agency entrusted with the service and the operator. In privatization processes for the management of BWSS services, the only time «free competition» comes into play is during the process of awarding the concession; from that point on, monopoly conditions apply.

Basic public water and sanitation services ought to have the following characteristics:

- **Universality:** Universal access to water services and sanitation for the entire population, without any type of exclusion.
- **Equity:** Access to basic water and sanitation services, regardless of the race and socioeconomic status of the population.
- **Comprehensiveness:** Taking an approach towards basic services for access to water and sanitation that encompasses the entire water cycle. Basic water and sanitation services ought to include sewer services, rainwater drainage, and vector control.
- **Public management:** An understanding that access and sanitation services are public by definition, are provided by entities that are public in nature, and are managed under the form of

direct public-company organization.

– **Social participation and control:** The citizenry must be involved in water management, with the necessary empowerment that implies. The citizenry must exercise control over BWSS services in order to attain an efficient, sustainable management in social, environmental, and economic terms.

– **Intersectorial development:** Making development possible both in urban and rural zones, through an ecosystem-based vision of water.

– **Quality of service:** Service must be guaranteed with regularity, continuity, efficiency, safety, and quality in the supply, as well as affordability in prices of water services.

– **Access with fair and reasonable prices:** Developing rate policies in line with the buying power of users (not exceeding 3% of family income).

Objectives of Participation in Managing BWSS services

In the framework of managing BWSS services, the population's participation in managing the services provides an opportunity for building society. The International Observatory of Participatory Democracy has defined the four basic objectives pursued by civic participation at the local level as follows:

– **Equality:** Participation is understood as a way to increase the representation of groups that were previously excluded, build their capacities, increase their self-esteem and create a society with greater justice, redistributing resources and opportunities in favor of socially excluded sectors. Such participation can create equality of opportunities among different players and citizens for engagement in public decision-making, which benefits the population sectors traditionally excluded from that process. At the same time, civic participation can contribute to

a better distribution of public resources.

– **Civic identity:** Participation expands the rights of citizens, granting new freedoms and creating responsibilities for exercising democracy, thereby promoting a more participatory citizenry. Civic participation makes it possible to reinforce the building blocks of community. Participation can serve to heighten the feeling of belonging to a community, of feeling that one is part of and is actively involved in a collectivity.

– **Trustworthiness:** Participation allows for transparency and control by the citizenry, creating new relationships with the government and closing the gap between citizens and political representatives. This builds new relationships based on trust between local government (administration) and the citizenry, and helps restore the legitimacy lost by traditional forms of government.

– **Efficiency:** By promoting civic participation, greater efficiency is obtained in public policy development. In other words, public policy is improved through civic participation. With civic participation, the identification of problems is more in tune with reality, and public policies better respond to those collective needs. In other words: civic participation can make local governments more functional and more transparent.

Conclusions

BWSS services are of vital importance for more successful governance of territories. BWSS services contribute to building the social cohesion of territories, and are therefore strategic for the public sector. The social movements believe that the public sector must not inhibit the effective and efficient management of BWSS services. Therefore the concession/privatization of their management should not be allowed, especially in places where governance is weak (where there is little capacity of control over private corporations).

When the private sector participates in impoverished countries, it almost always does so with loans from the World Bank, which are public funds. Therefore, the alleged injection of economic resources from the private sector foretold by the World Bank was false. Private multinational corporations promised to deliver universal access to water with those public funds, but their failed attempt has proven that such an approach is obsolete. Despite all the public money, the private sector has accounted for only 0.3% of new water connections since the year 2000.

The call for public management with social participation and control is a call born of civil society. In recent times there have been intense campaigns to reduce the role of the State and thus reduce the role of public services. Everything has been governed by strictly commercial norms. The affected population has been left with few tools of control over their own lives. BWSS services have not been the exception; they have been a laboratory for all sorts of public policy reforms aimed at reducing the role of the State, but have had more to do with reform of the international financial system than with the water sector.

The public water sector, on the other hand, has had its weaknesses and episodes of low efficiency. Yet we cannot deem that these problems permeate the entire public water sector. Indeed, thanks to public water services, in some countries, universal access to water has actually been attained.

The public water sector needs to reach out to users; it needs to establish long-term ties, allowing for their participation in the system's management. We need to separate BWSS services from political forces that seek to utilize them for electoral purposes or party politics. If we are able to attain effective, transparent public water services, then social participation and control in water management will lead to reforms in this sector to the benefit of all, with bottom-up policies. This new form of managing BWSS services will not be easy. Nor will it be exempt of pressure aimed at making it fail. Still, it must be given the necessary support and impetus so

that universal access to water can be attained across the globe.

What the movements are calling for is public management with social participation and control. This entails the need for a new approach to governance and a new type of relationship between the population and public powers, based on an understanding that social participation and control is fundamental in water management.

IX. THE PUBLIC MODEL FOR POTABLE WATER AND SANITATION SERVICES IN URUGUAY AND THE STRUGGLES TO ACHIEVE IT

Adriana Marquisio*

Potable Water Services in Uruguay

In 1952, the public entity State Sanitation Works (OSE – *Obras Sanitarias del Estado*) was created when a British company handed over management of Aguas Corrientes, along with its infrastructure, to the Uruguayan State. Transfer of the company, located on the banks of the Santa Lucía River, was made as payment of Britain's debt accrued on meat at the end of World War II. The management and infrastructure of railroads was also delivered to the Uruguayan State.

Law 11,907 created the OSE, whose Montevideo sanitation division was granted authority over the supply of potable water and sanitation throughout the country. The only exception was sanitation in Montevideo itself, which was entrusted to the Office of the Municipal Under-Superintendent of Montevideo (IMM – *Intendencia Municipal de Montevideo*).

Between that date and 1995 no type of private management

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was proposed for these services or any other public utilities. It was approximately in 1995 that an offensive was unleashed to manage all those public utilities under a for-profit business approach. That was when our front of struggle and resistance commenced in opposition to what we call the «privatization stage of the neoliberal model».

Natural Public Monopoly and the Interests of Society

This service, this right for the population, should be guaranteed for society as a whole by the State. Indeed, the State ought to invest public funds, that is, the wealth generated by our territory and our citizens, to serve the health of the population.

Along these lines, the law that gave birth to this entity, in its Organic Charter Article III, states that «the public utility for potable water should place higher priority on hygiene and social benefits than on economic ones». That is the legal and political mandate for which this entity was created. As such, it was given clear authority to pursue the social objectives of ensuring the health of the population, as opposed to generating business profits.

Also, given the onerous burden of investments to extend systems, both for potable water and for sanitation, they are unquestionably a natural monopoly. We will only be offered one system in front of our homes; our options will be limited to a single connection to that network, without freedom of choice. This reveals the weakness of the argument that privatization is needed in order to promote «competition in distributing the water market».

Levels of Coverage, Management, Mechanisms for Economic Sustainability

For many years, this service in Uruguay has achieved levels of coverage with quality tap water for almost 99% of the Uruguayan population.

The principal potable water system services the population of Montevideo, population 1,800,000, with a metropolitan area that extends to the east of the department of Canelones, Ciudad de la Costa, population 100,000.

Production, storage, distribution, and marketing, in other words all processes, from the water source to the faucets of Uruguayan residences, is performed and managed by the public entity's workers, contracted as government employees, who now number 4250 workers, including men and women.

The service's economic sustainability (when well administered) is based on a subsidized investment mechanism and rates that allow for a distribution of the wealth generated in zones with the most connections per kilometer or with the greatest density of high-income population. This form of rate charges (the only financing source for investment and management) has made universal provision of the service viable.

This mechanism, frontally attacked by the World Bank and international credit entities, guaranteed investment in rural and remote zones with few families, where the need for connections surpassed the service's earnings potential.

In other words, this public utility has made investments not only without obtaining a return on the investment *per se* but also where such investment is decidedly «unprofitable in economic terms». This form of doing business, applied to public utilities that provide services for social and health functions, as a fundamental human right, faces severe obstacles under the commercial economic approach of the global guidelines to which they are subjected on a daily basis.

The WTO and loans from international credit entities condition our countries to accept this privatized approach to the State.

A Conceptually Privatized State

But we are involved in such struggles in many parts of the world, in opposition to those terms, concepts, dialectics, or, as our friend Estaban Castro (the Argentine sociologist) would say, «synergetic forces» that continue to form the mindset of our professionals, educated at universities, which reproduce this same way of looking at States.

Public Water and Fundamental Human Rights

Since 1990, Uruguay has been acting as a never ending billboard for the neoliberal model and its impacts.

On December 13, 1992 the first plebiscite was held in defense of public companies. It passed with 80% support of the voters, thus inaugurating more than 10 years of exercising direct democracy based on two constitutional mechanisms, the plebiscite and the referendum. These constitutional reform initiatives are more infrequent now that the privatization processes for public services have ceased. In some cases, such as fuel, telephony, and water, we have clearly prevailed. Now, we must keep insisting on respect for the will of the citizenry, democratically demonstrated in these popular consultations.

The neoliberal model, regardless of which administration is in office, uses its supranational mechanisms as pressure to negate this national legal obstacle, whether through «bypassing» it with another type of mechanism, such as public-private partnerships, or «municipalizations» in our case, «implementation units» with budget autonomy, or the «outsourcing» of strategic areas. In conclusion, the struggle leaves no room for respite, because, beyond public debates and struggles, it is still being demonstrated that privatizations have only favored the minorities of multinational or domestic capital, that is to say, a greater concentration of wealth with greater exclusion of those most in need. Such interests have not stopped demanding and promoting privatization of the State covertly, or the

possibility that the State will create «public consortiums», «totally public corporations» with partnerships between two public entities.

But Under What Law? Public or Private?

Public law was not created to immobilize the State, as press strategies and neoliberal politicians have argued. It is not true that the State's structures, regulations, and workers are immovable. Public law is the product (clearly in Uruguay) of a way of understanding the rights of workers, of the citizenry. Private law, whose conception is based on a consensus of capital, has at its heart labor flexibility, the idea of the «useful life of a worker», the concept that the people are «customers» of an «effective and efficient» service, and not «users» of a right to be guaranteed by the organizational form of society as a whole.

This clearly means that when the State fails to solve these «essential» issues to bring quality of life to families, the community itself must find a solution. Such is the clear case of self-managed cooperatives. When both solutions take on a commercial nature, in other words, are utilized to enrich a few, they lose their social role, placing the health and trust of the respective population at risk.

A public entity used for personal gain, electoral campaigning, or party politics, or cooperatives used to further personal interests, can jeopardize the entire mechanism of sustainability of «fundamental human rights». Pressure to adopt such an approach also comes from international conditioning that promotes forms of competition and increases access to financing under this type of relationship.

For example, in Uruguay, as a product of the Constitutional Reform approved by 64.7% of the population on October 31, 2004, two multinational water companies, Aguas de Barcelona – Suez (with the name in Uruguay of Aguas de la Costa) and Aguas de Bilbao, Iberdrola, and Kartera, known in our country as URUGUA) withdrew, following years of privatization of the service in

both cases.

Also, as a product of the Constitutional Reform, the Uruguayan company «Tarse» S.A., which had provided the service in Pinar, a location with 6,000 families, for 35 years, withdrew. But this result was the outcome of a long road of struggle by many men and women who worked tirelessly in defense of Uruguay's national heritage.

The Return to State Hands of Public Potable Water and Sanitation Services

URAGUA

In the year 1995, the budget of President Julio María Sanguinetti, of the Colorado Political Party, included Article 750 in the budgetary norms for the period. That article allowed for public works concessions in the country's interior. At the time, the need for sanitation works infrastructures was noted as imperative by the press, which emphasized that an environmental catastrophe was imminent unless the public company, OSE, were to build them. Simultaneously, the State commenced a stage of clear «abandonment» of investment, maintenance, and management of public utilities in general and potable water in particular, with an aggressive smear campaign against public services and their workers.

In 1998 an international tender process commenced. For the next five years, the trade union of workers of the potable water sector (FFOSE) along with the community of the department of Maldonado resisted privatization, with ongoing struggles, legal battles, resistance, and local popular consultations. But in October 2000 the new government of the Colorado Party of Dr. Jorge Batlle turned the concession for the department's infrastructure over to URAGUA (Spanish capital from Aguas de Bilbao - Kartera 1 and Iberdrola) for a period of 30 years.

In order to make the investment more tempting to foreigners, the Uruguayan government, through the State Sanitation Works

(OSE), reportedly invested 70 million dollars in infrastructure improvements, finalizing payment thereon in 2009 (Tender 1008).

Taking into account the horrific experience of Aguas de la Costa, where rates (in the hands of Aguas de Barcelona and Seinco) had for several years been charged, without the possibility of regulation, in an amount 700% higher than the rest of the country, a regulation mechanism was ordered for the new URAGUA concession. Any rate increases instituted by the company would be discounted from the fees payable to OSE, and would not impact customer rates.

With payment for 10 years of a progressively increasing fee, the company started doing business in the department on October 2, 2000, managing 45,000 water connections, which represented 18 million dollars per year for the government treasury. The department's loss in revenues from public water rates destabilized the «cross-subsidy» investment mechanism for the next five years, as well as rates that had ensured the service's universal provision with 99% coverage in the country.

After the constitutional reform was approved, which declared a government monopoly over management of potable water and sanitation utilities, and following the change in administration to a progressive government —Uruguay's first ever— it took one more year for URAGUA (Aguas de Barcelona, an affiliate of Suez Lyonnaise des Eaux) to leave the country.

The Uruguayan state resumed its management role on October 8, 2005, under the law that created the Deconcentrated Management Unit (UGD – *Unidad de Gestión Desconcentrada*), with a public board of directors comprised by two directors from the OSE and one from the Office of the Assistant Municipal Superintendent of Maldonado (IMM – *Intendencia Municipal de Maldonado*).

For us, the workers and citizens, this form of organization does not exactly respond to the type of public and social control we had imagined when the Constitutional Reform was written. But, according to the government, in legal terms, in order to make a trans-

fer in full of the staff of workers from the former private company (approximately 200), a law had to be passed by the Congress approving such direct hiring.

That law, on account of pressure from workers (FFOSE) resulted in the rehiring of 20 employees who had lost their jobs when the company was privatized. Most of these workers were trade union leaders or representatives that the private company did not want on its staff. Since they had not agreed to be relocated to remote areas where the OSE had jobs, they were forced to resign, agreeing to a retirement incentive.

Thus, with Maldonado once again in the hands of the State, highly valuable coworkers whom we had lost for five years returned and the Maldonado local of the FFOSE was reestablished. This past May, these workers were speakers at the May 1 celebration.

Today, OSE is continuing to increase its annual surplus. The recovery of Maldonado alone in these past three years has generated a surplus of more than 40 million Uruguayan pesos.

Starting in the year 2004 with an annual deficit of 100 million, we now have:

2005 – 2006	Surplus of 26 million
2006 – 2007	Surplus of 40 million
2007 – 2008	The balance sheet has yet to close, but the surplus continues to increase

(See investment and references at www.ose.com.uy)

We have made progress on several goals, based on the struggle of workers and the administration. We've been working through the difficulties as they arise. We're now moving forward with a clear vision and direction, against the backdrop of a globalized world, caught in a web of guidelines that leave little room for States to exercise autonomy and independence.

Such progress has been made through the tireless work of society, individuals, and workers, to overturn each and every decision that seeks to undermine so many years of resistance and struggle.

Aguas de la Costa

In December 1992, without warning, at the same time as the plebiscite passed in defense of public companies, a concession was granted to Ingenieros Bellagamba and Ingeniero Gross, allowing them to establish Aguas de la Costa, a company capitalized by the construction firm Benencio Construcciones. According to the concession's terms, Aguas de la Costa would manage potable water and sanitation services for 14 years east of the Maldonado Creek, in the same department as URAGUA.

This is a tourist zone *par excellence* with a high socio-economic level. But it was also inhabited by people of modest means, who were subjected to fees of 100 dollars before they even turned on the faucet. Water connections cost 2,500 dollars at a minimum. This situation lasted from 1992 until 2006, when it was finally possible to negotiate a solution that incorporated the spirit of the constitutional reform instituted.

In 1996, this Uruguayan company partnered with the multinational company Aguas de Barcelona – an affiliate of Suez Lyonnaise des Eaux.

Social organizations such as the Water Sources Promotion League waged a tireless campaign to denounce the situation there.

The tariff composition of this company was substantially different than that of a public one. For example, the fixed charge component of this rate was almost 100 dollars before a user even turned on the faucet. This ensured a profit anywhere above a residential consumption rate of zero. The rate per cubic meter of water was very low, almost 10 times less expensive than that of the public entity. This led to excessive usage of water from the Laguna Blanca

Lake, because despite unbridled growth in consumption, costs weren't reflected on the water bill. In the end, the Laguna Blanca Lake dried up completely, and it was necessary to request water supplied by the OSE using the Laguna del Sauce Lake as a water source.

Finally, in September 2006, this multinational company sold the infrastructure built by Aguas de Barcelona (another multinational company) for 6 million dollars. In its place, a mixed partnership was formed based on another law with public capital from OSE in a 60%/40% proportion with the original Uruguayan company, Seinco.

Such an arrangement is clearly unconstitutional. Article 47 literally states that «public water services and public sanitation services must be provided directly and exclusively by governmental legal entities». This 40% that is still managed through private enterprise is in violation of the constitution.

On a positive note, rates were brought in line with those applied at a national level, and finally, 2,900 families started to pay the same as everyone else in the country for access to potable water and sanitation.

Workers and the National Committee in Defense of Water and Life (*Comité Nacional en Defensa del Agua y de la Vida* – CNDAV) now have a «duty» to fully regain administrative control, eliminating the public-private arrangement still in practice as a form of application of constitutional principles.

«Tarse» S.A.

Tarse, or Coubarrerre, was a company awarded the management of water services in the zone of Pinar, Department of Canelones, approximately 35 years ago under the «Law on Population Centers». There it serviced some 6,000 system connections, without much unbalance in rates. Nonetheless, this company did have a profit motive, because the service connection was 4 times more

expensive than one provided by the public entity.

The handing over of this infrastructure, constructed in full by this Uruguayan company, was negotiated with the public administration agency OSE. In December 2006 it reverted to the state, with which the cost of a new connection became equal to the one applied in the rest of the country.

Only one worker from the former private company agreed to be hired by OSE. His contribution has been fundamental for the agency to become familiar with the region's residents, operations, and infrastructures.

The Challenge of Developing a Successful Political and Management Model

Some of us have been working for years in the various OSE processes, involved for more than 20 years as public servants in one phase or another. The challenge we now face in these roles is perhaps to demonstrate that such management, such a public approach, can be effective and transparent, that it can be built as a collective effort of operators, workers, and the citizenry.

Potable water, as well as its public management, do not belong to anyone, but are everyone's responsibility. If long-term workers, not out-sourced interns, are hired, that is, «people who are here to stay», who are here for the «long haul» as «permanent workers», then intergenerational knowledge can be rapidly handed down, and they will be able to quickly absorb these principles and perspectives, working side-by-side with experienced workers; they will be able to internalize a love for public service conceptually and ideologically.

Cooperation processes, through the public sector, both domestically and internationally, are also fighting for their lives in a sea of consultation firms and conditioning that promote other discriminatory solutions for those living on our side of the border.

Why not start with cooperation through the public sector «with social objectives that place greater emphasis on health issues

than on economic ones».

This is one challenge among many. We have made progress, however, on the legislative front, with a bill before the Congress in its current session. It is our hope that this bill will pass.

June 2008

X. THE STORY OF DEPRIVATION AND THE CREATION OF AN ACTIVIST NETWORK

Al-Hassan Adam*

Introduction

Access to water on the African continent is a major development challenge. It is a continent with abundant fresh water from its many rivers and lakes, yet some 45% of its population has no access to potable water,¹ This lack of access to water has severely compromised sanitation in Africa. The worst affected areas are the urban slums, where lack of access has forced dwellers to resort to using wells close to sewers and *flying toilets*² as an alternative to WCs. This is a phenomenon that emerged shortly after the Structural Adjustment Programmes (SAPs) and Economic Recovery Programmes (ERPs) were introduced in the late 70s, and the fully fledged privatisation of the 90s.

By 1991, the government had divested only 42 of approximately 300 state-owned enterprises. The Divestiture Implementation Committee should be given more resources and clear timetable to speed up the pace of privatisation on the basis of

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1. Human Development Report 2006, *Beyond Scarcity: Power, Poverty and the Global Water Crisis*. Pp. 33

2. Slum Dwellers defecating in polyethylene bags and throwing the package in alleys, gutters and backyard.

thorough research.³

The introduction of SAPs saw the withdrawal of subsidies from most social goods and agriculture; the budgets associated to cost recovery tariffs for water services were slashed. This was the main factor in reducing access to water. The situation only worsened when rural economies crumpled under the yoke of SAPs. This led to an influx of rural migrants to the city, piling more pressure on urban water services. Throughout the 70s, most African countries were encouraged to borrow the petrodollars lying idle at the World Bank to finance the production of their primary commodities (timber, minerals, cocoa, coffee and some food produce). The logic of these policies was to boost the export capacity in these developing economies. However, market conditions in the buying countries - which were of course the lending countries under a different guise - led to the borrowing countries falling into huge debt, and the prospect of having to surrender sovereign rights to the IMF and World Bank. Thomas Sankara, former president of Burkina Faso said:

In debt we see neo-colonialism under a different guise, with the colonialists recast as 'technical assistants'. In reality we should call them technical assassins. And they are the ones who offered us funding, and financial backers... those financial backers recommended to us, we were advised to turn to them. We were shown attractive resources and financial packages. We got ourselves into debt for fifty, sixty years, or even more. In other words, we were persuaded to compromise our people for the next fifty years or more.⁴

3. Economic Commission of Africa, November 2002, Second meeting of Africa Learning Group on the Poverty Reduction Papers.

4. Eric Toussaint, The World Bank, A Never Ending Coup d'État, Edition January 2007 pp. 212, MILLET Damien, 2005, *L'Afrique sans dette* [Africa without debt], CADTM-Syllepse, Liege-Paris, 2005, pp. 205

Expatriate advisors took over the role of policy formulation thanks to sponsorship or loans from the IMF and WB. These expatriate experts were in some cases based inside the Ministries of Finance, Economy or Trade of the target country. In cases where they were not physically located at the ministries, they were either based at the country offices of the WB/IMF or created parallel institutions. Most policy documents were drafted by this group, who then advised civil and public servants on the content of their documents. The majority of the advice offered was not based on solid facts on the ground, but rather centred on what they learned at Oxford, Harvard and Cambridge. They bulldozed civil and public servants into submission with tables of logarithms, technical jargon, computer skills, writing skills, smart suits and direct access to donor power. This process was taking place when most African states were under the rule of either civilian or military dictatorships. Civil society expressed its position on policies through trade union conferences, religious pulpits or spontaneous street demonstrations.

These policies led to massive cuts in social spending and the deterioration of most public corporations, as well as the emergence of shameful but lucrative public asset sell-offs, as if that was the panacea for the crisis. Those who lost most from these policies were public-sector workers, who experienced massive lay-offs, as well as certain private-sector manufacturing companies which were producing import substitutes. The winners, on the other hand, were the politicians and their facades, who served as fronts for the foreign private and state companies descending on the dying economies like vultures. Practically none of the money raised through this process stayed in the victimised country. Capital flight was on the rise and local currencies were not suitable as reserve currencies. Currency devaluation and depreciation was the order of the day!

Privatisation accompanied by the opening of capital markets, led not to wealth creation but asset stripping. It was perfectly

logical. An oligarch, who has just been able to use political influence to garner assets worth billions, after paying only a pittance, would naturally want to get his money out of the country.⁵

Current developments do not take environmental balance and the rights of future generations into consideration, which are supposed to be fundamental to the survival of Earth and its inhabitants.⁶ The issue of access to water is only going to worsen all-round with the push for privatisation, climate change and modern lifestyles consuming such high volumes of water. If such policies continue, there will be 4 billion⁷ people lacking access to water by the year 2050. Generally speaking, the average person needs an estimated 20 litres of water per day, with an access point within a radius of 1 km. This benchmark excludes most citizens living on the African continent.

International norms set out by agencies such as the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF) suggest a minimum requirement of 20 litres a day from a source within 1 kilometre of the household. This is sufficient for drinking and basic personal hygiene.

5. Eric Toussaint, *The World Bank, A never ending Coup d'etat*, Edition January 2007 p. 224, STIGLITZ, Joseph E., 2002, *Globalization and its Discontents*, Allen Lane, p. 136

6. UN General Assembly, Rio Declaration on Environment and Development, June 1992 Principle 3, «The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations».

7. Center on International Cooperation, *Rising Food prices: International Drivers and Implications* December 2007 «Global demand has tripled in last 50 years: 500m people in countries chronically short of water, likely to be 4 billion by 2050. 70 per cent of all water used by humans goes into food production. 1 kg wheat takes 1,300l water; 1 kg beef takes 15,000l water».

In other words, one in five people in the developing world lack access to sufficient water to meet even the most basic requirements such as wellbeing and child development. The problems are most severe in rural areas. In Uganda, average consumption in rural areas ranges from 12 to 14 litres a day. This use falls sharply during the dry season, as the distances to water sources increase. In arid areas of western India, the Sahel and East Africa, dry season water availability can fall below 5 litres a day. And people living in urban areas also suffer extreme shortages. The average water use is 5 to 10 litres a day in small cities in Burkina Faso.⁸

The response from civil society to these crises was to challenge the appalling living conditions of the poor - especially the slum dwellers - through direct involvement in the delivery of services, pressure groups (lobbies) and campaigns. In this article, we focus on the campaigns waging on the continent. Our decision to write about campaigns was not an accident, but rather a deliberate choice to focus on the water management and governance processes that have the potential of involving the socially excluded - and how this potential is opening the doors to participation on their own terms. A great deal has been said and written about other forms of engagement, but very little about campaigns, hence our interest.

National water campaigns or struggles have been on the back burner with African activists. National movements were formed around various other struggles: colonial rule, apartheid, land rights, migrants' rights and gender rights. However, national movements for water rights did not emerge as a spoke in the wheel of social movements until the dawn of 21st century. This was in response to the neo-liberal policies responsible for pushing back social services

8. Human Development Report 2006 *Beyond Scarcity: Power, Poverty and the Global Water Crisis*, pp. 34-35.

to the levels introduced by various Africa governments in the mid-20th century to speed up human development after independence. Both South Africa and Ghana are pioneers in launching social movements against water privatisation.

The Struggles

In the late 90s, Ghana's water sector saw the introduction of reforms geared towards privatisation of the urban water supply. Soon after, the public water utility was transformed from a corporation into a public liability company, and taken down the path of privatisation. However, the first attempt to lease it to Enron-subsiary Azurix was a failure, so in 2001, and under a new administration (New Patriotic Party), Ghana initiated a new privatisation process through the Heavily Indebted Poor Countries (HIPC) initiative. The process was facilitated with studies and consultation from the following pro-privatisation think-tanks: Adam Smith Institute, Stone and Webster, London Economics, Louis Berger and Halcrow. Despite this, the process was stalled for 3 years by civil society groups led by the National Coalition Against Privatisation of Water (NCAP), which is made up of trade unions, student unions, communities, NGOs and social movements, and was formed in May 2001 largely through the initiative of a local NGO (Integrated Social Development Centre - ISODEC). The NCAP launched local and international campaigns against both the companies involved (Suez, Veola, Biwater, International Waters and Saur), and the World Bank. An international Fact Finding Mission to Ghana did not report privatisation as the solution to the prevailing water situation in the country. Throughout the campaign period, the proposed investment from the private sector was repeatedly reduced. The original proposal was an initial capital investment of \$140 million for the two business units (the country was divided into business units A and B); the final estimation was \$80 million for the two business units. Failing to bow to the pressure, the NCAP launched a

drive for international action, which received a massive response. As a result, the lease contract was abandoned and restructured into a management contract. However, the management contract was also rejected by the NCAP and its international solidarity partners, which led to Biwater and Suez pulling out of the bidding process. A consortium (AquaVitens Rand Limited - AVRL) led by Rand Water (South Africa) and Vitens (Holland) won the bid and entered into a 5 years management contract with Ghana Water Company Limited (GWCL). The management contract was a \$120 million package comprised of donor funding and a Ghanaian government contribution (World Bank - \$103 million; Nordic Fund - \$5 million; Ghanaian government - \$12 million). The NCAP went on to expose the controversy surrounding the new Operations Manager - Mr Cliff Stone,⁹ regarding his failure in Tanzania, where he was employed as Managing Director of Dar es Salam City Water, a subsidiary of Biwater (UK). Mr Stone and Anne de Groot made quite a controversial exit from Ghana within a year of the management contract. Water supply has not improved in most Ghanaian cities since the inception of this contract. Water rationing is still the norm, and consumers are often left without water for weeks. As part of their obligation, AVRL should increase household connections by 50,000; however, going on their track record, this will not be achieved. AVRL has not submitted its year-end report to GWCL, citing a lack of basic information as the reason. AVRL also laid-off some 1,600 workers, whom they duped into accepting redundancy with the promise of a large settlement and training for a new post. These same workers also signed agreements that they would not seek employment in the formal sector; at the time of writing this article, they were still searching for a means of catapulting themselves into the dream world of the informal sector.

The situation in South Africa has been very similar to Ghana's.

9. See newspaper article on Cliff Stones exit.http://www.ghanaweb.com/public_agenda/article.php?ID=7603.

The country suffered a severe drought in 1991-92, which only highlighted the apartheid regime's lack of interest in supplying potable water to the majority of its black population. This development immediately put water on the agenda of the African National Congress (ANC), the first democratic government of South Africa. In a bid to appear the shining new star of the capitalist world, the ANC slipped into top gear with sweeping cutbacks to municipal and local government services - a move that cleared the path to privatisation of the water services, and the subsequent introduction of prepaid water meters. The Anti-Privatisation Forum, which was formed to fight the ANC's neo-liberal policies, convened a meeting in September 2003 to deliberate on the privatisation threat posed by Operation Gcin'amanzi, a flagship project of Johannesburg Water.

The Bill of Rights provides that, «everyone has the right to have access to sufficient water». The privatisation of water violates that constitutional (and human) right in every way imaginable.

As the International Covenant on Economic, Social and Cultural Rights (to which the South African government is signatory) explicitly acknowledges: «water is a public good fundamental for life and health. «The human right to water is indispensable for leading a healthy life in human dignity. It is a pre-requisite to the realization of all other human rights».¹⁰

At all levels of life - political, social, economic and cultural - the privatisation of water is undemocratic, anti-social and anti-human. The meeting was attended by progressive movements and organisations. Meanwhile, the municipalities entered into a management contract with Suez and Biwater for the supply of water services.

10. Declaration of the Coalition Against Privatisation of Water, September 2003

These private companies introduced water flow restrictors and pre-paid water meters to reduce unaccounted for water and maximise returns. The result: households were left for days without water; HIV/AIDS patients' healthcare was jeopardized; and houses burnt down. The Coalition Against Water Privatisation (CAWP) filed a lawsuit against them, which was heard on December 3rd, 2007. They also launched a series of social mobilisations to stop the installation of pre-paid meters. In some communities, activists started breaking up meters to gain access to water. One of the CAWP's triumphs was the fact that Johannesburg City Water did not renew its management contract with Suez. The CAWP engage in various tactics and strategies, which include marches, community meetings and litigations. They also participated in the local council elections in Soweto, where one of their candidates was successfully elected. In other places like Orange farm, they campaigned to boycott the elections. One of the most effective tools they use in campaigns is graffiti. It is commonplace to see graffiti in public places in Soweto and Orange Farm, sometimes superimposed over billboards and Suez posters.

I trust the Queen now has all the information she needs about South Africa —I'm glad I could help.

– Tanzania is struggling to rebuild after the chaos it was plunged into by Biwater. The government is involved in a lawsuit with Biwater over breach of contract. They are also being sued by Dar es Salam City Water over privatisation of the city's water services. Civil society is concerned about this development and has written a position paper to the sector minister.

– In Mali, the government abrogated their contract with Saur in 2005 - a move that civil society hailed as a step in the right direction. The Malian Committee for the Defence of Water (CMDE) is actively campaigning and lobbying government to keep water in

the public sector. They have moved forward by embarking on a Public-Public Partnership pilot project in Sio, Mopti.

– The situation in Sierra Leone is extreme: 70% per cent of the population have no access to potable water; this fact, coupled with an economy ravaged from years of civil war, has created a situation that is next to hopeless. The UK government's DFID (Department for International Development) has hired the services of PricewaterhouseCoopers (PwC) to carry out a reform assessment. And going on PwCs history and interests, they will most likely recommend privatisation. The DFID have also short-listed 8 private communication companies to promote privatisation.

«The DFID is proposing to assist the Government to reform and improve the performance of 24 state enterprises. Poor management in these sectors is a major obstacle to Sierra Leone's economic recovery and to improving public services delivery, especially for the poor».

- The Campaign for Good Governance (a coalition of NGOs) offered an alternative to the PwC report. This report, together with the launch of a World Development Movement (WDM) campaign, forced the government and the DFID to slow things down. Luckily, this pro-DFID government was ousted from power in the 2007 elections. Civil society is now patiently waiting to see what direction the new government will take. Experience from Ghana and elsewhere shows that when opposition parties come to power, they often abandon their manifestos, bite the bait and adopt donor policies. The African Water Network (AWN) is very keen to advance the debate on public restructuring. They face a daunting task, however, as the majority of the country do not currently benefit from the services of the Guma Valley Water Company.

The Future of African Cities and Water Supply

The current water crisis in African cities and towns is largely down to the massive influx in rural-to-urban migration, coupled with a lack of investment in public utilities as a result of the conditionality of the IMF and WB. Workers and farmers who were initially victims of the Structural Adjustment Programmes (SAPs), were then damned by the Poverty Reduction Strategy Papers (PRSPs), and flocked to the city centres for non-existing jobs.

Rather than the classical stereotype of the labour-intensive countryside and the capital-intensive industrial metropolis, the Third World now contains many examples of capital-intensive countryside and labour-intensive deindustrialised cities. «Overurbanisation», in other words, is driven by the reproduction of poverty, not by the supply of jobs. This is one of the unexpected tracks down which a neoliberal world order is shunting the future.¹¹

These unemployed and underemployed are forced to build architecturally chaotic, make-shift shacks and dwellings. This leads to an exponential rise in unhealthy housing in slums, which creates landscapes that are difficult to install utilities in. The slums themselves are also breeding grounds for gang and mafia-controlled water and sanitation companies.

Unable or unwilling to pay the extortionate price of water from vendors, some Nairobi residents resort to desperate expedients, including, two local researchers write, the use of sewerage water, skipping bathing and washing, using borehole water and rainwater, and drawing water from broken pipes.¹²

11. Mike Davis, ««Planet of Slums»» p. 16, Josef Gugler, «Overurbanisation Reconsidered», in Gugler, *Cities in the Development World*, pp. 114-23

Residents of these communities are forced to pay higher tariffs, and receive deliberate water rations that fall far short of that required to maintain a dignified life, as described above.

The consequences are a permanent presence of cholera and typhoid fever in communities, which contributes to higher death rates - most notably in children under the age of 5, who suffer constant diarrhoea. Even in slums where attempts have been made to supply potable water services to these communities, the results have been painfully inadequate due to the frequent breakage of spaghetti pipelines. This, in turn, gives rise to more unaccounted for water and contamination.

Slums depend on cesspits and open sewers to deal with wastewater. High levels of faecal matter are found in water from pits and boreholes, which is a major source of cholera, dysentery and typhoid diseases. Another service available to slum dwellers is the provision of water via trucks —a method that creates the double agony of higher prices and more contamination. Indeed, studies carried out by the Public Utility Regulatory Commission (PURC) in Ghana reveal that consumers who depend on trucks pay up to 9 times more than the normal price. Most African cities are expected to turn into slums in the next 50 years; that means there is going to be more people without access to water than we can even imagine. The Millennium Development Goals (MDGs) to halve the number of people with no access to sustainable potable water and sanitation services by the year 2015 —are not going to be achieved. Streams and rivers located close to urban areas will become either over-polluted or die off. The really scary prospect is that rivers, streams and aquifers will dry up due to climate change. Water will become a scarce commodity, and attempts will be made to ring-fence any

12. Mike Davis, *Planet of Slums* pp. 145, Mary Amuyunzu-Nyamongo and Negussie Taffa, *The Triad of Poverty, Environment and Child Health in Nairobi Informal Settlements*, Journal of Health and Population in Developing Countries, 8 January 2004, p.7.

available water resources. Those communities with access to the corridors of power will have the advantage; slum dwellers, on the other hand, have less power in most cases, which means they will be the first casualties of water shortages. According to the statistics of the PURC in Ghana, some 47% of the urban population are poor, and of those urban poor, just 15% have access to piped water. These are frightening statistics that spell doom for the urban poor! The situation is even worst in countries that have gone through civil war, such as Sierra Leone, where just 30% of the general population have access to potable water.

Africa Water Network

In January 2007 at the World Social Forum held in Nairobi, Kenya, water activists from all over Africa launched the African Water Network (AWN).¹³

The formation of the Network was extremely important if the sheer magnitude of privatisation and commercialisation taking place on the continent was to be combated. Activists recognised the urgent need to create a platform to share ideas and develop strategies to fight the banks and governments promoting privatisation and commercialisation. It took a year of extensive preparatory consultations and negotiations between 20 countries to arrive at the point of launching in Nairobi. Discussions followed on from the preliminary discussions held in May 2004 in Accra, Ghana, which called for the formation of such a platform.

The AWN is focusing on recovering public utilities through collaboration with water workers —a daunting task considering the donors still think the public sector in Africa is inefficient.

We need to recognise that most public distribution systems in

13. www.ipsterraviva.net, Clean Water for All! <http://www.newint.org> Privatisation Brings The Rain? www.africawaternetwork.org

Africa are costly, inefficient and do not meet the needs of women and girls, who have the main responsibility for supplying water to households. There are some good examples of grassroots solutions, but they are not happening fast enough to meet the scale of need; over 150,000 people per day need to gain access to safe water and double that number need to gain access to basic sanitation if we are to achieve the MDG targets.¹⁴

The Network focuses on documenting progressive public water management systems throughout the continent. At its first Annual General Meeting (AGM) in Johannesburg, South Africa, a 10 minute video documentary about the Savelugu Water Board management system was launched as a first step. This documentary is now used for educational purposes in various forums. It has been shown at the XII Civil Society Forum of the UNCTAD (United Nations Conference on Trade and Development) and a host of other platforms. The AWN is currently producing two more documentaries about the Kisumu (Kenya) and Sio (Mali) community water management systems, which are due by the end of the year.

Realising the threats posed to activists from national governments, the AWN set up a united response team to monitor events and take action in support of fellow activists across the continent and beyond. At its AGM, the Network also agreed upon two acts of solidarity: its participation in the march against pre-paid water meters in Phiri, and sending a message of solidarity to the Indian water activists being intimidated and arrested by Mumbai City Authorities. These two examples serve as demonstrations of the extent the AWN will go to in this regard.

Reaching the public is key to the success of any national or continental campaign. With this in mind, the Network plans to

14. Hillary Benn, *Respond to World Development Movement-Water Privatisation Campaign* <http://www.dfid.gov.uk/aboutdfid/world-development-movement-water.asp>

organise a media training programme to enable them to overcome the issues involved, and to assimilate this know-how across the various movements. This will also serve as a channel to broaden public education.

To avoid the pitfalls of bureaucratic governance, the Network is governed by a General Assembly which takes decisions on policies. Day-to-day management is carried out by a coordinator, 6 members (representing the continent's 6 regions) and water workers.

XI. THE EXPERIENCE OF ENGLAND AND WALES IN ORGANIZING WATER AND SANITATION SERVICES REGULATION

José Esteban Castro*

Introduction

This chapter briefly presents the development of regulation in the water services and sanitation sector¹ in England and Wales.² The first section explores the historic precedents of regulation in the country. It also makes certain parallel references to how principles and regulatory institutions developed in the United States, since the two countries' processes have major points in common and have influenced one another over time. The importance of a histo-

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1. In general I have used the term «water and sanitation services» as synonymous for «water services», while in some cases I have simply used the term «water and sanitation». Note, for example, that the «Office for Water Services (OFWAT)» covers both water and sanitation services.

2. Although some generic aspects of their regulatory activity correspond to the United Kingdom of Great Britain (England, Wales, Scotland, North Ireland, and overseas territories) as a whole, most of this chapter's reflections are based on the experience of England and, in the more recent period (since the 1989 privatization of water and sanitation companies) England and Wales. In many respects, the cases of Scotland and North Ireland have different characteristics (for example, water and sanitation companies were not privatized).

ric analysis of these processes could hardly be exaggerated. Indeed, this chapter takes the need to recall the history of water and sanitation services as one of its principal axioms. In this endeavor, special attention should be paid to countries that successfully achieved universal coverage for such utilities during the twentieth century, for all too frequently, debates over public policies and regulation adopt a strictly technical standpoint that tends to ignore historic lessons and fails to properly consider the relevance of socioeconomic and political aspects. The second section makes a more in-depth examination of the structure and development of water and sanitation services regulation as of the companies' 1989 privatization. This section briefly describes the current state of the debate and the principal problems facing the sector. The reflections are primarily based on the results of the PRINWASS research project (www.prinwass.org), coordinated by the author. Among other cases, that project analyzed the reforms introduced to water and sanitation services in England and Wales, particularly as of 1989.

A Historic Look at the Development of Regulation

Regulation in England and the United States developed in order to establish controls over private-company provision of goods and services such as the distribution of water and gas for domestic use during the second half of the nineteenth century (Foreman-Peck and Millward, 1994; Newbery, 1999). These companies, small monopolies operating without regulation, generally served the more affluent neighborhoods of major cities. The need to establish strict controls over the activity of these private, unregulated monopolies was due in large measure to the user public's growing anxiety over the unsatisfactory nature (in terms of quality, prices, coverage, etc.) of the services, along with the need to extend the services to the population as a whole. Private companies failed to undertake the extension of such services, and thus decisive action of the State was

needed.³

Some liberal sectors interpreted the movement towards increased regulation of economic and social life that commenced in the nineteenth century as an anti-liberal conspiracy and an attack on democracy. Yet the fact is that the social and political forces advocating introduction of strict regulations were very heterogeneous and included prominent representatives of the liberal school of thought. They even included staunch defenders of *laissez faire* who nonetheless supported greater regulation and government intervention as a means to ensure preservation of the market and private property. Naturally, the struggles of workers to improve their working and living conditions and to expand the rights of the citizenry played a decisive role in this process (Marshall, 1963). It thus comes as no surprise that the introduction of an increasingly strict regulatory policy would enjoy a broad consensus of support and encompass nearly all aspects of social and economic life, with calls for minimum quality standards, price controls for foods, mandatory vaccination of children, taxation to extend water and gas supply systems in the cities, and a prohibition against child labor or the torture of workers by business owners, among many other topics (Polanyi, 1957: 144-150).

In England increased regulation of public services started in the mid nineteenth century with the signing of contracts between municipalities and private providers, who were granted rights to exploit monopoly services such as gas and water distribution, on the condition that they meet previously agreed-upon quality standards and be subject to price controls (Millward, 1991). Nonetheless, by the late nineteenth century it became obvious that regulation of private monopolies was insufficient to ensure the services' quality and, particularly, to provide the incentives needed in order to expand coverage in a context of rapid urban/population growth and

3. A brief analysis of the existing literature regarding this topic can be seen in Castro, 2005 and Castro et al., 2003.

ever-present threats of epidemics. Eventually, the solution adopted was municipal ownership of the services. For example, the city of London in 1902 decided to combine the eight private water monopolies that served the city, replacing them with a single company under public control; similar processes took place in other regions of the country (MWB, 1949; see also Laski et al., 1935; Hassan, 1998). It should also be noted that the private monopolies focused on obtaining and distributing «clean» water, but had almost no involvement with collecting and disposing wastewater or with the protection of basins. Such activities were accomplished through public-sector initiatives, sometimes supplemented, as in the case of environmental protection, by non-profit organizations (Antonelli, 1992; Finer, 1952; Luckin, 1986).

Gradual replacement of private water monopolies by municipal companies was not solely due to a need to improve the services' quality and extend coverage to the population as a whole. There were also what we could call systemic factors and conditioning elements external to the sanitation sector, for example considerations of a financial and political nature, which in large measure determined the course of action that inevitably led to increased regulation and direct public intervention. As one analyst recently indicated regarding the municipalization process of late nineteenth-century England, municipal ownership:

Provided local political support by keeping prices at reasonable levels while generating profits to finance local political public goods and reduce the burden of local taxes. This political-economic equilibrium gave the consumers political voice, the politicians economic power, while the profits benefited both. [...] With the growing power of the emerging working-class, with or without democracy, came demands for access to these services at «fair» prices —prices that the mass of the population could afford. Political concerns moved on from health and safety to equity and efficiency [...]. The political process,

either local or central, was inevitably involved in regulating these utilities. The real problems emerged when the political process was captured by those who saw that the need to regulate network utilities provided the opportunity to redistribute income or patronage. (Newbery, 1999: 19-22).

Accordingly, we could state that in England the development of regulation and, increasingly, of direct government intervention in providing network water services and wastewater collection and disposal (as well as other essential public services), starting in the late nineteenth century, responded to a number of factors, both internal and external to the sanitation sector *per se*. As I will further develop below, this analytical element is important for understanding the development of regulation, not only in the past but also in our current context.

The Case of the United States of America

Parallel to the development of regulation of essential public services in England, it is important to also consider the case of the United States, among other reasons because the processes in the two countries share a common legal base and have influenced one another over time. The development of regulation in the United States is generally divided into three principal stages. The first stage was from approximately 1870 to 1930 and includes the creation of the first regulatory institution in 1887, the Interstate Commerce Commission, followed by a series of similar entities created in the 1910s and 1920s. A second stage developed within the framework of the New Deal implemented by President Franklin Roosevelt in the 1930s in response to the Great Depression of 1929. During that period the private sector consistently supported the application of regulatory policies aimed at protecting market conditions and private property in times of great social and economic turbulence. A third, more recent, stage would be characterized by what some have

called «social regulation», in reference to extending the regulatory arm to cover new areas such as health, safety, and environmental quality standards. Such aspects have been gaining importance since the 1970s (Peters, 1998: 55-60). In broader terms, starting in the 1980s, in large measure under the influence of the United States and Great Britain, we have witnessed an aggressive return to the ultraliberal policies that consider regulation an obstacle to private liberties and to the business spirit. Such an approach supports deregulation and liberalization of economic activities, based on the argument that regulation is inefficient and that the market can effectively self-regulate without need for bureaucratic interventions.

Despite points of fundamental convergence in the development of regulation in the United States and England, the emergence of principles and regulatory institutions in the U.S. took a very different path than in England. Of particular note is the central role of the judiciary in the U.S. In this regard, the Supreme Court of Justice established a series of fundamental regulatory principles following Common Law, maintaining that regulation is necessary to protect the public interest and correct problems of imperfect competition such as those derived from the existence of natural monopolies in network services, including water. One of these principles introduced to justify government regulation is that companies that provide public services are legally within the public domain, performing a public function, and are therefore subject to regulation. For example, a Supreme Court ruling in 1877 related to a dispute over railroads set forth this principle as follows:

When the owner of property devotes it to a use in which the public has an interest, he in effect grants to the public an interest in such use, and must, to the extent of that interest, submit to be controlled by the public, for the common good, as long as he maintains the use. (U.S. Supreme Court, 1877).

Another example involves the principle of balance between

constitutional respect for private property and protection of the public interest. This principle assumes that private companies should not receive disproportionate rates of return to benefit their shareholders to the detriment of users. For example, in 1904 the Supreme Court justified setting a limit on the rate of return of a private water company in California as follows:

It is not confiscation, nor a taking of property without due process of law, nor a denial of the equal protection of the laws, to fix water rates so as to give an income of 6 per cent upon the then value of the property actually used for the purpose of supplying water as provided by law, even though the company had, prior thereto, been allowed to fix rates that would secure to it 1 1/2 per cent a month income upon the capital actually invested in the undertaking. If not hampered by an unalterable contract, providing that a certain compensation should always be received, we think that a law which reduces the compensation theretofore allowed to 6 per cent upon the present value of the property used for the public is not unconstitutional. There is nothing in the nature of confiscation about it.

The original cost may have been too great; mistakes of construction, even though honest, may have been made, which necessarily enhanced the cost; more property may have been acquired than necessary or needful for the purpose intended. Other circumstances might exist which would show the original rates much too large for fair or reasonable compensation at the present time. Notwithstanding such facts, are the shareholders in the company to be forever entitled to 18 per cent upon this cost, and does a reduction in amount, as provided for in the act of 1885, take away property, in violation of the provisions of the Federal Constitution? We think not. (U.S. Supreme Court, 1904; See also: U.S. Supreme Court, 1912).

Another case, which involved the Knoxville Water Company in

1909, foresaw a growing need for regulation in future years and discussed the intrinsic problems faced by regulators, who need to preserve the balance between private and public interests. At the same time as it defended the «sanctity of private property» as a foundation of the social system, the Supreme Court judgment in this case confirmed the right of citizens to have open access to information on the operations of private companies that furnish public services:

Regulation of public service corporations, which perform their duties under conditions of necessary monopoly, will occur with greater and greater frequency as time goes on. It is a delicate and dangerous function, and ought to be exercised with a keen sense of justice on the part of the regulating body, met by a frank disclosure on the part of the company to be regulated. [...] Our social system rests largely upon the sanctity of private property; and that state or community which seeks to invade it will soon discover the error in the disaster which follows. The slight gain to the consumer, which he would obtain from a reduction in the rates charged by public service corporations, is as nothing compared with his share in the ruin which would be brought about by denying to private property its just reward, thus unsettling values and destroying confidence. On the other hand, the companies to be regulated will find it to their lasting interest to furnish freely the information upon which a just regulation can be based. (U.S. Supreme Court, 1909).

Leaving aside any political and ideological implications that could be seen in this and other Supreme Court decisions, these judgments contributed in the long term to establishing a solid regulatory tradition in the United States, many of whose principles continue to have clear relevance today and influence the development of regulation in several other countries. An important aspect worth noting is that regulation was clearly perceived as a necessary instrument to preserve the functioning of the capitalist system and,

in particular, private property, even though some business sectors and liberal intellectuals tended to criticize the advance of regulation over private activities as an attack on individual liberties and, in the final instance, on the democratic system. This is an important aspect, because the tensions generated within the capitalist system in relation to regulation persist today and to a great extent permeate contemporary debates over the institutional forms to be adopted and the appropriate scope of regulation for essential public services.

Finally, another point worth reiterating is that although the development of regulation for basic public services in England and the United States have influenced one another throughout history, there are also significant differences between the two. In particular, the judiciary has not played as predominant a role in England as in the United States. Some authors have argued that in England negotiations and mutual understanding between the government and the private sector have led to the development of a «negotiated» regulatory model that contrasts with the litigiousness characteristic of the United States (Wilks, 1998). This is an important aspect to better understand the design and functioning of the existing regulatory system in the water and sanitation services sector in contemporary England.

Administrative Rationalism vs. Economic-Mercantile Rationalism

The development of regulation and growing direct government intervention in the economy accelerated after the First World War and particularly following the Great Depression of 1929, when a consensus grew that the State should play an essential role in ensuring economic growth and social equity. In the water sector, this took the form of increasingly centralized services in the hands of the nation States, with the creation of public bureaucracies organized hierarchically based on a combination of scientific knowledge

and administrative expertise, exemplified with institutions such as the Bureau of Reclamation and the Corps of Engineers in the United States (Lee, 1999: 44). Such a process forms part of the development of the tradition John Dryzek called «administrative rationalism» (Dryzek, 1997), characterized by a central role of State regulation over, and direct intervention in essential public services—functions that those critical of government intervention tend to call «command and control». In the water sector, this tradition has in large measure been dominated by experts in engineering, environmental sciences, and other related disciplines, who have played a key role in developing regulatory structures and mechanisms as well as standards for monitoring the services.

This government regulation model was based on the notion that government intervention is necessary to ensure public interest in the face of private interests. Strongly associated with theories of «welfare economics», it paved the way for the development of a body of regulatory theory generally known as the normative theory of regulation. The normative theory assumes that an optimal result to a given problem, for example the problem of equitable access to essential public services, can be arrived at through decisions based on a fair and ethical judgment regarding the best solutions available to attain social well-being, regardless of the personal preferences of those involved. Notions of social well-being and public interest, and a presumption that public institutions constitute the fundamental instrument to guarantee the attainment of objectives, occupy a central place in the normative theory of regulation, which played a crucial role in the development of regulatory principles and institutions (Newbery, 1999).

The normative theory's assumptions and principles have been criticized since the start by a tradition of authors who, generically, represent what has been called the positive theory of regulation, which rejects the validity of concepts such as «social well-being» and «public interest» that constitute the starting point of normative theories (Newbery, 1999: 136-7). Positive theory tradition has major

points of convergence with what Dryzek called «economic rationalism» (Dryzek, 1997), especially in its extreme version, which favors the dismantling of control and public regulation functions and a return to the ultraliberal model of *laissez faire/laissez passer*, which extols the market's self-regulatory capacity. These authors reject the notion that the public sector is inherently a benevolent maximizer of social well-being. They support their arguments on empirical evidence, suggesting that to the contrary, the public sector frequently does more harm than good. For example, these critics argue that in the water sector, despite several decades of intervention, the State has failed to achieve its goals, especially with respect to economic regulation (Lee, 1999: 41-2). These authors have developed a series of arguments based on notions of «governmental», «bureaucratic» or «regulatory failures». Here, the principal presumption is that far from being a guardian of the public good, the State is subject to principles similar to those that prevail in the private sector. For example, economist William Niskanen, a researcher of bureaucratic behavior who has had great influence in recent academic and political debates in favor of deregulation, liberalization, and privatization of public services, applied neoclassic economic assumptions regarding economic agents to his analysis of bureaucracy. Bureaucrats, under this model, are rational players who in principle act based on self-interest, seeking to maximize their individual objectives (Niskanen, 1968; 1971; see also Jackson, 1982; 1985). In the case of water bureaucracies, critics who adopt this line of argumentation have indicated that normative theories of public interest rarely take into account that public officials may be pursuing their own objectives and do not necessarily seek to maximize social well-being through their actions. They note that the starting point for positive theory is that public officials have alternative objectives, generically defined as the pursuit of individual income, which tends to have a negative impact on the administration of water and water services (Lee, 1999: 43).

Although the positive theory of regulation undoubtedly has

in its favor an abundant empirical basis for its criticism of bureaucracy and, in parallel thereto, the normative theory, the concrete policy consequences derived from it are the subject of an unfinished and likely never-ending debate. In particular, this approach, which starts by considering regulation unnecessary in the best of cases and in the worst an obstacle to growth and economic development, has inspired radical reforms in the water sector at a global level since the 1980s, when a radical policy of deregulation, liberalization, and privatization of public services started being promoted in the United States and Great Britain. In theory, that policy proposed to replace administrative rationality with a rationality founded in what was called free competition of self-regulated market forces.⁴ The prevailing argument in this new context has been summarized by Newbery:

Introducing competition into previously monopolized and regulated network utilities is the key to achieving the full benefits of privatization. Privatization seems to be necessary but is not sufficient. Regulation is inevitably inefficient, suggesting that it can be confined to the core natural monopoly of the network. Provided that competition is effective, it can replace regulation for network services and thereby increase efficiency.

4. This debate is not merely an academic digression. To the contrary, it is of great relevance for understanding contemporary processes occurring in water and sanitation services at the international level. On the one hand, we have argued in other works (See for example Castro, 2005, 2007a,b,c, 2008) that the growing influence of extreme economic rationalism, closely tied to certain positions derived from the positive theory of regulation, have influenced reform policies in the sanitation sector in Latin America and other regions ever since the 1980s, with calls for dismantling both public intervention and regulation and, as was recommended by a World Bank expert in water and sanitation, a transfer of services to «unregulated private monopolies» (Brook Cowen and Cowen, 1998; Brook Cowen, 1997; see also Richard and Triche, 1994; Foster, 1998, 1999; Zerbe and McCurdy, 2000). Regarding this policy's consequences in relation to the regulatory process, see, among others, Solanes (1999, 2002).

(Newbery 1999: 386).⁵

In practice and in historical perspective this process did not result in the radical transformation of the regulatory realm predicted on paper. In fact, in some cases privatized public services have been subject to even stricter public regulation or re-regulation (Swyngedouw, 2009), as is the case of sanitation services in England and Wales since their privatization in 1989 (Hogwood, 1998; See also Taylor, 1999, 2002; Schofield and Shaoul, 1997 and Shaoul, 1998), which we consider below.

Regulation of Privatized Water and Sanitation Companies in England and Wales⁶

The current structure of the water and sanitation services sector in England and Wales was established in 1989 with that year's privatization of the ten regional public companies previously providing those services. Privatization was sanctioned by the Water Act of 1989⁷ (See Table 1). The system then implemented contemplated private ownership and operation of the companies (*full divestiture*), and although significant changes have taken place, considered on the following pages, in general terms the model has been maintained up until the time of writing this chapter. One notable aspect is

5. Given the brief space of this article, we are unable to further elaborate on this point, but it should be noted that this type of argument has unleashed an extensive debate regarding the various forms of «competitiveness» that can be introduced in water and sanitation services management and their relative scope. See, among others, Lee (1999) and Beato and Laffont (2002). For the case of England and Wales see, for example: OFWAT (2000, 2007, 2008), Vass (2002) and, for a recent critical evaluation, Yarrow et al. (2008).

6. As anticipated at the start, we have principally focused on the case of England and Wales, because Scotland and North Ireland have followed a different path (among other things, water and sanitation companies were only privatized in England and Wales), although in several regards the regulatory system applies in general to the United Kingdom as a whole.

the expansion of regulatory activity and institutions since the onset of privatization, which has led to the development of a complex system comprised by government entities of different levels and a new type of hybrid entity curiously named «quasi non-governmental» (later known as «QUANGOS») or also «non-departmental public bodies».

TABLE 1: key legislation governing the management of water and sanitation services in england and wales since the 1989 privatization

7. In addition to these ten regional public companies there were 29 small private companies in England that only supplied water (they did not provide wastewater collection services) to approximately 25% of the population. Some of these private companies had existed since the nineteenth century. These companies were not immediately affected by the 1989 privatization of public companies, but in time most of them were absorbed by the large privatized companies.

Year	Law	Matter	Relevant Measures
1989	Water Act	Privatization	Transfer of water and sanitation services to private operators; creation of the environmental regulator National Rivers Authority (NRA) and of the economic regulator Office of Water Services (OFWAT).
1991	Water Industry Act	Organization and regulation	Replaced the Water Act of 1989. Assigned powers and responsibilities for regulating the quality of water for human consumption in England to the Secretary of State for the Environment, Transport and the Regions, and in Wales to the Secretary of State for Wales.
1991	Water Resources Act	Protection of water resources	Granting of powers and clarification of the responsibilities of the NRA
1991	Statutory Water Companies Act	Organization and regulation	Establishes the rights and statutory obligations of private operators.
1992	Competition and Service (Utilities) Act	Regulatory framework for comparative and market competition	Establishes the role of the economic regulator and the obligations of private operators in relation to competition, focusing on improving efficiency in the sector.
1995	Environment Act	Protection of water resources	Creation of the Environment Agency, which replaced the NRA
1998	Pesticides Act	Protection of water sources for human consumption	Revision of the Food and Environment Protection Act of 1985
1998	Competition Act	Regulatory framework for comparative and market competition	Introduction of anti-trust policies; grants greater powers to the economic regulator (OFWAT) to apply anti-trust policies; provides incentives to improve comparative and market competition.
1999	Pollution Prevention and Control Act	Protection against environmental contamination	Implementation of Directive 96/61/CE of the European Union on Integrated Pollution Prevention and Control.
1999	Water Industry Act	Organization and regulation of the Sector	Prohibited disconnection for lack of payment; revised billing methods (encouraging the installation of meters).
1999	Town and Country Planning Regulation in England and Wales	Environmental protection	Implementation of the European Directive introducing environmental impact studies for projects involving water resources.
2003	Water Act	Organization and regulation	Amended the Water Act of 1991.

At the time of privatization in 1989, responsibility for designing policies and legislation in the sanitation sector and for designating⁸ the private companies to act as water and sanitation service providers was handed over to the Secretary of State for the Environment and the Secretary of State for Wales (later replaced by the National Assembly for Wales).⁹ On the other hand, the Ministry of Agriculture, Fishing and Food (MAFF) retained responsibilities for flood defense and fisheries, as well as licensing, monitoring, and control of effluents and other discharges to the sea. The secretaries were also in charge of developing and updating the regulatory framework, which, among other things, established service performance standards, water quality parameters, criteria for monitoring the state of rivers, or measures to prevent contamination of water sources. The secretaries also had powers to approve codes of practice for the com-

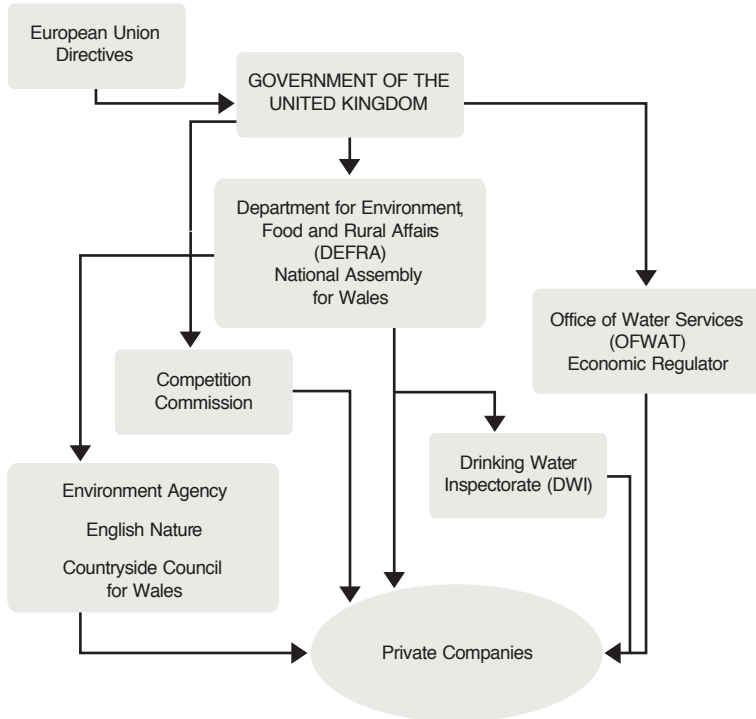
8. This is an important concept, since privatization in England and Wales was not implemented through open competition among companies, as has normally occurred at the international level. Rather, the English government created 10 private companies to replace the 10 regional public companies in existence at the time, and designated them to provide the services (in many cases, such as the case of Thames Water, which serves London and the region of the Thames River basin, a good part of the executives of the private company created in 1989 had been executives in the former public company). The possibility of acquiring the companies created in 1989 was prohibited by law. This was amended in 1994, when the phase commenced for acquisition of the companies, especially by foreign investors. In addition, designation of the private companies to act as providers of the service was protected by a clause that obligated the government to give 15 years advanced notice if it wished to modify the companies' status (for example, in case it intended to return them to the public sector). This clause was later modified under the government of Prime Minister Tony Blair, when the mandatory notice period was extended to 25 years.

9. Wales recovered a certain degree of autonomy with respect to the central government as of the 1997 general elections won by the Labor Party, whose platform included the return of certain powers to Scotland, Wales, and the regions of England. Among other powers «returned» to Wales was management of public services such as water and sanitation. Regarding the specific case of these services in Wales see Drakeford (2002).

panies and to impose sanctions in case of nonperformance of their obligations as specified in their designation agreements. Since 1998, one year after the Labor government came into office, these powers have been transferred in the case of England to the Department for Environment, Food and Rural Affairs (DEFRA), and in the case of Wales, as stated above, to the National Assembly for Wales.

But the greatest innovation was the creation of a specific regulatory entity for the sector: the Office of Water Services (OFWAT), supplemented by other governmental or quasi-governmental agencies, such as the Drinking Water Inspectorate (DWI) and the National Rivers Authority (NRA), replaced in 1995 by the Environment Agency. Certain other entities also exercise a regulatory role over specific aspects of the companies' operations, such as the Monopolies and Mergers Commission (MCC), later replaced by the Competition Commission; the HM Inspectorate of Pollution, later absorbed by the Environment Agency; the District Health Authorities; and local authorities that maintained a certain role of control over particular aspects (see summary in Figure 1). Finally, other regulatory entities have considerable influence in the sanitation sector, in particular the Department for Constitutional Affairs, in charge of implementing Freedom of Information legislation, and the Office of Fair Trading, (OFT) in charge of several different aspects regarding user protection.

FIGURE 1: key institutions in the regulatory system for water and sanitation services in england and wales



The primary obligation of the economic regulator, OFWAT, created in 1989, is to ensure that the services function properly, particularly guaranteeing the private companies' financial viability. In addition to this primary obligation, OFWAT is also responsible for protecting the interests of users in relation to equity in the cost of services; promoting economic efficiency on the part of the companies; and facilitating competition among them. OFWAT's economic regulation system is oriented towards price caps more than return-rate regulation as occurs in the United States. The princi-

ple underlying the system is that price regulation provides stronger incentives for improvements in efficiency and innovation. OFWAT uses what is called the «RPI-X» formula, which takes into account a complex set of variables, including individual investment requirements for each of the ten companies and a Retail Price Index to protect the companies' income from inflation, plus or minus an amount (X) determined by the regulator itself based on an analysis of each company's specific conditions. Prices are set for five-year periods with the objective of providing incentives for the companies to improve efficiency.

In addition, one of OFWAT's responsibilities is to hear disputes between the companies and users. In said regard, OFWAT originally designated ten Customer Service Committees (CSCs) for each region serviced by each of the ten regional companies. The chair of each committee, together with the Director of OFWAT, formed the National Customer Council. This consumer representation system was restructured in 2002, among other reasons in response to criticisms received due to the CSCs' extreme dependence on the OFWAT director, who, in fact, personally designated their members. In its place, WaterVoice was created, an entity also organized with ten regional committees and a National WaterVoice Council. In 2005, in turn, WaterVoice was replaced by the Consumer Council for Water, with a similar structure.

Regulation of the Environmental Impact of Water and Sanitation Services

As mentioned above, at the time of privatization in 1989, environmental regulation of sanitation companies was entrusted to the National Rivers Authority (NRA), which was replaced in 1995 by the Environment Agency. The Environment Agency was created through a merger of the NRA, the Inspectorate of Pollution, 83 Waste Regulation Authorities, and certain offices of the Department for the Environment. The legal framework of action of the Agency

was set by the Water Resources Act of 1991 and the Environment Act of 1995 (See Table 1). The principal functions assigned to the Environment Agency were pollution prevention and control, through the setting of discharge limits for substances that pose an environmental hazard; permit issuance for wastewater treatment stations to discharge effluents; control of the use of sewage sludge in agriculture; the setting of minimum flows for river currents; the granting of water abstraction licenses; control of fisheries; water recreation areas; and the conservation and navigation of certain rivers. The Agency was also entrusted with promoting demand-management initiatives through its National Water Demand Management Centre, including the promotion of water conservation and related measures, such as the design and dissemination of mechanisms for water savings in domestic, industrial, and public uses; programs to reduce losses; and expansion of the use of water consumption meters.¹⁰ Once the Labor government took office in 1997, the Agency's powers and obligations were extended to also cover long-term planning management for water resources and drought prevention and control. The Agency was even empowered to regularly monitor the plans of private water and sanitation companies in relation to such aspects.¹¹

10. Despite which, between the time of privatization in 1989 and 2008, the percentage of household users with metered water consumption in England and Wales only grew from 14 to 30%.

11. This extension of the Environment Agency's powers and obligations resulted directly from the action of the government of Prime Minister Tony Blair, based on electoral campaign promises made at the Water Summit in 1997. There, a radical review was promised of water and water and sanitation services management. Such measures responded to the population's growing discontent with the performance of the privatized companies, which intensified during a 1995 drought that exposed the private companies' lack of strategic planning for management of water resources in conditions of growing climate insecurity (regarding this debate, see for example: OFWAT, 1998; Haughton, 1998; Bakker, 2000; Environment Agency, 2000; Walker and Smithers, 2007).

Regulation of Drinking Water Quality

In 1990 a specific regulator was created to control the quality of drinking water supplied by water and sanitation companies, the Drinking Water Inspectorate (DWI). The Inspectorate is in charge of monitoring the companies' compliance with Directives issued by the British Government and the European Commission¹² in relation to the physical/chemical and biological parameters of water distributed for human consumption (ingestion, hygiene, and food preparation). The Inspectorate conducts technical auditing and regular inspection of water and sanitation companies; investigates incidents that affect the quality of water for human consumption; provides technical support in preparing the corresponding legislation; and represents the British government in the standardizing of criteria related to incorporating European Directives on water into the country's legislation. The Inspectorate also has powers to bring actions in the name of the Secretary of State and of the National Agency for Wales in cases of extreme violations of water quality regulations (DWI, 2001; see information updated annually on the Inspectorate's web page: www.dwi.gov.uk).

FIGURE 2: structure of regulation of water and sanitation services in england and wales

Sector Level	Horizontal	National	International
OFWAT (economic r egulator)	Environment Agency	Department for Environment, Food and Rural Affairs	EUROPEAN UNION Directives
Drinking Water Inspectorate (DWI)	Competition Commission	National Assembly for Wales	
	Office of Fair Trading		

12. The European Commission establishes «Directives» over water management and water services, which must then be incorporated into the legislation of the member States (See Figures 1 and 2).

Regulation of Business Conduct and Other Aspects

Finally, there are other regulatory entities that also have powers and obligations in relation to water and sanitation services, in particular the Monopolies and Mergers Commission, later replaced by the Competition Commission, and the Office of Fair Trading. The Monopolies and Mergers Commission plays a role similar to that of a court of appeals to which both OFWAT and the private companies may bring cases in relation, for example, to disputes over price controls established by the economic regulator. This regulator is also in charge of monitoring proposals for mergers between companies. For its part, the Office of Fair Trading has the role of supervising companies in activities that could affect users.

Although of significantly lesser importance, planning and municipal authorities also have a certain regulatory role in relation to water management and water services. The recent trend has been towards that of a growing intention to return certain regulatory functions to these local and regional powers (Environment Agency, 2001). Nonetheless, the degree of progress in said regard is not clear.

Summary and Future Outlook for the Regulatory System in England and Wales

As suggested by the foregoing paragraphs, certain ideological debates over the 1989 privatization might create a confusing picture, especially with respect to the notion that privatization contributed to shrinking the public sector. Actually, public activities for the control and regulation of water and sanitation services expanded considerably. This is due to a series of factors, both internal and external to the sector. In part, such a result was unplanned, since certainly one of the declared objectives of privatization as implemented by Margaret Thatcher's administration had precisely been

to free companies from government controls and reduce the public sector. Nonetheless, in practice, as the process has unfolded, there has been a trend towards proliferation of regulatory entities and an increasing range of areas subject to regulatory control (Hoogwood, 1998). New regulatory agencies have been added to control the privatized companies, while the European Directives' influence over the member States has increased to the point where they should be considered a constitutive part of the process and of the country's regulatory institutionality. Figure 2 above presents a summary of the structure for regulation of water and sanitation services in England and Wales. This makes it possible to distinguish several different levels and interrelations among regulation agencies, particularly at the international, national, horizontal (cross-sectorial) and sectorial (specific to the sanitation sector) levels.

Intense debate continues over the reasons that led to privatization of the sanitation companies and the regulatory system's results in this new stage. Unfortunately, for reasons of space, we cannot do justice to them in this work (See, among others, Green, 1997, 1999; Greene, 2002; DEFRA-OFWAT, 2003; Bakker, 2004; Hall and Lobina, 2007). In particular, the water and sanitation services regulatory regime in England and Wales is subject to a continual debate, principally focused on its effectiveness and replicability. Furthermore, certain myths have been built around the system, which tend to be indiscriminately accepted in other countries that are developing their own regulation systems for these services, especially what I call the myth of the independent and neutral regulator. It is fundamental to engage in an objective critique that will allow that myth to be unraveled.

In this regard, critics of privatization have repeatedly pointed out severe faults in the system and the tendency of regulatory entities, in particular the economic regulator OFWAT, to favor the interests of private companies over the rights of citizens and the companies' users (among others see Schofield and Shaoul, 1997 and Shaoul, 1998; Taylor, 1999, 2002; Bakker, 2004; Hall and Lobina,

2007; Castro, 2007). During the 1990s¹³ the debate over the role of the regulator, OFWAT, intensified for a number of reasons, including a perception that the private companies enjoyed extreme flexibility in applying the law and regulatory norms, allowing them to accrue extraordinary profits and pay salaries in the millions to their executives, accompanied by an obvious lack of investment in infrastructure renovation (the need for massive investments had been one of the reasons argued to justify privatization) and in strategic planning (see footnote number 11). All this took place in a context of sharp price increases for the users and a harsh process of exclusion from access to services through disconnection for lack of payment, which reached high percentages in the early 1990s.¹³ These problems became one of the major issues in the campaign of the Labor Party, which finally came into office in 1997. As a consequence, Labor introduced significant changes in environmental regulation, demonstrating that the regulator's alleged independence is a myth. Among other fundamental decisions, the government prohibited disconnection for lack of payment. In setting price levels for the period of 1999-2004, the regulator, OFWAT, obligated the companies to reduce rates by an average of 12% to offset excessive profits accrued during the previous period and failure to fulfill investment plans. All this amounted to a radical change in the regulator's conduct and suggests that OFWAT adapted to the new political environment with the arrival of the Labor Party. In 1997, the Labor government also applied a windfall tax on the companies of approximately 1.65 billion sterling pounds, once again as an off-

13. Between 1990 and 1995 the number of disconnection notices for lack of payment sent by the private companies to families increased by 900%, and in 1994 almost 2 million families (nearly 9% of the total) stopped paying their water and sanitation bills (Herbert and Kempson, 1995; Ward, 1997). According to information obtained in the author's interviews with persons who had occupied executive positions in water and sanitation companies prior to privatization, historically user nonpayment rates had always been a very low level, that is, 2-3% of total users.

set for their excessive profits in the preceding period.

These transformations in the regulatory environment as of the Labor Party's supplanting of the Conservative Party (which had instituted privatizations) are sufficient evidence to indicate the fragility of the concept of «independence» or «neutrality» of the regulatory system, which, without question, is strongly determined by the political process. Nonetheless, from another point of view, the changes introduced were insufficient to restore a more favorable balance to the private companies' users. As a result, the proportion of families with unpaid debts to the sanitation companies continued to grow, reaching figures in 2008 of some 15 to 20% of total users, while according to the government's own data between 2 and 4 million families currently live in «water poverty» (which, according to the government, occurs when the water and sanitation bill surpasses 3% of family income).¹⁴

On the other hand, one of the core objectives of privatization had been that of introducing competition in the system by exposing water and sanitation companies to market forces, an aspect that the regulator, OFWAT, consistently tends to defend as an achievement of the regulatory model introduced in 1989. A typical example of the economic regulator's posturing is found in a report on the «state of competition» in water and sanitation services, in which one can read that «Comparative competition has been successful at encouraging efficiency in the water companies. Market competition is encouraging greater efficiency». (OFWAT, 2000: 1). Nonetheless, the water and sanitation companies have been subject to continual criticism due to their lack of efficiency and even deteriorating performance, for example, in relation to environmental impacts.¹⁵ This is a clearly controversial aspect. At the international level, fervent

14. See for example, Klein, 2003; Fitch and Price, 2002; Greene, 2002; UKP, 2003; OFWAT, 2004, pp. 14–19; NCC, 2005. The situation has worsened in recent years and is one of the government's current concerns in relation to the future of water and sanitation services in the country.

defenders of privatization and of its regulation system refer to this as a successful example of public policies and management in water and sanitation services (Rouse, 2009).

Nonetheless, even though defenders of the system, including the economic regulator OFWAT, indicate several elements to argue their optimistic position on the results of privatization, voices taking a dissident stand against this official position are ever louder and more numerous, and include more than just those skeptical of the privatization of essential public services. For example, in clear recognition of the inexistence of real competition in water and sanitation services, a recent report published by a British newspaper that clearly supports the private sector through a free-market approach stated:

OFWAT, the water regulator, has made the first tentative steps towards liberalisation of the water industry in England and Wales, publishing a menu of options that could lead to the break-up of the regional monopolies that have become infamous for market abuse and poor service. (Fortson, 2008).

The article, given its eloquence, does not require further explanation: from the point of view of defenders of the free market and of business competition, the regulatory system for the sanitation sector in England and Wales has failed; it has contributed to maintaining the privileges of a monopolistic market controlled by a small number of private companies (The article suggests that the regulator OFWAT took 20 years to take the «first tentative steps» to introduce competition into the sector). This newspaper report

15. While the annual reports of the economic regulator OFWAT state that private companies have introduced constant improvements in the services' infrastructure, the environmental regulator (Environment Agency) annually publishes a list of companies ranking as the country's ten worst polluters, which includes several privatized water and sanitation companies. One of them, Thames Water, heads up the list of «worst offenders.» See, for example, Beard, 2002; BBC, 2006.

is just one indicator of the intense debate now unfolding in the country. Another recent report based on a detailed study of the sector concluded that there are enormous difficulties for evaluating the performance of water and sanitation companies and the regulatory process in England and Wales because «relevant information (to make an evaluation) is limited, in large part because of the restricted roles played by competition in the sector to date». (Yarrow et al., 2008: 4). The report is resoundingly skeptical regarding the results of the model implemented since privatization was instituted:

It follows that the prospects for the development of competition in the water industry should be good, but the reality is that they are quite possibly not very good. There have been a number of false starts in this policy area in the years since privatization of water services in England and Wales nearly twenty years ago now, and the latest attempt to move forward, in the form of those provisions of the 2003 Water Act dealing with market opening and with access to water networks, is widely regarded as having resulted in failure. [...] Those who are sceptical about the potential contributions of competitive markets can certainly point to the fact that there is only limited evidence of success. (Yarrow et al. 2008: 86).

These and other evaluations critical of privatization of sanitation services in England and Wales and of the regulatory system implemented for their monitoring join a consistent series of criticisms put forth over the past two decades by a number of authors, mentioned throughout this article. The regulation system for water and sanitation services in England and Wales, which will soon complete two decades of existence, will certainly be subject to intense

16. In 2001, shortly after the return of powers to Wales, the private company that served this region was deprivatized. This was the first case of radical modification of the system privatized in 1989 (Drakeford, 2002).

scrutiny. Quite probably, substantive changes to that system should be expected in the coming years, among which one ought not rule out deprivatization of the companies (See, for example, Hall and Lobina, 2007).¹⁶

Conclusions

Certainly, an examination of the model for the organization and regulation of water and sanitation services in England and Wales provides substantive lessons for other countries. We can summarize some of these lessons in a series of topics, each of which probably deserves a study of its own: a) The historic role of the public sector in organizing, regulating, and universalizing the services, b) The existence of factors internal and external to water and sanitation services. These are true systemic, structural conditioning factors, constituting key elements in the development of these processes and are largely independent of the rational action of the players involved (governments, businesses, organized social groups, individual users, etc.), c) the need to promote critical studies, as opposed to complacent ones, regarding regulatory and organizational processes for water and sanitation services in general, and especially to unravel certain myths that are often indiscriminately accepted, as for example the myth of the «independent» or «technically neutral» regulator. This myth may be very attractive for a number of understandable reasons, but does not survive a rigorous analysis of empirical evidence regarding the functionality of regulation in practice.

With respect to the first aspect, it should be noted that a large part of the current debate at the international level has consistently failed to make a historic analysis of how water and sanitation services were actually organized in the countries that succeeded in universalizing access to them during the twentieth century. This «forgetfulness», in our opinion, is not casual. Rather, it principally responds to the predominance of analytical approaches that tend to exclude consideration of long-term processes that help explain the genesis of a given phenomenon. In the case of water and sanitation

services, for example, specialized contemporary literature seldom asks «how did the countries that successfully universalized services (such as England, the United States, or the countries of Western Europe) do so?». The answer is very clear when the historic record is examined, as we have briefly argued in this chapter: the universalization and effectiveness achieved in these countries, with all their problems and limitations, was only possible based on a decisive role of the State starting in the late nineteenth century, and was a task that demanded several decades of efforts. The return to direct private-sector participation in the management of these services, as is the case in England starting in 1989, was only possible on account of the conditions created by decades of public investment and control in the sector. Furthermore, as we have seen, the privatization policy is far from being a success even from the standpoint of those who defend a free-market policy in the United Kingdom. I believe that, unfortunately, these fundamental lessons from the history of sanitation in England and the United States are systematically ignored in a large part of the debate taking place at the international level. This trend is in urgent need of being reversed in order to keep errors from repeating and get the maximum benefit from those positive experiences that actually can be extracted from such examples.

In relation to the second point, it is also very important to restore a balance between the role of agents, on the one hand, and systemic, structural conditions, on the other, when analyzing regulation processes and other aspects of water and sanitation services. In this regard, a fundamental lesson that can be learned from the case of England is that the sharp criticism made of the privatization system and its regulatory model has only been possible due to conditions of comparatively open, comprehensive information regarding the functioning of the companies, the government, and the regulatory system. I say «comparatively» because, as we have seen in this chapter, critics of the system in England, from different parts of the political spectrum, ranging from skeptics of the market and privatization all the way to ardent defenders of a self-

regulated market without bureaucratic controls, have great reservations over the quality of the information available, its mechanisms of production, and access to it. Nonetheless, in comparative terms, in many other countries, especially in the global south but also in Europe, the existence of information such as is available, for example, in England, on the functioning of the systems continues to be a distant dream. This is actually an excellent example of systemic, structural conditions, since the possibility that information exists, with mechanisms for accessing it, allows the different social agents to analyze and take positions regarding a given phenomenon or process, as in the case of water and sanitation services. Moreover, such possibilities form a part of the country's socio-political and cultural context, also expressed in its institutions. One need not be in agreement with that model or attempt to replicate it; that is not what I am suggesting. But the principal point here is that consideration of systemic conditions is fundamental for understanding and explaining the concrete functioning of, for example, the regulatory system of water and sanitation services, yet is frequently left out of specialized literature on the topic and of the corresponding debates. Of course, this is only an example, since a number of systemic conditioning factors, most of them external to water and sanitation services, ought to be incorporated into the analysis. Such factors run anywhere from the impact of the international financial system all the way to challenges for water management posed by climate change, to give just two examples.

In close relation to the above, the third point we want to emphasize in the conclusion is the need to promote critical, not complacent studies, and especially to demystify certain assumptions such as the much celebrated «independence» or «neutrality» of the regulator, which frequently, in the current debates in many countries, tends to be illustrated precisely with the case of England's economic regulator of sanitation services, OFWAT. I believe this chapter has provided sufficient elements so that the reader can at least decide to take another look at this notion of independence

or neutrality, which in practice cannot withstand a critical analysis based on the empirical evidence. The problem is not the intentions or moral position of the players involved (although obviously this aspect should not be ruled out, as we are reminded by the school of the positive theory of regulation). This clarification is necessary to avoid confusion, since we precisely believe that independence and neutrality are in fact impeded by systemic, structural conditions, which, in large measure, determine the configuration and functionality of regulatory systems and their relations to other spheres of activity such as the economy or political and legal systems. Probably, the key distinction that should be explored in greater detail is between autonomy and independence. One would assume that while a degree of autonomy for the regulator is certainly possible under the proper conditions (financial, institutional, etc.), independence in strict terms would imply a status of the regulator above that of the national authorities of the country itself. Such a situation certainly does not exist in England or in other places with a solid regulatory tradition. Finally, the second myth that must be examined in detail and exposed as such is the myth of the regulator's «neutrality», that the regulator supposedly plays a technical role completely free of political and ideological implications, value judgments, etc. This is obviously an old debate and will continue to be a controversial point, but from our standpoint, based on the examples considered above, it is clear that those who try to defend the argument of the regulator's neutrality are skating on very thin ice. When the Supreme Court of Justice of the United States issued its historic judgments that served as foundation for the now universally accepted regulatory principles, they did so unequivocally based on clear ideological assumptions and from a specific political position: the defense of private property and of the capitalist market. When the regulator OFWAT, or any of the regulators of the English sanitation system, exercise their functions with autonomy and professionalism, they do so within a given institutional framework, following certain rules and guidelines that presuppose a given understanding

of how that system should be organized (for example, that private companies should provide the services and that access to the services is not a social right or a public good, and therefore is not subject to any type of subsidies to cover the population that cannot pay the cost thereof). Such assumptions are not necessarily shared by all the citizens (opinion surveys and other studies in England have consistently indicated that a significant portion of the citizenry is not in agreement with the existing model). In this and other aspects that we cannot go into in depth here, the alleged neutrality of the regulator is indefensible. That, of course, does not prevent the regulator from efficiently exercising its professional role.

References

- ANTONELLI, C. F. (1992), «Acque sporche. Londra e il 'Metropolitan Board of Works', 1855 – 1865», *Storia Urbana*, n. 61, pp. 61 – 81.
- BAKKER, Karen J. (2004), *An Uncooperative Commodity: Privatizing Water in England and Wales*, Oxford: Oxford University Press.
- (2000), «Privatising Water, Producing Scarcity: The Yorkshire Drought of 1995», *Economic Geography*, Vol. 76, n. 1, pp. 4-27.
- BBC Online News (2006), «Thames Water Heads Pollution List», London, July 26, [http://news.bbc.co.uk/2/hi/uk_news/5215504.stm].
- BEARD, Matthew (2002), «Water Companies and Farms Singled Out as Britain's Worst Polluters», *The Independent*, London, July 25, [<http://www.independent.co.uk/environment/water-firms-and-farms-the-worst-polluters-649393.html>].
- BEATO, Paulina and Jean-Jacques LAFFONT (2002), «Competition in Public Utilities in Developing Countries», Washington DC: Sustainable Development Department, Inter American Development Bank [<http://www.iadb.org/sds/>]

- doc/IFM-127Competition-in-Public-Utilities-E.pdf].
- BROOK COWEN, Penelope J. (1997), «Getting the Private Sector Involved in Water». «What to Do in the Poorest of Countries», in Klaus Tilmes (Coord.) *The Private Sector in Infrastructure. Strategy, Regulation and Risk*, The International Forum for Utility Regulation, Washington D.C.: The World Bank [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/1997/09/01/000009265_3980804143615/Rendred/PDF/multi0page.pdf], pp. 93-96.
- and Tyler COWEN (1998), «Deregulated Private Water Supply: A Policy Option for Developing Countries», *Cato Journal*, Vol. 18, n. 1, pp. 21-41 [http://www.cato.org/pubs/journal/cj18n1/cj18n1-3.pdf]
- CASTRO, José Esteban (2008), «Neoliberal Water and Sanitation Policies as a Failed Development Strategy: Lessons from Developing Countries», *Progress in Development Studies*, Vol. 8, n. 1, pp. 63-83.
- (2007a), «Systemic Conditions Affecting the Universalisation of Water and Sanitation Services: A Sociological Exploration», *Journal of Comparative Social Welfare*, Vol. 23, n. 2, pp. 105-119.
- (2007b), «Poverty and Citizenship: Sociological Perspectives on Water Services and Public-Private Participation», *Geoforum*, Vol. 38, n. 5, pp. 756-771.
- (2007c), «*La privatización de los servicios de agua y saneamiento en América Latina*», *Nueva Sociedad*, n. 207, Buenos Aires: Friedrich Ebert Foundation, pp. 93-112.
- (2005), «*Agua y gobernabilidad: entre la ideología neoliberal y la memoria histórica*», *Cuadernos del CENDES* n. 59, Caracas, Centro de Estudios del Desarrollo, Universidad Central de Venezuela, pp. 1-22 [http://www.cendes-ucv.edu.ve/pdfs/59%201-22.pdf].
- Erik SWYNGEDOUW and María KAIKA (2003), «London: Structural Continuities and Institutional Change in Water

- Management», *European Planning Studies*, Special issue on «Water for the City: Trends, Policy Issues and the Challenge of Sustainability», Vol. 11, n. 3, pp. 283-298.
- Department for Environment, Food and Rural Affairs (DEFRA) (2008), *Future Water*, London, DEFRA [<http://www.defra.gov.uk/environment/quality/water/strategy/pdf/future-water.pdf>].
- Department for Environment, Food and Rural Affairs (DEFRA) and the Office of Water Services (OFWAT) (2003), *Structure of Water Industry in England: Does it Remain Fit for Purpose?* [[http://www.ofwat.gov.uk/legacy/aptrix/ofwat/publish.nsf/AttachmentsByTitle/pr04_defraofwat_report.pdf/\\$FILE/pr04_defraofwat_report.pdf](http://www.ofwat.gov.uk/legacy/aptrix/ofwat/publish.nsf/AttachmentsByTitle/pr04_defraofwat_report.pdf/$FILE/pr04_defraofwat_report.pdf)].
- DOERN, G. Bruce, and Stephen WILKS (eds.) (1998), *Changing Regulatory Institutions in Britain and North America*, Toronto, Buffalo, and London: Toronto University Press.
- DRAKEFORD, Mark (2002), «Providing Water in Wales: is There a Third Way?. The Welsh Experience with Public and Private Utilities and the Emergence of the Not-For-Profit Model», in J. E. Castro (Coord.), *Project PRINWASS*, Oxford: University of Oxford, [<http://prinwass.ncl.ac.uk/PDFs/Drakeford.PDF>].
- Drinking Water Inspectorate (DWI) (2001), *Drinking Water 2001. A Report by the Chief Inspector*, London, DWI [<http://www.dwi.gov.uk/pdf/index01.htm>].
- DRYZEK, J. (1997), *The Politics of the Earth. Environmental Discourses*, Oxford: Oxford University Press.
- Environment Agency (2000), «The Environment Agency's Review of Water Company Drought Plans. A Submission to Central Government and the National Assembly for Wales», Bristol: Environment Agency [http://grdp.org/static/documents/Leisure/drought__00.pdf].
- Environment Agency (2001), *Water Resources for the Future. A Strategy for England and Wales*, Bristol: Environment Agency.
- FITCH, M., and H. PRICE (2002), *Water Poverty in England and*

- Wales, London, Centre for Utility Consumer Law and Chartered Institute of Environmental Health.
- FINER, Samuel E. (1952), *The Life and Times of Sir Edwin Chadwick*, London, Methuen.
- FOREMAN-PECK, James, and B. MILLWARD (1994) (Eds.), *Public and Private Ownership of British Industry, 1820-1990*, Oxford: Clarendon Press.
- FORTSON, Danny (2008), «OFWAT calls for Water Industry to be Opened up to Competition», in: *The Independent*, May 17, [<http://www.independent.co.uk/news/business/news/ofwat-calls-for-water-industry-to-be-opened-up-to-competition-830001.html>].
- FOSTER, Vivien (1999) «Ten Years of Water Service Reform in Latin America: towards an Anglo-French model», Washington D.C., World Bank, Information and Communications Technology Division [<http://go.worldbank.org/78WEEF91K1>].
- (1998), «Considerations for Regulating Water Services while Reinforcing Social Interests», *UNDP-World Bank Water and Sanitation Programme Working Papers*, [<http://go.worldbank.org/E62R3OC0E2>].
- GREEN, Richard (1999), «Checks and Balances in Utility Regulation: The UK Experience», *World Bank Public Policy for the Private Sector, Viewpoint Note*, n. 185, Washington, D.C., World Bank [<http://go.worldbank.org/I8DC1ZBSD1>].
- (1997), «Has Price Cap Regulation of UK Utilities been to Success?», *World Bank Public Policy for the Private Sector, Viewpoint Note* n. 132, Washington, D.C.: World Bank [<http://go.worldbank.org/9OU9C8D0G0>].
- GREENE, Joanne (2002), *The England and Wales Water Industry Privatisation. A Desk Study*, London: WaterAid.
- GUASH, J. Luis and Robert W. HAHN (1997), «The Costs and Benefits of Regulation: Some Implications for Developing Countries», *World Bank Infrastructure Working Paper* n. 1773,

- Washington, D.C.: World Bank. [http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/1997/06/01/000009265_3971126124256/additional/129529322_20041117165614.pdf].
- HALL, David, and Emanuele LOBINA (2007), «From to Private Past to a Public Future? The Problems of Water in England and Wales», Greenwich: Public Services International Research Unit (PSIRU), University of Greenwich [<http://www.psiru.org/reports/2008-02-W-UK.doc>].
- HASSAN, John (1998), *A History of Water in Modern England and Wales*, Manchester: Manchester University Press.
- HAUGHTON, Graham (1998), «Private Profits - Public Drought: The Creation of a Crisis in Water Management for West Yorkshire», *Transactions of the Institute of British Geographers*, Vol. 23, n. 4, pp. 419-433.
- HERBERT, A., and E. KEMPSON (1995), «Water Debt and Disconnection», London: Policy Studies Institute.
- HOGWOOD, B.W. (1998), «Regulatory Institutions in the United Kingdom: Increasing Regulation in the 'Shrinking State'», in: G. Bruce Doern and Stephen Wilks (Eds.), *Changing Regulatory Institutions in Britain and North America*, Toronto, Buffalo, and London, University of Toronto Press.
- JACKSON, Peter M. (1982), *The Political Economy of Bureaucracy*, Oxford, Phillip Allan.
- (1985), «Economy, Democracy, Bureaucracy», in R. Matthews (ed.), *Economy and Democracy*, London, Macmillan, pp. 168-203.
- KLEIN, Michael (1996), «Economic Regulation of Water Companies», *World Bank Policy Research Working Paper* n. 1649, Washington, D.C.: World Bank [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/1996/09/01/000009265_3961214162451/Rendered/PDF/multi_page.pdf].
- KLEIN, Michael and Timothy IRWIN (1996), «Regulating Water

- Companies», *World Bank Public Policy for the Private Sector, Viewpoint Note* n. 30, Washington, D.C.: World Bank [<http://go.worldbank.org/3IQM34D8O0>].
- KLEIN, Georgia (2003), «Life Lines: the NCC's Agenda for Affordable Energy, Water, and Telephone Services», London, National Consumer Council.
- LASKI, Harold J., William I. JENNINGS, and William A. ROBSON (eds.) (1935), *A Century of Municipal Progress 1835-1935*, London, George Allen & Unwin.
- LEE, Terence R. (1999), *Water Management in the 21st Century. The Allocation Imperative*, Cheltenham: Edward Elgar.
- LUCKIN, Bill (1986), *Pollution and Control: A Social History of the Thames in the Nineteenth Century*, Bristol, Adam Hilger.
- MARSHALL, Thomas H. (1963), «Citizenship and Social Class», in *Sociology at the Crossroads and other Essays*, London, Heinemann, pp. 67-127.
- Metropolitan Water Board - MWB (1949), *Water Supply of London*, London, Staples Press.
- MILLWARD, B. (1991), «Emergency of Gas and Water Monopolies in Nineteenth Century Britain: Contested Markets and Public Control», in James Foreman-Peck (Ed.), *New Perspectives in Late Victorian Economy: Essays in Quantitative Economic History 1860-1914*, London, Cambridge University Press.
- National Consumer Council — NCC (2005), «Affordability Problems in the Privatised WSS Sector in England and Wales», London, NCC.
- NEWBERY, David M. (1999), *Privatization, Restructuring, and Regulation of System Utilities. The Walras-Pareto Lectures*, Cambridge, Mass. and London, The MIT Press.
- NISKANEN, William A. (1968), «The peculiar economics of bureaucracy», *American Economic Review*, Vol. 58, n. 2., pp. 293-305.
- (1971), *Bureaucracy and Representative Government*, Chicago, Aldine.

- OFWAT – Office of Water Services (2008), «Ofwat's Review of Competition in the Water and Sewerage Industries: Part II», Birmingham: OFWAT [http://www.ofwat.gov.uk/competition/pap_con_reviewmrktcomp.pdf].
- (2007), «Outcomes of Ofwat's Internal Review of Market Competition in the Water Sector», Birmingham, OFWAT [http://www.ofwat.gov.uk/competition/wsl/pap_rsh_intreviewmrkcomp070404.pdf].
- (2004), «Annual Report 2003 – 2004», Birmingham, OFWAT.
- (2000), «The Current State of Market Competition» Birmingham, OFWAT [[http://www.ofwat.gov.uk/legacy/aptrix/ofwat/publish.nsf/AttachmentsByTitle/currentstateofmarketcomp.pdf/\\$FILE/currentstateofmarketcomp.pdf](http://www.ofwat.gov.uk/legacy/aptrix/ofwat/publish.nsf/AttachmentsByTitle/currentstateofmarketcomp.pdf/$FILE/currentstateofmarketcomp.pdf)].
- (1998), «Ofwat Work Plan 1998-99. Protecting customers' interests», Birmingham, OFWAT [<http://www.ofwat.gov.uk/legacy/aptrix/ofwat/publish.nsf/content/ofwatworkplan1998-1999.html>].
- PAREDES, Ricardo M. (2001), «Redistributive Impact of Privatization and the Regulation of Utilities in Chile», *Discussion Paper* n. 2001/19, World Institute for Economic developments Research (WIDER) [http://www.wider.unu.edu/publications/working-papers/discussion-papers/2001/en_GB/dp2001-19/].
- PETERS, B. Guy (1998), «Institutionalization and Deinstitutionalization: Regulatory Institutions in American Government», in: G. Bruce Doern and Stephen Wilks (eds.) (1998), *Changing Regulatory Institutions in Britain and North America*, Toronto, Buffalo, and London: Toronto University Press, pp. 51-79.
- REES JUDITH, A. (1998), «Regulation and Private Participation in Water and Sanitation Sector», *TAC Background Papers*, No. 1, Sweden: Global Water Partnership, Technical Advisory Committee. [http://info.worldbank.org/etools/docs/library/80636/IWRM4_TEC01-RegnAndPPIInWatsan.pdf].
- RICHARD, Barbara, and Thelma A. TRICHE (1994), «Reducing Regulatory Barriers to Private-Sector Participation in

- Latin America's Water and Sanitation Services», *Policy Research Working Papers* n. 1322, Water, and Urban Development Department, The World Bank, Washington DC, World Bank [<http://go.worldbank.org/8PM5GPDNJ2>].
- ROUSE, Michael (2009), «The Market-Centred Paradigm», in Castro, José Esteban and Léo Heller (eds.), *Water and Sanitation Services: Public Policy and Management*, London: Earthscan (printing in progress).
- SCHOFIELD, R., and J. SHAOUL (1997), «Regulating Water Industry: By any Standards?», in *Utilities Law Review* 8 (2), pp. 56-70.
- SHAOUL, J. (1998), «Water Clean Up and Transparency: the Accountability of the Regulatory Processes in Water Industry. A Public Interest Report», Manchester, University of Manchester.
- SOLANES, Miguel (1999), «*Servicios públicos y regulación. Consecuencias legales de las fallas de mercado*», *Serie Recursos Naturales e Infraestructura* n. 2, Santiago de Chile, Economic Commission for Latin America and the Caribbean (ECLAC) [<http://www.cepal.org/publicaciones/xml/4/4464/LCL1252-E.pdf>].
- SOLANES, Miguel (2002), «*América Latina: ¿sin regulación ni competencia? Impactos sobre la gobernabilidad del agua y sus servicios*», Economic Commission for Latin America and the Caribbean (ECLAC). [<http://prinwass.ncl.ac.uk/PDFs/Solanes.PDF>].
- SWYNGEDOUW, Erik (2009), «The Political Economy of Essential Public Services», in Castro, José Esteban, and Heller, Léo (eds.), *Water and Sanitation Services: Public Policy and Management*, London, Earthscan (printing in progress).
- TAYLOR, Graham (2002), «Regulating Change in Water Industry: The Role of OFWAT in the Redefinition of Public Service», in *The Economics of Private Sector Participation in Water and Sanitation*, First Research Workshop – PRINWASS Project. Oxford: University of Oxford [<http://prinwass.ncl.ac.uk/>]

- PDFs/taylor.pdf].
- (1999), *State Regulation & the Politics of Public Service. The Case of the Water Industry*, London and New York, Mansell.
 - UKP – United Kingdom Parliament, Select Committee on Environment, Food and Rural Affairs (2003), «Memorandum Submitted by the Public Utilities Access Forum», London, UKP.
 - U.S. Supreme Court (1877), “Munn v. Illinois,” 94 U.S. 113, [http://www.law.cornell.edu/supct/html/historics/USSC_CR_0094_0113_ZS.html].
 - (1904), «Sanislaus County v. San Joaquin and Kings River Canal and Irrigation Company», n. 80, 192 U.S. 201 [http://supreme.justia.com/us/192/201/case.html].
 - (1909), «City of Knoxville v. Knoxville Water Company», n. 17, 212 U.S. 1, [http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=212&invol=1].
 - (1912), «Cedar Rapids Gas Light Co. v. City of Cedar Rapids», n. 163, 223 U.S. 655, [http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=223&invol=655].
 - VASS, Peter (2002), «Competition and Restructuring in the UK Water Industry», in *Journal for System Industries*, Vol. 3, n. 1, pp. 77-98.
 - WALKER, S, and H. A. SMITHERS (2007), «A Review of the 1995 – 96 Drought in the North West», in *Water and Environment Journal*, Vol. 12, n. 4, pp. 273-279.
 - WARD, Colin (1997), *Reflected in Water. A Crisis of Social Responsibility*, London and Washington, Cassell.
 - WILKS, Stephen (1998), «Utility Regulation, Corporate Governance and the Amoral Corporation», in G. Bruce Doern and Stephen Wilks (eds.) (1998), *Changing Regulatory Institutions in Britain and North America*, Toronto, Buffalo, and London, Toronto University Press, pp. 133-161.
 - YARROW, George, Tony APPLEYARD, Christopher DECKER, and Timothy KEYWORTH (2008), «Competition in the Provision of Water Services», Oxford: Regulatory Policy Institute

[<http://www.rpieurope.org/Research/Report%20on%20Competition%20in%20Water%20Services.pdf>].

ZERBE Jr., Richard O., and Howard MCCURDY (2000), «The End of Market Failure», *Regulation*, Vol. 23, n. 2, n. 10-14 [<http://www.cato.org/pubs/regulation/regv23n2/zerbe.pdf>].

XII. THOUGHTS ON INSTITUTIONS IN WATER GOVERNANCE

Josep Centelles *

Presentation

This article's purpose is to present ideas for further thought and criteria for use in the debate over the best institutional architecture to help achieve Millennium Development Goal Number Seven as regards water and environmental sustainability. Said goal proposes to halve the proportion of people without sustainable access to safe drinking water.

In the first part of the article, the author presents his vision of what development means and what cooperation for development should be. He places emphasis on the importance of institutions (including cooperation institutions) to achieve good governance, concretely good governance over water.

The second part of the article provides a list, open to further discussion, of axiomatic foundations or criteria to be borne in mind when addressing institutionality and governance of water. The focus of attention is potable water, particularly in urban settings. No closed or dogmatic conclusions are drawn. What is presented is

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an article open to discussion, to stimulate the necessary reflection prior to taking action.

The article addresses players in the cooperation community (both donors and beneficiaries) and all public decision-makers, especially local politicians interested in governance over water. The author's experience is limited to Latin America.

Institutions, Governance, Cooperation, and Development

Institutions: *What are they? What purpose do they serve?*

Perhaps someone might believe that the solution to the water shortage problem lies in pipes, filters, pumps, and other technical installations. In other words, its solution lies in technical know-how and a certain amount of money to finance the installations of the «project». Allow me to suggest that this answer is very wrong. Money for the project, as important as it is, is relatively easy to come by. Yet it is even easier to misspend or make poor use of the money if it falls from the sky too easily. Let's talk about know-how.

In today's globalized world, in our digital era, one can assume that objective, technical, or engineering know-how is not even conceivably the preeminent or definitive issue. What is really important is social know-how. Social know-how needs to include the perceptions of a wide range of stakeholders, and is intimately related to each concrete community's capacity for collective action. The essence of the problem of underdevelopment lies in the capacity for collective action. This refers to capacity to organize, interrelate, and above all, to provide self-governance, in other words, to make good collective decisions—good decisions on matters that affect the collective—. The complexity and core problem of water (and of many other issues) has moved out of the engineering offices (technical know-how) and into the streets (social know-how). Technical know-how is now globalized and therefore, in good measure, has become commonplace. It is relatively easy to acquire such knowledge anywhere on the globe at reasonably competitive prices.

On the other hand, the social know-how needed to correctly institute an infrastructure project or provide a service (aqueduct) in the human environment, is very specific, localized knowledge, and therefore quite costly. Moreover, this is the most determinant factor for success. Following the investment comes operation and maintenance. In this phase one could state that social know-how and capacity for collective action take on even greater importance.

Institutions are the rules of play that guide interactions between individuals and organizations. Therefore, a community's capacity for collective action will depend upon the quality and functionality of institutions. Each community has its own institutions (formal and informal) that we must become familiar with and respect. This does not prevent us from proposing changes to institutions. We will, in fact, be discussing necessary changes in water-related institutionalality. Institutional changes are not easy or rapid, but are important for true development.

In this section, it is worthwhile to discuss a bit more about institutions. In doing so, we are lent a hand by Joan Prats, who stated:

In everyday language, «institutions» tend to be confused with the organizations to which we attribute a certain social function or relevance. But in reality, institutions are only relevant for development when they are clearly distinguished from organizations. Institutions are the rules of play, both formal and informal, that guide interactions between individuals and organizations.

Institutions are not things. Their existence is merely abstract. They do not have objectives, even though they fulfill important social functions. They are the framework of constrictions and incentives in which social interaction takes place. They correspond to certain correlations or balances of power, and they come to life and are supported by our mental models, values and attitudes. They may be formal or informal. Formal institutions are confused with legally or socially proclaimed rules

of play, and informal ones with rules that have been effectively interiorized and lived out. In Latin America almost nothing is as it seems, because in many settings institutional informality clearly prevails, at times in contradiction to formal institutionality, which it voids and supersedes in practice.

Institutions are the principal legacy of each society. They are the principal factor determining the types of organizations and interactions from among which the individual has freedom to choose. It is well known that the simple addition of a few brilliant individuals makes no difference unless accompanied by a brilliant society. A social order's efficiency and equity depends above all on its institutional system and, secondarily, on the quality of its organizations, which, in large measure, is determined by the institutional system in which they exist.

The fact is that institutionality with respect to water in most countries is far from adequate and hardly approaches the desired optimums. We know of many countries and cities where a large part of the population faces serious potable water supply shortages, and we know that despite the efforts, declarations, and good intentions of governments and multinational entities, very little progress is being made in achieving the universal coverage desired. But even in countries that have had full potable water coverage for a long time for the totality of their population, a need is seen to develop alternative approaches for institutionality in relation to water, given that the prevailing models are often unsustainable. Such is the case, either due to a spiraling growth in consumption, or due to threats of shortages derived from climate change.

There is no question that in general, a «New Water Culture» must unavoidably be constructed, which needs to develop a new institutionality specific to each place, with new rules of play and new decision making mechanisms, in short, a new approach to governance, in order to attain good use and better distribution of water.

Development Cooperation

Often, when mention is made of «cooperation», many concepts are muddled together or treated quite vaguely. Frequently, the players of the cooperation community, that is, the «donors» and their civil society supporters, have but a superficial understanding of the beneficiary communities. One thing with which they are often unfamiliar are the beneficiary's institutions, especially the informal ones. They mobilize, as is quite human, based on a perception of poverty, misery, or exploitation, and are very bold in their diagnoses and forms of action. The truth is that, with very good intentions, they often do things whose results are highly doubtful, or, at times, even patently negative.

We believe it is necessary, at a minimum, to distinguish between three concepts. In the first place, unquestionably, comes «emergency aid». These are actions meant to mitigate and overcome an unusual state of the beneficiary population, either on account of a natural disaster, or on account of wars or famine. Although potable water is generally one of the critical elements in such situations, this article does not discuss that aspect of cooperation.

In the second place, comes what we could call «solidarity aid». This is humanitarian action aimed at helping beneficiary groups who are coping with difficulties. The driving force behind such aid is a sentiment of human solidarity, kindled in most persons when we witness an injustice, especially among those who are the weakest. This is a noble sentiment, essentially with a cultural basis, which we externalize through some type of «cooperation action». Faced with injustice, there is a need to engage in action. Our environment awards and encourages this mode of action by granting social prestige to those who act in such a way. It is worth remembering that such solidarity is, by nature, voluntary and haphazard. It may take the form of political solidarity, gender solidarity, group solidarity (even corporate solidarity) or simply solidarity with the poorest and most uprooted of the Earth.

Finally, in the third place, we could mention «development

aid» in the strict sense, when the final objective of the action is to reverse the direction of the vicious cycle of underdevelopment and attempt to activate the virtuous circle, that is, the upward spiral of development and endogenous well-being.

Promoting development is much more complicated than simply providing emergency or solidarity aid. Promoting development is not completely indifferent to solidarity, but it doesn't stop at solidarity; it goes farther than that. It would be desirable if emergency and solidarity actions were also a factor for development; yet that is hardly guaranteed. In fact, one must recognize that, not infrequently, solidarity aid has the opposite effect. Rather than generate development, it may provide mere band-aids, creating new dependencies or interfering with the basic institutionality of the beneficiary community's governance, thereby contributing to its disintegration.

Governance and Development

When we attempt to generate «sustainable human development» starting with a firm foundation that it is not our intent to impose our own development models upon others, what is decisive is to assist in generating capacities for collective action of peoples and communities. But collective action in a community is only possible if the community is well governed. In order to be well governed, it needs institutions (rules of play) that are strong, innate, genuine, and in line with their cultural, economic, and political medium. The quality of interrelationships among the different social players is crucial when it comes time for them to collaborate with one another and build their own development. The conceptual emphasis on quality of interrelationships is one of the major differences between government and governance. From this point of view, placing governance at the center of all cooperation efforts, as the British Government declared, should come to us as no surprise.

In addition to the British, the official doctrine of almost all

the European countries, including, first of all, that of the European Union itself, is unequivocal in this regard: structures and quality of governance are determinant factors for social cohesion or social conflict, for the success or failure of economic development, for conservation or deterioration of the natural environment, for respect or violation of human rights and fundamental liberties. These correlations have been widely recognized by the international community and demonstrate the importance of governance for development.

Without any doubt whatsoever, it can be stated that there is no development without good governance, and that the quality of institutions is the first and foremost factor conditioning development. The old image of «don't give a fish; give a fishing pole», no longer suffices. What is involved is something a bit more complicated, that is, capacity building, so that the beneficiary communities will decide whether or not to fish, and if so, whether to do so with a fishing pole or a net. Then, through collective action, they will obtain the fishing pole or net they need. Merely giving people fish perpetuates poverty; just giving them a fishing pole perpetuates dependency (besides being a good business for the fishing-pole manufacturers of the North).

Solidarity aid through non-governmental counterparts of the South can lead to erosion of public institutions that should logically take charge of solving the problems so mitigated. It is especially easy to illustrate this phenomenon in the case of water. An aqueduct project in a small community for the supply of potable water through an NGO of the South rather than through its town council could initially be much more effective for the project's direct beneficiaries, but in the long term can also lead to considerably eroding the institutional capacity of the local government, which, by all rights, should be the one taking charge of the service, either directly, or through its capacity to organize its community in building and managing the project. There have been cases where thanks to international cooperation, local NGOs emerge with sufficient

power to provide a large cushion for government. These situations are not easy to evaluate, but several experts have pointed out the notoriously perverse effect of these processes, which place many of the assisted communities in an obvious state of dependency on international cooperation.

When we propose to achieve Millennium Development Goal Number Seven, the institutionality of development cooperation itself, both from the point of view of the donors and that of the recipients, is highly significant, because it is increasingly interfering with the institutionality of water. And obviously, in order to attain this goal in a universal manner (not just in one place or another), water governance and institutionality matter a lot.

Foundations for Institutionality with respect to Water

When we ask ourselves what institutional model is best for managing potable water in terms of sustainable development, we should not merely be thinking in terms of environmental sustainability, but also economic, and, above all, social sustainability. (One must not forget that cases as tragically infamous as the Cochabamba «water war» are clear examples of social unsustainability). The reflections presented below are only intended to contribute certain foundational elements of sustainable institutional design. These are certain basic, almost axiomatic premises, which, in our opinion, should form the basis for the debate. Some of them, though quite obvious, at times appear to be completely forgotten.

Foundation 1. Priority setting for water usage

A first basic consideration when contemplating a hypothetical institutional design is that, from the point of view of usage or usage rights, there are at least three types of water: water in its life-giving function, water in its civic function, and water as merchandise.¹

Water in its life-giving function (drinking water and water for basic hygiene) is a human right and, as such, one cannot demand a price or counterpart for it. Everyone, on account of the mere fact of being born, is entitled to it, even if they can't pay for it. Its value is so high that it has no price. Water in its life-giving function is also a «right» for all other living beings on the planet. Therefore, matters as debatable, for example, as the minimum ecological volume of a river must be taken into consideration.

There is a second level, water in its civic function, which can be understood as the right to water for uses derived from a social contract and for services in the general interest of the collective. The right to such water derives from a contract with the citizenry. A price or some type of civic counterpart can and should be asked for such water, for example, savings or good usage. Most urban water corresponds to this level.

Finally, there is water for business. This is surplus water, and there may be a lot of it. This water can and should be an economic merchandise subject to a regulatory regime similar to those applied to other natural resources such as mining or forestry. Regulation of its market should take special care to ensure an adequate regeneration of the resource and see to it that it is never managed to the detriment of the other categories of water mentioned above. Water in its business dimension is at the service of the economy, which everyone wants to see prosper. In terms of volume, its most important component is agricultural irrigation, but it also includes water used in a wide range of industrial and recreational applications.

The conceptual discourse over these three types of water is clear and elegant, and should serve us as a reference for designing certain good rules of play. Nonetheless, everyone knows how difficult it is to build an institutionality that can effectively delineate the three types of water. Though not easy, it is possible to do so. Many societies, even in an arid environment with severe water shortages, have

1. See Pedro Arrojo (2006), *El reto ético de la nueva cultura del agua*, Paidós.

done so through a well-balanced institutionality (formal or informal).

Within an urban system, the laws of many countries prohibit cutting off residential supplies for lack of payment. This prohibition is accompanied by a progressive rate increase based on blocks of consumption, which is an attempt along the lines of making the necessary discrimination among the three types of water.

Foundation 2. Water is an intrinsically local good

A second axiomatic foundation to take into consideration when addressing water governance consists of affirming that water is an inherently local good.

As a natural resource, fresh water is found in lakes or in the form of snow, and it flows (albeit not as quickly as our busy world would like) through underground aquifers and surface water bodies. Based on this fact, we should remember another that is obvious, but often forgotten. Water without human intervention doesn't flow through a water system. No one has ever seen two streams «cross» one another. Water in nature flows through inverted branch structures (rivers and tributaries). It is the human action of channeling water that can change its course and «reroute» it. It is human action that pumps it under pressure, puts it in pipes, and builds water systems that «cross» one another.

Such basic considerations may seem hilarious, but we ought to stop laughing when we run across institutional constructs that completely ignore this local nature of water and advocate centralized water management. Water systems are in vogue, blessed may they be, but this love for systems, centralization, and technological posturing have frequently led to an ill-fated organizational parallelism between managing water and, for example, electricity, simply considering them as «flows» to be distributed. Accordingly, it is nothing rare to come across «national (or provincial) water companies», which in our opinion are a big mistake.

The concept of «local» for water is not simple. There are «natu-

rally defined local areas» formed by basins and sub-basins, which do not always coincide with aquifers, but above all there are «socially defined local areas» or legally defined ones, that is, administrative divisions (municipal, provincial, departmental, national, etc.), which form the basis of how we are socially and legally organized, and which have little or nothing to do with those defined by nature. One need only consider how many rivers in the world form national or administrative boundaries. But we are also reminded that these boundary-forming rivers have only been so for more or less two centuries. Indeed, rivers, lakes, and seas, prior to the invention of railroads and trucks, brought people together much more than they separated us.

We also have human settlements (locations in the form of urban regions, which quite logically manage resources in a unified fashion) that intercept the basins or occupy more than one basin. Rerouting of water and pressurized systems are legitimate management mechanisms, bringing these intersections of the different maps of naturally and socially defined locations into harmony with one another. Nonetheless, there should be a limit to rerouting, which is an institutional limit. Fortunately, in Spain, it appears that this limit was found during the long debate over the Water Plan.

The limit to rerouting and to the capacity of «centralized» management is a hard-core issue in water governance and will depend upon each national community, its geography, its economy, and how keen it is on risking its own sustainability. But it seems obvious that if water is an inherently local good, it should be managed as locally as possible. In fact, in countries with a long-standing history of guaranteeing potable water for their entire population, whether in Europe or in the USA and Canada, responsibility for potable water has always been entrusted to local governments and local authorities. It is surprising that in so many Latin American countries national or provincial water companies continue to exist. It is even more surprising that government officials and academicians (who sometimes refer to themselves as leftists and defenders

of the most unfortunate) start scratching their heads as soon as someone speaks, not of decentralization, but of «returning» authority over potable water to where it always belonged: the local governments.

Obviously, local authority for potable water implies that there will be different rates for different locations. The water rate should incorporate all local costs for provision of the service. In the same way that one location has a seashore and another doesn't, one location will have water resources that are more accessible than another location, and therefore may be less expensive. Once water in its life-giving function is guaranteed for all (which represents a very small proportion of urban potable water); prices on the rest of the water will be different in different places. This, nonetheless, should not undermine national unity. The rate, in addition to defraying the cost of the service, should also provide an incentive for savings and good usage of water.

Foundation 3. Water technology is simple and mature.

One argument that has been and continues to be used in defense of the centralized model is an alleged technological complexity and an obvious incapacity at the local (municipal) level to manage it. The centralist elites love to expound upon the incapacities of people in the provinces or the «interior». This argument is crass and completely unsound. In fact, when it comes to water technology, even the most modern technology is quite simple.

Although the technological and organizational complexity of an aqueduct usually grows with the size of the population it serves, it can be easily ascertained that such growth is less than linear in relation to the population served. In other words, technological/organizational complexity for supplying potable water to a given urban community grows much less rapidly than the cumulative growth of that community's know-how, plainly and simply due to the increase in population. This observation is hardly insignificant. In fact, it ensures the possibility of self-run capacity building regar-

ding the supply and management of water when its administration remains in local hands. This principle does not apply to many other technologies whose technical complexity has grown disproportionately in recent decades, such as telephony or aviation. Current water technology is so mature that it differs little from the technology of ninety years ago.

Unlike services such as electricity or telephony, all cultures and civilizations, dating back to the most remote times in history, have constructed water works, and all sedentary human communities, whether large or small, have managed their water more or less successfully. A human community (especially a city) that is incapable of managing its own life-giving and civic water functions is a sick community. In reality, the problem is not one of water or poverty, but a severe problem of governance.

Foundation 4. Multinational capital is not good for local water.

Weak governance can have several origins, such as major natural disasters or the prolonged avalanches of immigration many Latin American cities have suffered. However, in terms of potable water, the most frequent problem has been mere institutional decay.

Bad government and inadequate institutionality (too much centralization?, where the State was expected to solve everything), have led to an inevitable spiral of decay: insufficient rates with low incidences of collections, squandering of water by users, poor maintenance and increased losses, little predisposition to pay for the service, managers appointed on the basis of favoritism, with poor incentives, complete divestment from public companies, etc. Having reached this point, it is urgent to capitalize companies and modernize management. Such being the scenario, a moribund animal has come on the scene, hovering over it like a vulture: multinational capital legitimated by the Washington Consensus and supported by the principal multilateral financial institutions.

The vultures showing up on the scene, by invitation, are not really to blame. Their rules are clear, «we've come to make money».

The blame for this bad business falls squarely in the laps of the elites who have taken control of local and national governments and have been incapable of solving on their own something as simple as supplying water to the population. Their incapacity has led them to need aid from abroad (which has turned out to be very expensive) and they have handed the aqueducts over to foreigners, in a clear abandonment of their minimal responsibilities.

Cases of failed multinational privatizations are notorious. They fail, not because they are private, but better said, because they are international and are poorly regulated. In both cases there are institutional explanations.

Water in private hands (with political and institutional stability) is a business, but it is a long-term business. On the other hand, expatriate managers of multinational companies basically respond to short-term stimuli. At most, they have 4 years to make their mark within the company and go back to the metropolis. The manager is in desperate need of a quick profit, inherent to multinational capital. If we put ourselves in his shoes, we will see that such a person is a star in his field, but is faced by a mob of poorly prepared government officials (known as a regulatory agency) or by a clique of corrupt politicians. Everything pushes him to develop his legal and accounting skills to the max, rather than devote himself to improving his organization's efficiency. His true objective will be to fulfill the indicators demanded by the contract, with little regard for what is actually happening to the service. Management of a public good as local as water should be placed in the hands of someone with the required technical capabilities. But that person can't just be working for the money; he must also have roots in and love for his community.

Lack of capacity and authority in the regulatory function will be addressed in the next section. Here, mention will only be made of the fact that the more powerful the private operator, the easier it will be for the operator to take control over the regulator. The international operator's power is not just economic. It is also rooted in

expert knowledge of the business and technology, on which government regulators do not tend to shine.

Santa Cruz de la Sierra and Cochabamba, both major cities of Bolivia, represent two sides of the coin in developing their own systems for supplying water to their cities. Cochabamba became famous over what was called the «water war» (2000) following a sorrowful privatization of its municipal water services. Years later, it is still coping with major coverage and quality-of-supply problems, Santa Cruz de la Sierra is a good example of continuity and self-driven development of a potable water urban utility. Santa Cruz's water service, for the most part, is operated by a cooperative of users (SAGUAPAC) with a strong tradition of efficient, independent management. This has allowed it to approach multilateral credit institutions for the logically needed investments, but it has always kept its accounts well balanced. There is no need to call for international private capital. The service's degree of coverage in 2003 was 96% of the population, which, given the skyrocketing growth mentioned above, is a sign of very good performance. The difference between the two cities does not lie in a greater or lesser abundance of water or greater or lesser difficulty in ensuring that the water is potable. It lies in urban governance and, concretely, in the good governance of the company that provides the service.

Foundation 5. The water cycle is not a «sacred» cycle.

Another consideration on the difficulty for building sound institutionality in practice for potable water is related to the former fad of attempting to mechanically adapt organizational forms to the natural cycle of water. It is evident that the most (eco)logical way to manage water is based on a comprehensive understanding of its cycle. But in using this affirmation as a starting point, one must know how to distinguish very well among three very different things: a) the development of water policies and planning (including financial planning for investment); b) regulation of operators (including health, technological, and rate regulations, etc.); and c)

operation or management of the service. Each of these functions has its own space and its own institutional logic.

Not uncommonly, for the sake of a comprehensive approach to the water cycle, the supply of potable water and the treatment of wastewater have forcibly been placed within one-and-the-same implementation agency. Treatment of wastewater generated by a community poses far different problems, which require management models that are also quite distinct in nature. Frequently, wastewater doesn't bother the community itself; rather, it bothers communities «downstream». In this case what incentives will there be for good management of wastewater treatment?. Wastewater treatment forcibly calls for an overall approach to the basin or body of water on the receiving end. Such an approach is not necessary for obtaining and distributing potable water. Along these lines, at the management level, there should be no problem in breaking the water cycle and making use of different agencies, with different organizations and different financing models and geographic realms, for different functions.

Among other things, a good institutional design should start with a good analysis of the players and bear very much in mind the incentives and barriers that condition actions and set trends in an agency or organization. In the South, planning and regulation are usually quite weak and precarious, because the agencies, if they even exist, manage very little money. This is especially notorious in comparison to operating or investment agencies, whose job opportunities are quite coveted and held in high esteem. The States are chronically weak when it comes to exerting authority in planning and regulation. In other words, there is an evident lack of governance. Now then, governance is not built in one year based on the decree that creates the regulatory agency. Building institutionality is a slow process of cultural change. It is not easy, but good cooperation in developing institutionality must constantly be borne in mind.

Privatization Yes? Privatization No?

Forceful talk for or against privatization tends to be a frivolous exercise on which people have very superficially taken sides in advance. It is quite curious that the debate on privatization of urban water is comingled with that of cellular telephony, airlines, or electricity. Even though these are creatures of such a different nature, many people appear to be placing them in the same basket. This article has prioritized human rights and, secondarily, the local nature of water. Neither telephony, nor electricity, nor aviation, as important as they may be, are human rights. None of them is local in nature. Rather, they are solidly global in nature. Moreover, all three of them have been in existence for less than 100 years. At first glance, problems appear that are too different to be addressed using the same criteria.

If through an institutionality that is private in nature, a given community adequately solves the problems posed (human rights, good local service, efficiency, etc.) and whatever else might arise, why would we object to it?

Pedro Arrojo, when speaking about the radical privatization instituted by Margaret Thatcher in the United Kingdom, recognized that:

Nonetheless, in honor of the truth, such privatization was accompanied by the creation of a powerful public regulatory institution, OFWAT (Office of Water Services), in charge of strictly controlling the services' provision, quality, and rates.

I agree with his opinion, but what we have to ask ourselves next is: «Does the institutional maturity of our country allow us to create a regulatory entity with the authority of the OFWAT?». Because if the answer is no or is doubtful, it would be like building a skyscraper with no foundation.

Final Note

Even though this article is open to input, and we hope to add more «foundations» in the near future, the issue of privatization has been saved for last, not because that is the most important issue, but because I consider it a false debate. One would have to start by explaining what one understands as privatization, an equivocal concept surrounded by much misunderstanding. Addressing it would take more space than we have. The example of Santa Cruz de la Sierra itself, even though it is a cooperative, is actually one of a private company, because it is totally independent from elected governments. Or, to be more provocative with the positions taken, we are reminded that in Fidel's Cuba, Aguas de Varadero and Aguas de la Habana have a notorious proportion of private capital, which, incidentally, is very well remunerated.

The generic reason why the author prefers a public company for potable water services is because I am convinced that supplying quality water efficiently can generate great benefits. Such benefits emerge from collective action, which takes the physical form of a system that runs through our urban subsoil and distributes life. If its operation generates a deficit, or if investment is needed, all of us must pay for it together. But if it produces profits, the correct thing to do would be to return them to the public treasury. To put it more simply, I'm thrilled if someone becomes a millionaire selling cell phones. They're very useful; they connect people; they're economical; and nobody will die without one. But I see little merit in accruing hefty profits based on the vital need for water. Without question, regulation of private operator rates, limiting their profits, responds to this criterion. This is one more institutional arrangement that has been successfully implemented in many places.

XIII. PUBLIC-PUBLIC PARTNERSHIPS

Oliviar Hoedeman *

The world is facing a deep and worsening crisis in human access to water and sanitation, a crisis accelerated by growing water scarcity due to mismanagement of water resources. The failed privatisation experiment of the last decade has shown that the only realistic solution to this crisis is to improve public water management in cities and rural areas across the planet. Public water operators, who manage more than 90% of the world's water supply, must receive all the support they need to improve their effectiveness and coverage, through political, technical and financial assistance, as well as management reforms. This is a massive challenge that can only be achieved through a hugely ambitious progressive reform agenda, in which water management decision-making at all levels of society is re-oriented towards ecological sustainability and to «reaching the unreached». Democratisation of water management, institutionalisation (and implementation) of the human right to water and large-scale allocation of public funds are crucial to achieving this goal. Radical changes are needed in government policies (in both the North and the South), and international financial institutions need to move away from the short-sighted neoliberal tactics of the past.

In this chapter I will focus on one of the best tools available for achieving the large-scale rapid improvements that are needed in

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public water management. This tool is the Public-Public Partnership (PUP), a type of cooperation between public water operators (and other actors) in which knowledge is transferred, and operational, technical and financial management capacity is developed. These PUPs are a means of overcoming weak local administration capacity in cities in developing countries, and accelerating the much needed expansion and improvements to public water supply. PUPs can be national or international, between two or more public water operators, but can – and in most cases should - also include other actors that hold the key to solving problems in public water and sanitation, such as trade unions, community groups, civil society organisations, academic institutions, etc. In stark contrast to PPPs (Public-Private Partnerships), PUPs are strictly not-for-profit by nature. Moreover, they do not involve corporations (or any other bodies) taking control of the management side of things.

Public-Public Partnerships are a very powerful tool for speeding up improvements and forging local solutions to the global water crisis. In addition, PUPs are inexpensive and committed to local training to achieve long-term sustainable water management. There are, no doubt, cities and communities which could solve their problems by participating in a PUP. However, taking a global view of the challenges lying ahead, there is little doubt that unless a massive Public-Public Partnership drive takes place, the goal of water for all will not be achievable.

PUPs are no new phenomena, as twinning between municipal water companies has existed since the 70s. We are, however, at an entirely different stage today. The North-South twinning projects of previous decades were ad hoc by nature, were usually short-term and involved low levels of mutual commitment, which resulted in a relatively low impact. In the last five years a new wave of PUPs have emerged, in which partnerships between public utilities in the South are the central feature. An excellent example is the PUP between the highly successful, remunicipalised public water company of the province of Buenos Aires and the SEDAM public utility in

Huancayo, Peru. The partnership aims to help SEDAM overcome the wide range of serious water management problems it suffers, which include high leakage levels and large parts of the city lacking piped water connections. In both Buenos Aires and Huancayo, civil society and water workers, spurred on by struggles against privatisation, are actively engaged in water management decisions. Although there are many obstacles to overcome, this Public-Public Partnership exemplifies the value of international solidarity, social justice and democratisation underlying other new PUP initiatives in Latin America and elsewhere. The Huancayo example highlights the fact that there are often major local obstacles to overcome before a Public-Public Partnership can take off. Community groups and trade unions played a crucial role in gaining the much-needed political support of the local municipal government in Huancayo, as well as overcoming the scepticism surrounding public utility companies.

In Uruguay, a successful referendum campaign which led to the right to water being added to the national constitution, has paved the way for the state water company OSE to engage in new, more ambitious progressive approaches. This includes cross-border PUPs in which OSE offer their expertise and low-cost tailor-made technological solutions. One such project involves the participation of OSE and community groups in peri-urban areas of the Bolivian city of Cochabamba, who are not connected to the city's piped water systems. There are also other PUP programmes underway with the public water authorities of Venezuela, Benin, Angola and Haiti.

Also part of this emerging new wave is a deepening commitment from Northern public utilities to contribute to the struggle to secure water for all, by sharing their expertise on a not-for-profit basis. Amsterdam's municipal water utility Waternet, for example, is continuously expanding its PUP activities in countries like Indonesia, Egypt, Palestine and Surinam. Waternet's international department, Wereldwaternet, has developed a clear set of principles for its PUP program, which include that they are not-for-profit and

do not involve taking over the management, but are rather based on a long-term commitment aimed at developing sustainable local capacity. Waternet is one of the few water companies in the world that covers the entire water cycle, and has developed a comprehensive holistic approach to all aspects: from potable water supply, sanitation and rainwater storage, to sustainable groundwater and surface water management. Wereldwaternet includes this approach in their PUP projects. This also shows that PUPs can – and should be – used to solve not only potable water supply challenges, but the full range of water management problems too.

Elsewhere in Europe, progressive public water operators in Belgium, France, Italy and Spain are also expanding their international solidarity activities by engaging in PUPs with utilities in the South. The public consortium in the province of Seville, Spain, is working on the remunicipalisation of local utilities in the province and for the development of transparent and participatory water management. The consortium has also initiated PUP projects to help utilities in El Salvador, Peru, Nicaragua, Cuba, Malawi and Mauritania improve the technical and management aspects of their water supplies.

As a result of awareness-raising campaigns carried out by civil society groups, trade unions and progressive public water managers, there has been far stronger political recognition of the potential of PUPs in recent years. Public Services International, the UK-based World Development Movement, the France Libertés Foundation and numerous other groups involved in the Reclaiming Public Water network have ensured that the UK and Dutch governments and the European Commission, amongst others, have expressed official support of PUPs. Another breakthrough was the launch of the UN's Water Operator Partnerships (WOPs) initiative in March 2006. After a decade or more of donors obsessed with boosting the role of the private sector, these steps marked the beginning of the creation of the international training environment needed for PUPs to emerge and succeed. This political recognition is positive

and necessary, but major challenges still lie ahead. UK, Dutch and European Commission recognition of the importance of PUPs only came after strong political pressure from campaigns opposed to the use of development aid to promote privatisation.

In the face of this criticism, governments acknowledged the importance of PUPs and pledged financial support. However, this was only a partial victory as it did not bring an end to support for privatisation. In practice, implementing the pledges of support for PUPs has been slow and fraught with contradictions. This reflects the reality that the government agencies and international institutions responsible for water sector support were full of civil servants throughout the 90s who internalised the dogma of private sector superiority and became deeply obsessed with expanding the role of private water companies via «PPPs». Even now that the failure of this neoliberal formula is evident, institutional resistance to public sector solutions remains strong. In practice, this not only weakens active support of PUPs, it also distorts the concept of the partnership. Therefore, winning the debate on arguments alone is clearly not enough. Overcoming institutional resistance is a major challenge that requires long-term pressure and commitment.

March 2006 marked a milestone in the debate on Public-Public Partnerships when the UN's advisory board on water and sanitation presented its recommendations —the so-called Hashimoto Action Plan. The Board's chair, former Japanese Prime Minister Ryutaro Hashimoto, stated in his speech that: «Public water services currently provide more than 90% of water supply in the world. Modest improvement in public water operators will have immense impact on global provision of services». Among the board's proposals was the launch of a mechanism to facilitate PUPs, described as Water Operators Partnerships (WOPs). Without actually using the term «Public-Public Partnerships», the intention was clear: to improve water supply through partnerships between public utilities. This was the first time a major international institution had so clearly expressed support for this approach. As a result of the

ongoing battle between PUP supporters and pro-privatisation lobbyists inside the UN advisory board, however, private companies were not excluded, but the WOPs were defined as strictly not-for-profit. The WOPs proposal was enthusiastically welcomed by water justice activists as an initiative with the potential to massively boost the emergence of Public-Public Partnerships, thus accelerating efforts to improve the performance of public utilities worldwide. However, the coordination of further development of the WOPs mechanism was left to UN-Habitat —a process that soon started showing cracks.

In early 2007, a year after the launch of the Hashimoto Action Plan, it became clear that UN-Habitat had left most of the implementation of the WOPs initiative to regional development banks and Northern donor agencies —all of which were known for their commitment to promoting privatisation, and for not having shown much interest in public water solutions. The Asian Development Bank, for example, seemed to ignore the not-for-profit principle, and instead interpreted WOPs as a tool to help commercially-oriented publicly-owned water companies expand internationally and turn them into transnational companies. In this first year, the WOPs process was not very transparent, and public water managers seemed to be largely excluded, not to mention civil society groups and trade unions. The Reclaiming Public Water network wrote several letters of protest to UN-Habitat and the UN Advisory Board to demand that WOPs be implemented according to the vision of the Hashimoto Action Plan, and through an open and inclusive process, with public water managers given a central role. The responses to the letters were encouraging, but it remained unclear if anything would change.

At the first regional WOPs workshop in Europe, held in The Hague in October 2007, it became clear just how strong the pressures to co-opt and distort the WOPs process actually were. Suez's pro-privatisation lobbyists and AquaFed's pressure group were very much present, and even managed to secure a dominant role among

the panellists. To make matters worse, speakers from the World Bank and Dutch government made it clear that their interpretation of the WOPs had little to do with the vision of the Hashimoto Action Plan and its emphasis on not-for-profit partnerships. In response to this and other interpretations, activists, unionists and public managers have defended the original vision of the WOPs and insisted that the not-for-profit character of the partnerships should be rigorously safeguarded. The challenge we now face involves a combination of the lobbying power of private water multinationals, hell-bent on destroying any alternative to their privatisation agenda that may arise, and what appears to be deep-rooted institutional resistance to new progressive water policies —a combination that demonstrates that initial victories like the UN's WOPs initiative can quickly be turned into a defeat in the implementation phase. Water justice movements must rise to the challenge and develop an effective response to combat these challenges.

The recent appointment of WOPs coordinators at both UN-Habitat and the International Water Association (which coordinated the European WOPs process) are cause for optimism, as these coordinators have a strong affinity to public water supply. Another source of hope is the launch of *the Aqua Publica Europea* network in March 2008 - the first ever pan-European federation of public water operators. The emergence of a strong, organised voice to defend the interests of the public water sector has been long overdue to counter the heavily-funded pro-privatisation lobbyists.

In March 2009, the Fifth World Water Forum will take place in Istanbul. However, a counter-summit will also take place rejecting the Forum as corporate-biased and the wrong space and process for solving the world's water problems. In the run-up to and during the events in Istanbul, water justice movements must stand firm in their efforts to mount pressure on governments to recognise the human right to water, and to adopt equally important policies to make this right a reality, including a policy on Public-Public Partnerships.

XIV. THE PROVISION OF WATER SUPPLY AND SANITATION SERVICES IN BRAZIL. NEW MODES OF PUBLIC-PUBLIC PARTNERSHIPS AND CITIZEN PARTICIPATION.

Silvano Silvério da Costa*

Abstract

This article summarizes the current state of water supply and sanitation services in Brazil. It also focuses on the different forms of providing water supply and sanitation services. Reference is made to legal instruments recently passed by the National Congress and authorized by the President of the Republic. Lastly, the article discusses certain recent experiences in the country that promote public-public partnerships and the participation of Brazilian society in developing municipal sanitation plans.

Introduction

In the past five years Brazil has developed major legal instruments on sanitation: Law No. 11,107 of 2007, which instituted joint management for public services among different levels of government; Law No. 11,445 of 2007, which established general guidelines for public services concerning basic sanitation (water supply,

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sanitation, solid waste, and rainwater management); and the federal policy for basic sanitation.

Law No. 11,445 of 2007, the Sanitation Act, is the fruit of a fascinating democratic process, where several sectors interested in the issue took part in the discussion.

On a local level, a number of municipalities took the initiative to develop their own basic sanitation laws and policies. In some such cases, residents of these cities participated in the process.

The following sections will touch upon new public-public partnership modes in support of water supply and sanitation management services. They will also discuss citizen participation processes and their contributions to sanitation plans and policies at the municipal and federal level.

The State of Water Supply and Sanitation in Brazil

The state of environmental sanitation, in its most general sense, which includes water supply, sanitation, solid waste, urban sewage, and vector control, paints a fairly bleak picture. On the one hand, the coverage of services in urban areas is reasonably adequate, but the same cannot be said for rural areas. Those who lack access to sanitation services are always low-income households.

We will now present certain information taken from the «Preliminary Documents» prepared for the «Conference of Cities» by the National Department of Sanitation – Ministry of Cities – 2003. These data are taken from a census conducted by the Brazilian Institute of Geography and Statistics (*Instituto Brasileiro de Geografia e Estatística* – IBGE) – 2000 and from the National Basic Sanitation Plan – IBGE – 2000.

Water Supply

– Most of the approximately 18 million people who lack access to running water in urban areas live in substandard homes or in small districts/municipalities, especially in the region desig-

nated as «semi-arid».

- A good part of those considered to be receiving water services actually receive poor service.
- In the major cities, having water services does not mean that the residents have them every day.
- Lack of continuity in supply affects 20% of the serviced districts, forcing residents to turn to unsafe supply sources, while also causing harm to the distribution system, which increases losses.
- Water supplied to residents lacks good quality control. Many small systems distribute untreated water (38% of the serviced districts); a considerable number of them do not fluorinate the water (63% of the serviced districts); and in only 47% of the districts serviced is water regulated by the Provincial Health Department.
- 14 million people in rural areas do not have water close to their homes.

Sanitation

- Approximately 83 million Brazilians who live in cities are not connected to household sewage systems, and of those, more than 36 million live in metropolitan areas.
- Many homes do not have bathrooms. This situation affects millions of people in both urban and rural areas. The need is greatest in the poorest parts of the country.
- Approximately 93 million people who live in cities that have, or should have, running water and connections to the public system (some might be using septic tanks), do not have suitable sewage services.
- Almost all rubbish collected in the cities is dumped into the environment: into waters or the soil. Contamination of rivers in proximity to major Brazilian cities in some cases compromises their own supply sources.

Water Supply and Sewage Treatment Services in Brazil

Table No. 1 demonstrates that, despite the passage of the Law on Concessions in 1995, services are dominated by Provincial Sanitation Companies and Autonomous Municipal Services.

TABLE 1
Water supply and sanitation services in Brazil

I. Water Supply

71.5% of the municipalities are serviced through concessions granted to government-owned provincial companies. Services may or may not be provided with regularity, and there is no regulatory or supervisory system.

In 28.5% of the municipalities, services are directly provided by the municipal entities.

1% of the municipalities are serviced through concessions granted in whole or in part to private companies.

II. Sanitation

84.5% of the municipalities have services. For the most part, they are collection services. These services are either directly provided by municipal entities or are not provided on a regular basis.

14.5% of the municipalities are serviced through concessions granted to government-owned companies. Services may or may not be provided with regularity, and there is no regulatory or supervisory system.

1% of the municipalities are serviced through concessions granted to private companies.

Recent Federal Laws on Water and Sanitation Services

Two laws passed in Brazil and authorized in the past two years by President Lula are fundamental for water supply and sanitation management services in Brazil: Law No. 11,107 of April 2005 and Law 11,445 of January 2007.

The first of these, Law No. 11,107, instituted joint administration among the various levels of government: among municipalities (with or without participation by the states and the federal government), between municipalities and states (with or without federal government participation), and among states (with or without

federal government participation) for public utilities in general.

This law was also ordered by Federal Decree in the year 2007. It creates legal instruments allowing the various levels of government, if they wish, to form partnerships through consortiums under public or private law. It also allows municipalities to associate with one another in order to implement various modes of water supply and sanitation services.

The second law, number 11,445/07, anticipated for over two decades by Brazil's sanitation sector, defines the general guidelines for water supply, sanitation, urban solid waste, and rainwater management, as well as the federal basic sanitation policy.

New Experiences in Public Services following Passage of Law 11,107/2007 – the Public-Public Partnership Act

As stated above, Law 11,107/2007 allows municipalities to join together in order to do what they could not do alone, either because they lack economies of scale or because they are short of trained professionals to administer public utilities.

Many municipal districts are creating inter-municipal consortiums to manage municipal utilities. In the State of Paraná, for example, two consortiums were created with approximately eight municipal districts each. The purpose of these consortiums is to develop basic municipal and regional sanitation plans. The consortiums monitor the quality of water for human consumption, and also engage in certain other important activities.

Some consortiums are being created for joint, integrated administration of solid waste segregation. Others are expected to be created in order to concurrently provide water supply and sanitation management services for certain municipal districts.

It is likely that any consortiums established will go beyond planning and also regulate and oversee water supply services provided by government-owned sanitation companies. This approach will be implemented through program contracts (under the con-

tractual framework also instituted by Law 11,107/2007, whereby municipal districts, jointly or separately, may agree to form a consortium with the federal government, after which they would enter into a contract with the respective government-owned firm for water supply and sanitation management services).

Brief Report on Citizen Participation in the Creation of Laws and Policies, and in Water Supply and Sanitation Management Services in Brazil

In the creation of municipal and federal laws and policies Some Brazilian municipal districts have developed their own basic municipal sanitation laws, in which case civil society has exercised control over the process through municipal conferences. In several municipal districts, such laws have actually entered into force. One example is the municipal district of Alagoinhas in the State of Bahia, which developed its Municipal Sanitation Plan with citizen participation and passed its own municipal sanitation law.

Another significant experience was the drafting process for Law 11,445/2007, the Federal Basic Sanitation Act. This act defined the general guidelines for basic sanitation services, including a broad framework for administration, planning, implementation, regulation, oversight, participation, and citizen control. The discussion process was one of the most democratic in the nation's history, with the federal government, through the National Environmental Sanitation Department – Ministry of Cities, holding over a dozen regional seminars and public hearings, leading to the introduction of Legislative Bill/PL 5296/2005.

This bill was intensely debated in the National Congress and finally passed in the House of Representatives and the National Senate. It's not exactly what was hoped for by the National Front for Environmental Sanitation, the coalition that brings together the major stakeholders involved in Brazil's social movements and civil society, but, in a democratic system —where each sector compro-

mises somewhat to develop initiatives— it goes as far as possible.

It is important to note that the development of Law 11,445/2007 began with over 3,500 municipal conferences, in a nation of some 5,500 municipalities.

Participatory Budget – Determination of Municipal Investments

Some Brazilian municipal districts have been engaging in discussions with the citizenry on municipal investments since the early nineties, in a process known as *orçamento participativo* (*participatory budget*).

Due to the limited coverage of sanitation collector systems (sewer systems) and residential water supply services, top priority is often given to improving water supply and sanitation management.

Some municipalities with participatory budgets are: Guarulhos (São Paulo), Belo Horizonte (Minas Gerais), Alagoinhas (Bahia), Recife (Pernambuco), Porto Alegre, and São Leopoldo (Rio Grande do Sul).

XV. BOLIVIAN WATER SOCIAL MOVEMENT: FROM RESISTENCE TO CO-OPTATION (2000-2007)

Carlos Crespo Flores *
CESU-UMSS

The main problem is who decides upon the present and destiny of the people, the resources, work and living conditions. With regard to water, we want to decide by ourselves: this is what we call Democracy.

(Coordinadora del Agua of Cochabamba).

Introduction

In November, 2007, a meeting about the evaluation of social movements, in the Ministry of Water in Bolivia ended with a violent confrontation between organisations related to the government and the minister of water (former President of FEJUVE-El Alto) and social organisations of irrigation farmers and the Coordinadora Nacional del Agua, who questioned different aspects of the ministerial management. How did this breaking up between organisations happen? Organisations, which before to the access to government of Evo Morales had coordinated actions and shown solidarity in fights against privatisation of water in the country? To answer this, this piece of work analyses the Water National Movement (MNA, for its Spanish name, Movimiento Nacional del Agua), but con-

* The arguments in this text were discussed with Julián Pérez, Néstor el Negro and Víctor Hugo Calizaya, whom I thank for their suggestions and contributions.

centrating in three of its basic organisations: FEJUVE-El Alto, the Water Coordinatio as a regional organisation (Cochabamba) and also as a national organisation, and the irrigation farmers, nowadays organised around ANARESCAPyS.

The text contends that the strength and efficiency are efficient in the capacity of resistance of a social movement against commodification of natural resources and environmental services, that is, its privatisation and/or incorporation to the market discipline against an ecological inequitable distribution, which promotes for the poorest sectors to be those who assume the environmental, social and cultural costs of the exploitation of these natural resources and/or the economic activity and for the defence of the citizens' rights and their quality of life when this fight is *anti-state*, because it questions the State and the public politics which generate this situation, particularly neoliberalism; it is *non-hegemonic*, because it doesn't wish for seizing power or promoting another state model, but for reducing domination relations; when *democratic and solidary practice* work inside the movement. But when the social movement is organised to a state project (against) hegemony (to speak in Gramsci's jargon), this capacity is reduced, as it has happened in the case of MSA in its relation with Evo Morales' government, and it legitimates politics which are contrary to the MNA demands.

To all this, other factors have to be added, which in the Bolivian case, and as it will be analysed in the case of water, make the collective action of the social movements even weaker: the corrupt character of the Bolivian State, which makes it easier for the social movement to organise easily to a political clientelist, and scarcely transparent structure in its relation with the State and its institutions, the leader and authoritarian trend of the Bolivian social movements, heirs of the way of making politics, «COB method», which also supply the adequate ambience to neutralise the autonomy of these movements.

This piece is inscribed between those carried out reflections, from political sociology and philosophy, which analyse strategies

and power relations between and of the groups who operate upon criteria of horizontality, decentralisation (Gordon, 2005) and non-hegemonic practice (Day, 2005). Likewise, it synthesises the experience of the author as an intellectual and activist of water on the last seven years, which has allowed following closely the constitution and crisis process of the MNA.

Crisis of the political method «the COB method» and emerging of new ways of resistance: the water national movement

Analysing ways of autonomous resistance during the Bolivian Gas Conflict, in 2003, Juan Perelman emphasised the need to «forget about the old COB and mining centrality» (Perelman, 2003), and showed up the evident fact of the collapse of the Bolivian Workers' Centre (COB in Spanish, for Central Obrera Boliviana); even more, the «COB method» of making politics is in an irreversible crisis, but at the same time, since 2000 other organizing presences have emerged, which recovering memory of the social fights around COB have spread resistance processes which have been more effective to dominant powers. One of those has been the National Water Movement.

As it is known, COB is a product of the victorious insurrection of 1952, fact that has influenced its identity as an organism that organises social movements in Bolivia, until mid 80s, with a high capacity of questioning the State so much that in some situations constituted a real power factor. In Bolivia the «party method» of making politics was subordinated to COB decisions and their capacity of action. In fact, recovery of democracy in Bolivia is a product of the social fights, leaded by COB. In short, we could refer to a «COB method» of making politics.

We should attribute the COB crisis to external and internal factors. In the former group we can find putting into practice the «Ajuste Estructural» («Structure Adjustment»), understood not only

as a financial but fundamentally political project, oriented to eliminate the powerful Bolivian trade union movement, and in general associative organised and of mutual support forms, which potentially were setting out other social models; this way, the transference of the strategic enterprises and services of the country to the private sector was made easier. The Ajuste involved not only the massive sacking and/or relocation of workers, particularly of the mining sector (social fundamental basis of the «COB method») but also the set up of the work flexibility systems, which reduced the number of people in a trade union, terribly weakening the social basis of COB. The attempt of organizing the country to global capitalism was based on eliminating the Bolivian trade union movement.

But it is also necessary to refer to the intern factors that determined this process of destruction of the «COB method». The first one is that the Bolivian left-wing never understood the particularities of the COB as an organism with self-management and pluralist potentialities, beyond the Manichean logics and exclusive of the party method. They made a lot of efforts to make it become a classic claiming central union, fighting to co-optate it to the interests of the party (achieving it in many situations). Second of all, from its creation, the COB maintained a centralist structure, scarcely democratic and self-critic, where the decisions of the executive committee were spread to the grass roots for its performance. This caused authoritarian and leader practice, which gradually violated the great capacity of self-organisation of the Bolivian workers. Third, the COB maintained a workers' ideology, with its vanguard expressed in the vigorous mining trade union movement, but that it excluded the farmer and indigenous sector, reproducing deep down the racist ideology of Bolivia; the incorporation of the farmer sector of the highlands in the executive committee has not resulted in a real organisation of the farmer sector in the COB fights. Finally, COB has shown scarce capacity to «reinvent» itself in the context of the new economic model and, as a contrary, has insisted in its traditional style of confrontation fights, although totally weakened in its

social basis and their basic organisations.

This way, combination of the new conditions in which the economic model of Bolivia and the centralist and authoritarian features of the structure and operation of the COB have been constituted, wounded the union organism to death, at least in the organisational form that we have got to know.

In this context, new emergent ways in these last years, like the Coordinadora del Agua of Cochabamba or the resistance net organised between several organisations and social movements during the Bolivian Gas Conflict broke with the «cobist» tradition, in spite of rescuing some of their resistance strategies. Likewise, a water national movement was configured, different in its identity and tactics of collective action, but organised around a water commodification resistance and its services.

Thus, both in April 2000 and in October 2003, COB in no way was an organism which would articulate social demands, like in past situations, but an actor of a sort of «federation of social movements which unite in order to achieve a common objective», as Juan Perelman (2003) points out.

On the other hand, these emerging movements demanded aspects traditionally ignored by the COB; in the case of water these were expressed in the fight against commodification of the water and its services (that is, its privatisation and commercialisation), as well as against its pollution and «built shortag»; all this, in the context of global capitalism, as the material conditions of its expansion and the form of insertion of the country are gradually defending transformations in organisational forms and the scope of the Bolivian social movements resistance, as it could be seen in the «Water Wars» in Cochabamba and La Paz-El Alto. In the process of capital globalisation, life becomes a power object, a biopolitical power (Foucault, 1998); therefore resistance is biopolitics and water is one of its main sceneries, bearing in mind that it is the basis of natural and human life. Likewise, as capitalism works as a decentralised, informational, flexible net, these emergent movements also create

resistance strategies based on the constitution of biopolitical² resistance networks (for the case of water, see Crespo, 2004), although without washing away the «COB method»; in fact, revolutions in Cochabamba (2000), La Paz-El Alto (2003, 2005) which made these networks visible, were rapidly substituted by «COB method» practices.

Non-state-hegemonic, democratic and supportive features of the MSA

There are two features in the actions of the three analysed organisations (Coordinadora del Agua, irrigation farmers and FEJUVE-El Alto), which differentiated it from the «COB method», although they recover some of its aspects and they bring it rather close to anti-capitalism social movements: their non-state-hegemonic strategy and the operation of democratic and supportive practice in crisis periods.

– *Coordinadora del Agua*. The year 2000 sets a glorious moment of the autonomous and democratic practice, from the figure of the «spokesman», the town-councils where fundamental decisions were taken, from the open assemblies to all people in the Coordinadora, where they discussed not only future actions, but also alternatives to the business' future, from participative management forms to self- and cooperative management. It is the paradigm of a plural and democratic movement, which does not seek (anti) hegemonic objectives, but resistance against privatisation of water, which increased rates before starting the service, violated self-managed alternative systems of water distribution and called into question the «habits and

3. A Biopolitical Resistance Net is the organisation of a social, activist and social organisations movement diversity, around one or more common objectives of resistance to biopolitical dominant powers, from different points of resistance, using a multiplicity of tactics and (anti) power presences, whose actions are based in the application of non-authoritarian democratic principles and decentralisation, autonomy and flexibility principles.

customs» of water, and also for irrigation farmers to access/use to this resource. Non-hegemonic resistance, without a doubt, but at the same time supportive³, because in the most critical moments of Cochabamba's revolution, the mutual, urban and rural and between neighbours support, rose with its whole magnificence (Crespo, Fernández & Peredo, 2004). The Coordinadora del Agua of Cochabamba organised Cochabamba's people, both urban and rural, against the concession of drinking water service and the approval of new regulations for the sector, achieving to terminate the concession contract with the enterprise «Agua del Tunari» and to pass the Number 2066 Law of Drinking Water and Health Draining System (Ley the Agua Potable y Alcantarillado Sanitario), which allowed to reduce the possibilities of future privatisation of these services, besides protecting obtained rights to water (Crespo, Fernández & Peredo, 2004).

– *Irrigation farmers*. It is in the basic, communal and/or associative social organisations where democratic practice works better, including systems of «habits and customs», visible in crisis periods, in organisational aspects, solidarity and mutual support, particularly in the urban-rural allegiance during the last phase of the «Water conflict», questioning the neoliberalism applied in the country, in one of its foundations: privatisation of public services and its effects upon the water management systems based on «habits and customs». FEDECOR from Cochabamba, although their representatives were a part of the Instrumento Político-MAS, in crisis periods, it accepted the leadership of la Coordinadora del Agua. Irrigation farmers

3. I understand solidarity as the capacity of people to respond and identify with others, on the basis of mutualism and reciprocity, without calculating individual advantages, and above all, without an obligation. And it includes a will for sharing destiny of others, not for being a part of a category where it belongs, but as a unique and different person (Cohen & Arato; quoted in Gordon, 2005).

organised now around the ANARESCAPyS, in the year 2004 consolidated the victory of Cochabamba, passing Law 2878 of Promotion and Support to Agricultural, Livestock and Forest Production (Promoción y Apoyo a la Producción Agropecuaria y Forestal), better known as Irrigation Law (Ley de Riego) and its three Supreme Regulation Decrees, ratifying protection of the water management systems based on «habits and customs», thus protecting the interests in this sector, although at other sectors' expenses, among them poor farmers and indigenous, without access to water.

– *FEJUVE-El Alto*. This is an organisation which has the territory control, it operates as a mutual support network, particularly in crisis periods, because their members are structured by districts, in the whole city of El Alto, and it ends as a president assembly; they have spaces which permit the rendering of accounts of its leaders. This network operated efficiently in the resistance to concession of Waters of Illimani (AISA-Suez), as well as in the Bolivian Gas Conflict (2003), which, as it is known, it was the touchstone for the last fight of the II Bolivian Gas Conflict, this time against AISA-Suez (2004-2005), questioning a drinking water service and draining system, provided by the enterprise in El Alto and the mountainside, deepening this way the racial segregation in both cities (Crespo, 2007); without a doubt a non-hegemonic biopolitical fight, since it was not organised in any political project to conquer the state power. FEJUVE-El Alto led resistance to Water Concession of Illimani, and after a final fight at the end of 2004, obliged the government of the then President Carlos D. Mesa, to sign the contract termination, ratified by the present Minister of Water Abel Mamani, with the signature of the termination of the contract.

In critical moments, the Coordinadora del Agua, FEDECOR, FEJUVE-El Alto, worked as real war machines, as social machines,

which structure autonomist knowledge and cooperation practices, and which have skills and knowledge in order to spread resistance actions (Soñador Social, 2003; Crespo, 2004). Analysed organisations, in moments of direct action and/or massive mobilisation, acted efficiently to stop tolerance in the State and the private sector; but rapidly were reconverted in voting mass, mouthpiece of leaders, as we will see later.

In short, while MNA strategy had biopolitical grass roots, oriented to reduce relation of domination in the water sector, through their neoliberal presences of commodification, without being a part of an alternative (anti) hegemonic project and applying practice and organisational autonomous, plural and democratic forms, characteristic features of their anti-capitalist movements (Day, 2005), the resistance was efficient.

The water national movement and its relationship with evo morales' government

Non-hegemonic and democratic features in MNA actions, visible in crisis periods, stop some practices and behaviours of leadership of these social organisations in relation with their grass roots, which is characteristic of the «COB method», characterised by the scarce transparency and the way authoritarian and leader practice work, favourable for the existence of non-transparent, political clientelist relations, which means corrupt.

In this section I am going to analyse the running of the three social organisations in these seven years of MNA emergency, emphasising in the application of four main principles, the transparency degree of leaderships, the application of principles of rendering of accounts, revoking of term of office and rotation of position. The second part will be dedicated to reconstructing the relationship of the MNA with Evo Morales' government and the so called Instrumento Político. Below there is a table with its synthesis.

ORGANISATION/SECTOR OF SOCIETY		APPLICATION OF PRINCIPLES AND STATE/SOCIAL MOVEMENT RELATIONSHIP NOWADAYS			
Transparency	Rendering of accounts	Revoking of term of office	Rotation of position	Relation with State nowadays	
Coordinadora del Agua	Cochabamba. Citizen SEMAPA directors not transparent. Organised to structure of corruption of the enterprise; they are involved with political parties.	No rendering of accounts.	Not applied.	Not applied.	Citizen directors can repeat position. 5 spokesmen of the Coordinadora in year 2000; nowadays: 3 in government (1 senator for MAS, 1 deputy for MAS, 1 former President of YPFB), 1 former subleader of NFR, 1 bound to Carlos D. Mesa government, 1 supporter of government's hegemonic project.
	National. No transparency with their basis.	No rendering of accounts.	Not applied.	Not applied.	Spokesmen of National Coordinadora del Agua: 4 directly bound to the government (1 member of FUNDASAB, 1 worker if CONIAG, 2 members of member organisations worked in the vice-Ministry of Drinking Water), the rest supports government's hegemonic project, to a greater or lesser extent.
Irrigation farmers	No transparency. Leaders control all the information which flows between its members. Dissident voices are excluded and declared "enemies". Leaders are not irrigation farmers, they "work as irrigation farmers".	There are assemblies of rendering of accounts, but information is exploited.	Not applied.	Not applied. Their maximum leader has been elected more than three times, violating their own statutes.	They control vice-minister of irrigation (Vice-minister and national director of irrigation belong to the sector) They control SENARI 1 member in FUNDASAB
FEJUVE-EI Alto	No transparency, despite of a greater social control of district leadership. The 3 previous presidents to Abel Mamani, expelled due to corruption. One of them received money from AISA. Political clientelist relation with mayors.	There are cases of rendering of accounts (from districts and from presidents)	Applied in internal crisis periods.	There are unemployed leaders who organise in political parties.	Allegiance government-FEJUVE-EI Alto, product of which president FEJUVE minister of water. People bound to ex-leader of FEJUVE-EI Alto, work for the ministry nowadays.

Democratic and transparency principles in MNA

Converting Soto's concept of transparency (2004, 1) to organisations and social movements, I understand transparency as the fact by which all public events, practiced by leaders and organisation and social movements representatives, in a local, regional and/or national scale, must be obligatory and immediately published and accessible through all available technical media, without needing any application. This involves that base members must have a warranty of unrestricted accessibility to all legal, accountant, administrative, cartographic, statistic, communicational, technical and financial information.

The three organisations mentioned above controlled and/or manipulated the access/use to main information of their management; in the case of SEMAPA control of contract, salaries, projects information, legitimated by various citizen directors which circulated, helped to strengthen corruption in the enterprise. Irrigator leaderships, by controlling information about the real scope of Irrigation Law, exploited to condemn investigators and water activists, critics of these rules. In El Alto a system of «neighbour justice» works, which it has punished their corrupt presidents, that is, ALL presidents in the last 8 years at least. An agenda of democratisation and autonomous action, which from water social organisations goes necessarily through democratisation of information, which flows from leaderships to their basis, to make information transparent, so they can freely decide and avoid hierarchic, authoritarian, leader and political clientelist power relations between leaders and their basis, as until now it can be seen in the three studied cases.

Associated to transparency there is rendering of accounts; as information is controlled or manipulated, rendering of accounts is also devalued, fact seen in water social organisations; from those where there isn't any, like the Coordinadora del Agua Departamental, through those who exploit spread information, like in the case of irrigation farmers; the exceptional case is FEJUVE-El Alto, where there is greater social control to leaders and these are obliged

to inform about their activities; in spite of all, the corruption of El Alto leaders is constant.

Scarce democratic practice in analysed organisations can be seen in the no-application of the principle of revoking of term of office; the process of discipline to which their basis have been subject can be conveyed in the scarce control of the basis to their leaders, with the exception, again, of El Alto.

Existence of leaders in the movement itself is positive, if the leadership is equally distributed, that is, any member of the collective group has the same possibilities to lead in different moments; in short, the «*equal access to influence*», in a way that the power options which the leader has, must be distributed and/or shared (Gordon, 2005). In MNA in general it is not applied if we analyse rotation of positions, main principle to avoid the emergency of leaders, to which we are used to due to the «COB method», of which the greater result, without a doubt is our Republic President, who acted in his position for 12 years. The representative case of water is the maximum representative of the irrigation sector, elected by the fourth time leader of irrigation farmers of Cochabamba this year, violating even its own statutes (which establish to be elected as a maximum, twice).

Therefore, the efficiency of collective actions and resistance of the social organisations analysed above in general hid or subordinated drives and leader practices, authoritarian of their representatives, in the central struggle they were in by then (FEDECOR); in other cases, these were subject to the social control of assemblies (FEJUVE-El Alto) or town-councils (Coordinadora del Agua of Cochabamba).

MNA's co-optation process

This process cannot be understood without going back to Cochabamba Water Wars (1999-2000). As it is well-known, victory in the streets of the Cochabambinos also happened thanks to the support of the *cocalero* movement, which came to the city in its

critical moments, and which knew to hold on when the movement was waning. Evo Morales was a great ally of the Coordinadora, as it was later expressed by the alliances around La Comunal in 2001.

Thus, when structuring his programme, the MAS leader took for granted that the government policy for the water sector entailed applying the MNA agenda. That could be proved when irrigation farmers were recognised as an essential social base of the government, or when the battles of Cochabamba and La Paz-El Alto against the water and sewerage privatisation were acknowledged. That is the reason why the water question in MAS' programme was developed by members of the MNA's technical team. That is to say, by defining his government as the «government of the social movements», Evo Morales attracted the MNA and brought them under his influence –and this is the context in which the Ministry of Water was created.

The creation of the Ministry of Water⁵ is another key moment in the process of co-optation of the Water National Movement (MNA), as it showed some of the tensions and dilemmas within the movement and, additionally, brought to light the power strategies of the government and the MAS to attract the will of the social movements.

The idea of creating the Ministry of Water came from the leadership of the social organisations of the sector⁴, not from the MAS. These social organisations took for granted that Evo Morales' management would open the door to the application of the water agenda according to the MNA's interests. A question came up at that moment. Although it was quickly answered, it is important in order to understand what happened next: should the MNA par-

4. Which I witnessed as I was taking part of the FEJUVE-El Alto's technical team during the resistance to the AISA's concession.

5. Although there are people who maintain that it was actually an idea of a member of the water technical team, who served later as vice-minister (J. Pérez, personal communication).

ticipate in the government? Those who agreed to it declared that «water agenda must be applied from inside», a thesis conducted by the irrigation farmers and overwhelmingly dominant in the MNA. Nevertheless, a minority of activists defended the need for the MNA to keep its autonomy, although supporting the process.

At the end, the FEJUVE-El Alto reached an agreement with Evo Morales, which led to Abel Mamani's incorporation to the Ministry⁶. The irrigation farmers were totally compromised with the Instrumento Político since the beginning⁷, while the Coordinadora Nacional del Agua decided that each organisation should determine autonomously what to do. Consequently, most of the leaders and representatives from organisations like CODERIP, FEJUVE-La Paz or the Cooperativas de Santa Cruz, occupied their posts in the Ministry of Water and in other institutions within the sector, like the FUNDASAB.

It is also worth mentioning, in his decision to join the government, the fundamental support of the MNA's technical team (already organised in a NGO by then) and some other linked to a well-known NGO in La Paz. Those who thought that joining the government would guarantee satisfying MNA's demands had a decisive influence on some of the social organisations. Thus, some professionals of this technical team were appointed vice-ministers and/or government employees.

Evo gave the technical team and the social organisations the liberty to arrange the Ministry, which allowed some initial autonomy compared with the MAS' party machine. As a result of this,

6. As denounced by the FEJUVE-El Alto's leadership, the former President Abel Mamani did not take into consideration the requests for deliberation and decision of the neighbourhood organisation when he decided to occupy his post at the Ministry, for which this was unknown. This is a common authoritarian practise among the leaderships of social organisations in the country.

7. Although a sizeable proportion of its base, in the Valley of Cochabamba, holds the affection of Manfred Reyes Villa and conservative sectors of the Cochabamba society.

the names of the vice-ministers and directors disappeared from these discussions, except for one vice-Ministry, where party dues were imposed.

Some sector and/or power interests arose in these discussions:

- The irrigation farmers disliked Mamani's nomination, for they distrusted him. They supported the nomination of one of the most important members of the technical team, but Evo's alliance with El Alto prevailed and they had to resign themselves only to the vice-ministries. Anyway, this power discussion was not resolved and has been present throughout this process. While the MNA worked as a resistance and biopolitical solidarity network, not hegemonic, these differences were not visible. However, when it decided to support Evo Morales and his government's project, the network ceased working, as corporative and personal interests prevailed, particularly those of the leaderships.
- Representatives of social organisations had interest to become government employees in the Ministry and wondered thus whether being representatives gave them the power to be part of the government machine. Weren't they taking advantage of the power the base gave them in order to satisfy personal interests?. Some issues about transparency and democratic practices on the leaders-base relation were brought up for discussion, but they have not been solved so far.

In short, members of the leaderships and the water technical team adapted themselves to the structure of the Ministry, legitimising thus the MNA's support to Evo Morales' government, including the support to the fundamental decisions of the Ministry of Water, although that was contradictory to the direction of the water struggles in Bolivia:

- With the support of the Ministry of Water, President Evo

Morales promised to build a hydroelectric dam in Cachuela Esperanza, disregarding the opposition of indigenous peoples, settlers of the area, technicians and activists, because of its ecologically destructive approach and its severe sociocultural impacts, not just for the building of the structure, but also for the subsequent development of an extensive farming for exportation⁸ and, as a matter of fact, it also legitimised the Brazilian project to build hydroelectric dams on the Madeira River.

– Despite an audit report which found severe violations in the contract, including environmental impacts, breach of articles that are motive for termination of employment, the application of which meant not just the termination of the employment without compensation, but also expensive fines for Suez (Crespo, 2006a). The Ministry of Water paid US\$ 5.5 million in compensation, besides assuming some ongoing trials which, in case of losing the trial, would have entailed immense losses (Crespo, 2007). Moreover, the new company assumed the credits, including bond issue. That way, Suez left the country as an honourable company.

– Following the Ministry of Water's decision, the new water company in La Paz-El Alto continues working as a mixed limited company. The company has changed its name and the shares have also been modified: 99.9996% of the shares belong now to the government, through the FNDR working as a fiduciary to administrate such shares; the rest (0.0004%) are owned by Felix Huasco Calle and Mercedes Condori Quispe, former representatives of the FEJUVE-El Alto. The argument was that the concession agreement was signed by several shareholders and thus could not be modified. In 2007 a two-year concession

8. In this regard, check the presentations given by representatives of the affected communities in the seminar entitled: «Agua, industria y comunidades» (October, 2007).

agreement was signed by the EPSAS. Neither has the Ministry been transparent nor has informed about this issue.

– A COSUDE loan was taken out to extend the sewer system and to build a water treatment plant in El Alto (district 7), but the HAM-El Alto did not get the land, so the money had to be returned. The Ministry is co-responsible for the failure because it did not support its management, as it was not interested in strengthening the management of the current mayor of El Alto.

– Following the policies of neoliberal governments, the current government has approved and legitimised all licences, including environmental licences, for San Cristóbal company⁹, despite social organisations such as FRUTCAS, institutional platforms such as CGIAB, activists such as FOBOMADE or NGOs such as SEP have given evidence of the severe environmental impacts this company will cause, especially reducing the access and/or use of the water resources for the local communities¹⁰.

– Like previous governments, the Plan Nacional de Desarrollo bases its water and sewerage investment policies (elaborated by the Ministry of Water) on loans and donations, in a ratio of 7 to 10, denying any possibility of a sovereign policy within the sector (Crespo, 2006).

– The Ministry of Water is applying the Irrigation Law and its regulations, despite the opposition of technicians and activists within the sector who argue it will cause damaging effects on the equitable and sustainable access and use of the water when

9. The owner of which is Apex Silver Mining company, one of the largest in the world in this sector.

10. In this regard, check the presentation given by the representatives of the FRUTCAS in the seminar entitled: «Agua, industria y comunidades» (October, 2007).

overexploiting the source.

- It protects irrigation farmers, but excludes the rest, particularly those who do not have water, that is to say, the poorest (Crespo, 2006).

- Because of the passivity of the government when facing corruption in water and sewerage public companies, the presence of the Ministry in the board of water public companies, such as SEMAPA and EPSAs, only legitimise this practise. This presence only seeks to consolidate the power of the minister, in relation to the opposition (SEMAPA), or as a part of the power arguments for the leadership of the Ministry (La Paz-El Alto).

- The Ministry of Water, as well as the regulatory agency, transferred its competences to third parties. Apart from its financial weakness, the Ministry of Water, legitimised by the leaderships of social organisations, has transferred to NGOs within the sector competences established by law on critical issues, such as the development of specific rules for the sector, the application of power of attorney processes according to the Irrigation Law, the development of rules by the EPSAS Mancomunitarias, funded by the international cooperation.

- Requests for social participation and supervising are not granted, like the Consejo Técnico Social in the Ministry of Water, or the commission on control and monitoring, made up of the FEJUVE-El Alto and the FEJUVE-La Paz and meant to supervise the process of termination of employment with AISA-Suez (Supreme Decree 28101, 04/22/2005). In the case of the Consejo Técnico Social, stated in the LOPE as a link between the Ministry and the social movements, it does not work just because the Ministry is not interested in creating a debate on the government policies and even less if representatives of the opposition take part in it. It is expected that this debate would be made up of functional members of the government.

The MNA does no longer act autonomously, but it does regar-

ding the strategic and circumstantial interests of the government¹¹, as it accepts –sometimes unquestioningly– the water policies developed by the government and particularly by the Ministry of Water¹². In sum, a sovereign, sustainable and democratic water policy is currently not visible, as it is claimed by the water social agenda; however, a critical attitude within the MNA is also not visible, as these social organisations are limited to acting autonomously –whether because of their presence in the government or their support to the process–, which is crucial for the defence of the sector interests.

If this is the case, it is plain to see how the leaderships of the water social movements and organisations do not assume their power in a democratic and autonomous sense, but they are linked with a corrupt and authoritarian base of the State and its institutions. Currently, we can notice a connection between those and State institutions, sometimes advantageously. Political clientelism occurs within social organisations: nowadays, the Ministry of Water has its own power shares and each sector fights for their rights. Besides, for those who are both leaders of the social organisations and a part of the State machine at the same time, such as senators, government employees in the Ministry or members within the leadership of foundations, how can they reconcile State interests with those of its social base? What is more, they literally took advantage of their position of power as leaders in order to reach privileged positions within the government, which they did not have as members of the base, and thus this is technically corrupt practices.¹³

Furthermore, since 2000, some of the technical assessors of the

11. In what sense was January 11th, apart from its racist features, not also a part of the MAS' conspiracy, in which the leaders of the irrigation farmers played a crucial role to force Reyes Villa to give up his post, because of the increasing power he exercises as a civil governor?

12. As it is unable to develop an autonomous strategy, apart from the interests of the government of Evo Morales, it is enormously restricted to acting: would the irrigation farmers support the movement against the dams in the basin of the Madeira River, promoted by Lula and Evo Morales?

MSA have generally followed the same process, in most of the cases in agreement with the aforementioned associations. Out of 10 professional technicians who have for seven years worked for the MSA, 8 are in the government –working in the Ministry, in the Parliament, or in a consultancy– and just 2 are independent from the process. Moreover, the government has allowed some of them to set themselves as an NGO, which has now become the operator and advisor of the Ministry of Water, from which some of the reforms for the sector are developed.

Conclusion

1. Since 2000, within the water sector, a network of collective action and resistance has been taking shape, made up of a diversity of activists and social organisations, which I called the Water National Movement (MNA, in Spanish). This shows the crisis and the breaking-off with the «COB method» of structuring the Bolivian civil society, in force since the 1952 revolution. As it has been seen, although in crisis situations the MNA works horizontally and autonomously, applying social control criteria to the leaders as well as plural, democratic, supportive decision strategies which have proved its effectiveness of resistance to the commodification of the water, it normally reproduces the authoritarian, non-transparent procedures of the «COB method». This is set in the context of its connection to the Evo Morales and the Instrumento Político-MAS' state-hegemonic project, defined by the government as a process of co-optation, in many cases related to political clientelism, and which has led to its incapacity to act autonomously, thus legitimising government policies which do not favour these social orga-

13. The classic definition of corruption is «behaviour which deviates from the normal duties of public role because of private regarding (personal, close, private clique), pecuniary or status; violates rules against the exercise of certain types of private regarding influence» (Nye, 1967: 417).

nisations demands not to accept any domination practices in the sector that are based on the commodification of the water and its services –that is to say, its privatisation and/or introduction to the market–, including the social, economic and environmental effects it involves, particularly for the poorest sectors in the country. One effect caused by the MNA's co-optation and its connection to the MNA's state-hegemonic project is that solidarity is no longer the core of collective action, because it has been replaced by a competition among the different social organisations within the sector to achieve power shares within the Government, where political plans have subordinated mutualism and reciprocity to the interests of the leaderships or their sectors. Authoritarianism and co-optation as predominant practices in the MNA reproduce in turn the corruption of the Bolivian Government and its dominant powers (Crespo, 2004). Apart from that, the experience of the MNA is a part of a long story of controlling and disciplining social movements by the Bolivian Government: the COB during the MNR first term of office or the Military-Peasant Pact during the military dictatorships.

2. MNA's co-optation raises a debate within the social movements: must they link their struggles to (anti)hegemonic projects, that is, the development of a state power?¹⁴ (Day, 2005). There is some research showing that, globally speaking, the anti-capitalist movement has got an anti-statist and non-hegemonic discourse (Day, 2004 and 2005; Holloway, 2004). For instance, indigenous struggles defending their land, culture and way of living, the Zapatista movement in Mexico, the local assemblies in Argentina, radical environmentalism or forms of urban activism such as Reclaim the Streets. This movement is questioning the need to use the government machine for achieving an egalitarian, autonomous and sustain-

14. Because, as stated by Richard Day, there is no hegemony without state power and no state power without hegemony (2004: 721).

nable society, because it ends up being expropriated by professional politicians and «experts on freedom» (Gordon, 2005), reproducing authoritarian and domination practices. These movements are saying these dominant governments must be destroyed, as well as their state structures, but it must be done from the resistance and the creation of social, autonomous and emancipating alternatives, now and on a human scale.

3. The MNA, and especially their leadership, unlike the global anti-capitalist movement, supported a state-hegemonic building project, as it is proved by the presence of its leaders and advisors in the government and legislative machine within the water sector, causing the effects referred above. Behind this proposal lies the idea of the power as a possession, a seizing device, as a part of the hegemonic structure (Crespo, 2007a). There is a belief that the state is the only way to achieve an effective social change, without questioning its racist and corrupt identity, and denying the possibility to apply, particularly after the Water Wars in Cochabamba and La Paz-El Alto, self-managed, democratic and transparent forms of water management, anticipating the motto that «another world is possible». In Cochabamba, rather than promoting state-hegemonic projects such as La Comunal, it was about the Coordinadora del Agua and the irrigation farmers concentrating on strengthening the water company, which was recovered from the private capital under these criteria and principles. That involves breaking with the hegemonic forms of the power and taking the state as a «condition, a certain relationship among human beings, a mode of behaviour between men; we destroy it by contracting other relationships, by behaving differently toward one another» (Landauer, 1910). Therefore, in order to achieve social change there is no need to take the state and its hegemonic structure as facilitators, but to create and/or implement liberated spaces and autonomous geographies (Pickrill & Chatterton, 2005), temporarily autonomous zones (or permanent, if possible) (Bey, 1991), splendour areas (Soñador Social,

2003) to create and to life, now, a free and autonomous society.

4. Making the principle «another world is possible» a reality requires also other methods of action and resistance, and other organisation forms that do not reproduce Bolivarian authoritarian and political clientelist strategies, as showed in the case of the water. The society of freedom is not achieved by authoritarian methods (Gordon, 2005), which has been clearly proven in this case. The authoritarianism of the MNA is consistent with the state-hegemonic project of the current government, of which Evo Morales, former leader of the *cocalero* movement for over 12 years, surely is the most representative example.

5. The process of co-optation of the MNA is not sustainable, as it only promotes authoritarian and corrupt practices on the water management, reproducing and strengthening thus the corruption of the Bolivarian State.

6. Both the Cochabamba Water Wars and the local social movement in El Alto against the AISA-Suez company represent not just the resistance to the effects of water privatisation on their economy, but also their will to create other forms of company and water management and its services, which go further than both public statist and private approaches (Crespo, 2006). Within this perspective, a policy on the «common goods» that encourages self-determination and self-government on the water management, regaining basic principles of solidarity and reciprocity under an egalitarian and horizontal logic (Olivera & Gómez, 2006; Crespo, 2006). For this reason, and considering the evidence and antecedents stated in this text, one can declare that the MNA's water agenda will no longer go through the government of Evo Morales and the Instrumento Político, which in the next future will surely cause an internal evaluation of the water social organisations to make a change in the direction of their collective action.

References

- BEY, HAKIM (1991) T. A. Z. *The Temporary Autonomous Zone, Ontological Anarchy, Poetic Terrorism*; New York: Autonomedia.
- CRESPO, CARLOS (2007) *Water private governance and racism. The case of Aguas del Illimani Company in the cities of La Paz and El Alto (1997-2006)*; Newcastle; mimeo. 30 pp.
- (2006) «Hacia una política de los bienes comunes del Agua en Bolivia. Los desafíos y contradicciones de la agenda post Guerra del Agua»; Speech at *Taller de Investigación en Agua y Gobernabilidad*. Barcelona, November 16th 2006. Organised by Ingeniería sin Fronteras.
- (2006^a) *Soberanía nacional y transparencia en la terminación del contrato con aguas del Illimani*; Red Vida bulletin.
- (2006^b) «La Ley de riego y sus Reglamentos. Riesgos y Desafíos». *Todo sobre el Agua* bulletin, No. 78.
- (2004) «El Agua y el Gas son Nuestros», in *Siete Tesis sobre el Poder Biopolítico, el Estado Racista y los Movimientos Sociales en Bolivia*, *Decursos* magazine, No. 6 (11), pp. 38-62.
- CARLOS & FERNÁNDEZ, OMAR PEREDO, CARMEN (2004) *Los Campesinos Regantes de Cochabamba en la Guerra del Agua: Una Experiencia de Presión Social y Negociación*, Cochabamba: CESU/FEDECOR & IDRC.
- DAY, RICHARD (2005) *Gramsci is Dead: Anarchist Currents in the Newest Social Movements*; Toronto/London: Between the Lines/Pluto Press.
- FOUCAULT, MICHEL (1998) «The birth of Biopolitics», in M. Foucault *Essential works 1954-1984*. Vol 1 ethics, London: Penguin (pp. 73-79).
- GORDON, URI (2005) *Anarchism and Political Theory: Contemporary Problems*. PhD thesis; Mansfield College - University of Oxford.
- LANDAUER, GUSTAV (1973/1910) «Schwache Statismänner», Trans. in Eugene Lunn, *Prophet of Community: the Romantic*

- Socialism of Gustav Landauer*; Berkeley: University of California Press.
- NYE, J. S. (1967) «Corruption and Political Development: A Cost-Benefit Analysis», *American Political Science Review*, no. 61, pp. 417-427.
- OLIVERA, OSCAR & GÓMEZ, LUÍS (2006) *La crecida de las aguas. Los bienes comunes restablecidos por la gente en Bolivia*; Cochabamba: mimeo. 7 pp.
- PERELMAN, JUAN (2003) «Las Mil Mesetas de la Guerra del Gas», en *Combate. Periódico Anarquista*, no. 1.
- PICKERILL, JENNY & CHATTERTON, PAUL (2005) «Living between worlds: Autonomous geographies and everyday life beyond activism»; paper presented at *CAOS workshop: Contesting Capitalism*, 18th May. 18 pp.
- SOÑADOR SOCIAL (2003) «Maquinas Sociales Autónomas contra El Estado en Bolivia», speech at *II Encuentro del Grupo de Apoyo a Movimientos Sociales*, Quillacollo.
- SOTO, GUSTAVO (2004) «Cuatro principios para fundar otra Bolivia posible»; speech at *I Encuentro Nacional Libertario*; Paukarpata; 2 pp.

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The processes of commodification and privatization of water, driven by International Financial Institutions (IFIs) to serve multinational corporations, give rise to the fact that more than one sixth of the world population does not have access to water that is sufficient in quantity or quality. In light of this situation, social water movements worldwide have worked in the construction of social, environmental and economic proposals which are alternative and fair to people around the world. These social movements also declare water as a human right and vital to ecosystems; therefore, water must be exclusively managed from the public sphere with social equity as its main criteria.

In the first part of this book we discuss the major water policies promoted by IFIs (World Bank), donor agencies (European Union), and multilateral organizations (World Trade Organization).

In the second part we present the responses to the consequences of these policies as they violate basic social rights such as the access to water. We also present case studies of people and organizations struggling against prevailing policies, in addition to the construction of alternatives that not only claim water to be a common good but also emphasizes that the public sector, along with local social participation and control, must be the one managing water.

