

# WATER POLICY IN BRAZIL AND THE VARIOUS PATHS TO IMPLEMENTATION

*By Luis Fernando Novoa Garzon*

As far back as colonial times, water in Brazil was considered to belong to “no one.” Water, land and indigenous peoples were at the disposal of anyone who could snap them up. The country was viewed as a storehouse, a *senzala*,<sup>1</sup> a platform at the disposal of uprooted elites. This chosen land was the ideal backdrop for the “heroism” of the mercantile bourgeoisie: the journey from the “Old World” to a new world, with trade flows that shifted and expanded. And water was always at the disposal of those flows, at the service of a few, perpetuating a predatory and inequitable model of development.

“Hydrological resources,” as they were legally termed in the late 19th century, later fell under the jurisdiction of the Ministry of Agriculture (water as an input). As of 1950, with the acceleration of industrialisation and urbanisation, it was shifted to the jurisdiction of the Ministry of Mines and Energy (water as infrastructure). Amid the re-democratisation of the 1980s, the constitutional precept was established that viewed water as a resource of the states or the Union, subject to public regulation and planning and the object of a national integrated management system. In 1995, the Secretary of Hydrological Resources gained a specific place in the federal administrative structure, as part of the Ministry of the Environment. Two years later, the National Hydrological Resources Law (9433/97) was passed, establishing guidelines for a new regulatory framework for water. To refine and guide its implementation, in January 2006 the National Hydrological Resources Council (CNRH) approved the National Hydrological Resources Plan (PNRH), which was designed as a joint planning effort by the government and civil society, in order to implement the goals and programmes necessary for what should be the rational, equitable and sustainable use of water in Brazil by 2020.

It is necessary to take a closer look at this hybrid institutional effort, which was conceived amid the social democratisation of the 1980s, but which emerged in the context of the dismantling of the public sector toward the end of the following decade. The claim that the government lacks resources cannot be used to justify treating an essential service and a fundamental human right like merchandise. Public-private partnerships, especially in basic sectors, constitute an unacceptable shifting of responsibilities that are innate to the public sphere. Under the “public-private” model, services such as water, sanitation, energy, education and health would be reorganised and planned according to criteria based on financial return, to the detriment of more important objectives such as national development or a broader sense of citizenship. Because of its fragmentary nature and focus on immediate results, private enterprise is incapable of taking on public responsibilities of such magnitude.

We should map the black boxes and business-oriented decision-making systems that have taken hold in the Brazilian government, expose them to the light of public debate, and

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<sup>1</sup> The place set aside for black slaves in colonial manor houses [N. de la T.].

make them justify themselves, demonstrate their “efficiency” and indicate at whose service they have been placed. The identification and investigation of these hijacked spaces are indispensable for the building of a new system of democratic institutions.

## **NATIONAL HYDROLOGICAL RESOURCES POLICY AND BRAZIL: WHOSE WATER IS IT?**

While providing institutional tools for the implementation of a national water policy, Law 9433/97 was conceived within the framework of the deregulation and dismantling processes under way in the 1990s. The government had to give up providing services and dedicate itself simply to regulation. According to this paradigm, valid “national goals” are those that respect the various private interests involved in each sector. The expansion of private sector participation in providing basic services and infrastructure assumes a proportional increase in its influence on the management of those services, which has become known in Brazil as *gerenciamento* or *governança*. The executive branch has been reduced to issuing guidelines, while policy implementation is delegated to regulatory agencies that have varying degrees of autonomy. The autonomy pursued by these agencies, which are closely in tune with the markets, is autonomy with regard to the government, autonomy in the face of popular sentiment manifested democratically in elections. The water sector includes such a body, the National Water Agency (ANA), which was created in 2000 with the mission of implementing the national water policy established by Law 9433.

Although it is connected with the Ministry of the Environment, the ANA enjoys administrative and financial autonomy, has a term that does not coincide with that of Brazil’s president, and has broad decision-making prerogatives. The purpose of its creation was to send a positive signal to private investors and invite large-scale users to become directly involved in making decisions about water. Because of its genesis and structure, ANA is not capable of handling the responsibilities that it was given.

The implementation of a policy that has set itself the titanic task of establishing a national water system, fostering sovereign control over and universal access to this essential and strategic resource — based on guidelines and tools that must be implemented in such a way that they become part of the agendas of the federal, state and local governments, cutting across all sectors — should be in the hands of a body characterised by the appropriate political centrality and transparency. There will be no “decentralised and integrated management” of water unless there is first a political convergence and a linkage between the public spheres and qualified citizen participation. According to Section VI of Law 9433, the National System of Hydrological Resources Management (SNRH) must be established concomitantly and transparently in the three jurisdictional spheres (national, state and municipal) through carefully coordinated policies, so as to avoid becoming fragmented and ineffective.

Equal weight should be given to efforts to coordinate water policy throughout the continent. Because this is a natural resource that crosses national boundaries, it is vital to ensure regional consistency in areas related to universal access, equality, public control and participation that have already been defined at the country level. In order to monitor national

water policy, therefore, water must be excluded from any negotiation or trade agreement, so exceptions cannot be made to the public and national regulation of this sector.

Law 9433 and the National Hydrological Resources Plan have created new opportunities for public participation in planning, decision making and implementation, through representation on watershed committees, state resources councils and the CNRH. This representation, however, is distorted and remains inadequate. The representation of domestic users with disparate interests, who constitute the large majority of the population, is not proportionate to that of large-scale users such as industry and agriculture.

The national water law in a country such as Brazil, where there is enormous agricultural export, logistical and hydroelectricity potential, cannot be limited to “preventing conflicts over water use,” which would merely entrench preponderant private manoeuvrings. The true scope of national water policy will be defined in the process of implementing the PNRH. The management tools provided under the law will be moulded during the definition of criteria and the establishment of the operative bodies corresponding to each of these. The following points provide an analysis of possibilities for implementation of these tools.

1) Cataloguing of bodies of water by class of use. If it is merely a form of classification, such cataloguing would lead to an undesirable economic-functional specialisation of bodies of water. The goal must be to change unsustainable uses of water, establishing quality-related targets appropriate to its multiple potential uses.

2) Concession of the right to water use. Concession is the main tool for regulation of water use. Water catchment, waste disposal and the use of water to generate energy will only be authorised after an evaluation of the impact of these activities on the system, on water courses and on water quality, with attention to the specific cataloguing of each body of water studied and in accordance with its interrelationship with the watershed. To avoid the blind granting of concessions for use, the database of hydrological resources must be well established as called for in the PNRH. Concession cannot be divorced from the process of environmental licensing or policies in the environmental sanitation, energy, mining and urban development sectors. So far, ANA is the body responsible for granting water use concessions falling under national jurisdiction, and its actions serve as a reference for states and the Federal District. The scope and complexity of managing this tool underscore the need to expand the process for making decisions about concessions, with the participation of delegates who are more representative.

3) Delimitation of watersheds as basic units for planning and policy implementation. The comprehensive approach taken by watershed plans, committees and agencies can be an invitation to reclaim the territory in its integrity and to decentralise development, since the national government and states are developing political and institutional mechanisms for this. Unless there is an interconnection between the national water plan and state plans, between the national council and state hydrological resources councils, and among sector-based, national and regional water policies, these mechanisms will be ineffective and will lack legitimacy.

4) Water use fees. Recognition and determination of the economic value of water is the most controversial management tool. By law, the “priority” for investment of water use revenues is the restoration and maintenance of the watershed where the revenues were collected. This mechanism is widely used in countries that decided to create water use markets or markets for water use rights to ensure “efficient distribution of the resource,” although the cost of this efficiency tends to be economic oligopolisation and increasing inequality in access to basic services. In the case of Brazil, charging for water use was presented as a complementary tool, designed as a form of retribution, valid only for uses that could be granted and not including so-called insignificant uses. The behaviour of water users, especially large-scale users involved in agriculture and industry, will be guided not only by water use fees, but also by a series of responsibilities outlined in water plans, as well as the types of classification and conditions set by concessions.

## **OUR WATER, OUR POWER**

Pro-privatisation sectors are trying to set the pace and direction for implementation of the PNRH. These sectors claim that their interests, reflected in international financial institutions, multilateral bodies, business forums and regulatory agencies, are efforts to “rationalise” water use, “modernise” management or promote the sector’s “maturation.” Those who pursue a “water market with integrated management” for Brazil would gamble away the future of a large sector of the Brazilian population that has barely a toehold in the consumer market and that demands water as a fundamental right and a basic — and therefore public — service.

Water and collective learning — an opportunity for power and autonomy that is intensifying over time and space. Privatisation of water is seen as a preventive measure by the most concentrated circles of power — a definitive way of sealing, repressing and conditioning our people’s common destiny. Public water under citizen control is our response: we are here, and we live here. Enough blackmail by the few who take advantage of resources that belong to all. This is the most basic pact that will enable the country to rebuild itself from the grassroots, placing the people’s interests first.

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