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Ingo Gentes

## Governance in “Murky Waters”: the Political Fields of Water Extractivism in Honduras

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INGO GENTES<sup>1</sup>

## Governance in “murky waters”: The political fields of water extractivism in Honduras<sup>2</sup>

### Background

A sound water, sanitation and hygiene (WASH) sector reform focusing on democratic demands such as sustainability, effective control, and a thorough participation of users constitute still core tasks to be solved through public water policies in poor or transition countries. Concepts and methodologies for reforms are usually “imposed” from industrialized and highly technologized countries, and public administration has to adapt to “logical frameworks” of international agencies and donors. A critical issue is to modify policies and regulatory framework towards private co-investment and overall private participation in service provision (Hall and Lobina, 2006). Poorer countries are normally characterized by a high degree of external dependence through donations and loans, a weak law enforcement and overall inefficient implementation of public water policies.<sup>3</sup> This dependence makes them more likely to choose a none-consultative and top-down approach regarding adjustments and paying less attendance to local and collective demands (Lentini,

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<sup>1</sup> Ingo Gentes, PhD Political and Social Science, is a Member of the Water Justice (JH) Alliance and México via Berlin (MvB), further contact: [ingo.gentes@gmail.com](mailto:ingo.gentes@gmail.com)

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<sup>3</sup> The scope of total investment in WASH sector in Honduras, e.g. is around 823 million Lempiras (31.843.800 Euro) and characterized by a mix of grants, loans, state and municipal investments and management of projects and programs, still depending heavily on foreign aid (CONASA, 2013a).

2011). As a consequence, water administration is becoming widely perceived as low legitimated, especially on local level (Fernández et al., 2009).

Profound changes in public administration after the presidential elections (2013) resulted in a re-structuring and regrouping of public institutions and autonomous entities for the relevant legislative period (2014-2018) in Honduras. These adjustments, thought as a “new public-private co-management” – aimed to “...*tangible impacts not only within the administration but also within communities and scattered settlements which, in turn, are expected to be both, beneficiaries as well as participants in innovative sectorial and public policies programs.*”<sup>4</sup>

The governments’ goal was to carry out a National Plan for Water and Sanitation (PLANASA, *Plan Nacional de Agua y Saneamiento*) together with a still pending financial sector policy for the WASH sector (CONASA, 2013b, c, 2014). Both politics established different mechanisms and instruments as well as strategic guidelines according to the Framework Law for Water and Sanitation (2003, FLWS, *Ley Marco de Agua Potable y Saneamiento*). New secretaries and institutional entities generated adjoined existing ones in their technical and administrative mandate.

The driving pressure of our research relied on two “groups” of Honduran citizens who are systematically excluded from access to drinking water and sanitation: small communities of no more than 250 homes living in remote areas, mostly indigenous peoples, with less likelihood of support from NGOs or government (Lopez, 2008; Gobierno de Honduras, 2010b; UNICEF, 2011) and households in peri-urban areas inaccessible by public agencies and development agencies due to high interference of organized crime (Gentes, 2013). Our *core* hypothesis states that the instances of public water and sanitation control are intentionally poorly developed. We understand **control** here as States concrete will, capacity and action promoting and ensuring good and non-harmful water use, preventing overuse and overexploitation of (superficial and underground) water, as well as intervening and punishing in cases of contamination or illegalities, such as none registered water transfers to other

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<sup>4</sup> República de Honduras, 2014, legislative degree no. 266-2013. Honduras, La Gaceta, January 23rd, 2014

sectors. Central and local water and sanitation governance level remain weak due to strong pressure from conflicting interests in government and institutions that instead of aiming a systemic, pluralistic and integrated approach to sustainable water management and policy purposes, generate a steady fragmentation in the consultation and decision making process. Our research indicated that more political than financial reasons keep poorest and most vulnerable citizens off from their human rights and concrete participation in WASH systems and services, as prescribed in all national regulatory framework strategies, as well as embedded in United Nations human right to water and sanitation.<sup>5</sup>

### **Methodological approach**

The present article is part of an applied research around four core activities between August 2013 and April 2014 (Gentes, 2013; 2014): (i) the research, collection and analysis of accessible key material for decision makers on WASH; (ii) a set of following activities, such as the preparation, implementation and analysis of 40 semi-open interviews to public officials and development agents, as well as the implementation of two workshops on water governance and modernization; (iii) the preparation and dissemination of different inputs within the two workshops to formulate a “strategic route” for a comprehensive public action, and (iv) two field trips to collect voices and opinions from the “social fields of struggle”, to reaffirm the role of social organizations “inside and outside” the WASH sector.

All sort of recorded communication (transcripts of interviews, discourses, protocols of observations, video tapes, documents) from the field were object of a (qualitative) content analysis. In this sense, we analysed not only the manifest content of the material—itsself but within their context of communication, following main categories, without a rash quantification (Mayring, 2000). We conducted 40 open-

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<sup>5</sup> On 28 July 2010, through Resolution 64/292, the United Nations General Assembly explicitly recognized the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights ([http://www.un.org/waterforlifedecade/human\\_right\\_to\\_water.shtml](http://www.un.org/waterforlifedecade/human_right_to_water.shtml), visited, September 13th, 2016).

ended in-depth interviews with decision makers in water governance with the aim to reconstruct the State-of-the-Art of WASH in the country. In a second step, we grouped the responds in **three main categories**: power and influence, legal performance and institutional change. We expected an overall understanding of these issues. Obviously it is nearly impossible to measure progress or failure in this short progress.

We intuitively questioned “official public discourse” in a way (i) that public water policy advice had become much more discourse than praxis-oriented being highly influenced by means of private benefit and illegal interests, (ii) that the legal framework was only particularly implemented, neglecting sanctions and overall control of hidden privatization and transferring of water rights and (iii) that institutional change did neither include water boards in an overall decision process nor do they benefit from a strengthened participation. In fact, we insisted in totally different concepts of water governance among official decision makers and water boards.

Our guiding research questions were:

- To what extent do current public power structures and decision-making scenarios prioritize an integrated water and sanitation approach including meanings of real participation of all sectors, both formal and non-formal?
- Do the institutions in charge of regulation and conservation and/or protection and operation comply with their political and socio-legal mandates?
- How can the institutional changes from 2014 being assessed according to criteria of effectiveness, social equity and equality (of rights)?

### **Assessing the “champ” in water and the “participant objectification” as logical framework**

We assume, *firstly*, social science, according to Bourdieu, as a theory of practice attempting to overcome certain positions and contradictions, which occur, for

example, when collective action confronts predetermined structures, such as the fight for freedom against the need for political accomplishment. For Bourdieu (2002) “we are playing a game”, although we are not always aware of the embedded rules and specific goals. It is in the social field (*champ*) - a structured space of positions, a place of competitive struggles of actors and groups in which resources are distributed, usually unevenly – where symbolic violence results from an encounter between unequal powers; and it is this “unequalness” that has to be exposed by critical social research (Wacquant, 1989; Bourdieu & Wacquant, 1992). In each field social actors struggle to achieve key positions and compete for what is on stake (*power*). This betting for “cultural capital” (taken from Marx) therefore has to expose a “false recognition”, such as speeches and positions “of the others”, and to demystify the forms in which seemingly neutral institutions hinder people to learn from and to judge on public and state affairs and interventions. The final goal of this deliberative process is people’s awareness on taking own, free decisions on what best to do. The *champs* do always involve and commit the researcher to expose the lack of recognition that injustice relies on.

*Secondly*, and stated before, we understand power here not only in his physically form, but in a transmuted and symbolic one, and as such as an invisible and not recognizable consequence for the (affected) “outsiders” of, in our case, States water and sanitation policies. Therefore we define power, firstly, as the ability to influence others to believe, behave, or to value as those in power desire them to do or to strengthen, validate, or confirm present beliefs, behaviours, or values. As a result, the “victims”, better the “dominated actors” inclusively are willing to accept the hierarchy of (States) power and their inherent institutions as *conditio sine qua non* or “rules of the game”, and as such, as a natural relation and domain to which they are submitted. But power relates also to the social force that allows select persons to mobilize and to organize others to act in concert and to melt away resistance to leaders’ authority. The interrelation between both forms refers to the base, the means, the extent and scope of such power, surely difficult to measure in a concrete quantitative form (Dahl, 1957). Therefore, the researcher needs to pay attention on “... *all structures of power relations*” (Wacquant, 1989: 46). Every social field, every field of human activity

relates to a resource, implies classifications of entities and their competing values and conflicts; we have to carefully assess those “... *rival representations, sometimes hostile, claiming the status of truth and therefore the right to exist*” (Bourdieu, 2003: 13).

Our *third* concept, the participant objectification seeks more than exploring the “lived experience” of the knower, the “social conditions of possibilities” - and therefore the effects and limits - of that experience and, to be more precisely, the act of objectification, “*their goal is to objectify the subjective relation to the object (...) far from leading to a relativistic subjectivism and more or less unscientific, it is one of the conditions of genuine scientific objectivity*” (Bourdieu, 2003: 282). A critical social research thus exposes the “know-how” (in water, i.e.) and objectified knowledge of official policies and laws in a dialectical relationship, a reflexive sociology. Whereas the social fields of struggle reiterate that knowledge (on water, i.e.) must always be subject to criticism, we insist that any kind of categorization is always a psychosocial system, and our language (written or spoken) is always conditioned by these psychological and social structures (Bourdieu & Wacquant, 1992; Bourdieu, 2003). Thus, the “science of water policy” is not composed of an undifferentiated research community nor is it characterized by competition between mere “techno-legal” ideas; it is a “playing field” in which the fight for power is occurring as in any other field of social sphere; their players use strategies (and language!) that are both social and intellectual, sometimes in a closed and selective field, sometimes open and public. All do have inherent an inescapable ethical and social justice dimension (Wacquant, 1989).

Being conscious that modern science does not adopt the ideology of free knowledge of interest, our analysis seeks to identify the constituent interests in the political WASH field in Honduras, mostly invisible for science and contemporary Honduran society. Through a critical analysis of the fields we intend to explore the interests that underlie knowledge claims and their conditions for operation. Law here is seen not as a “simple” elitist construction that is being imposed, but as a collective construction that requires always a process of deliberation (Habermas, 1988).

### **WASH in Honduras: the “messy” framework**

The National Water Act (*Ley General de Aguas, LdA*) was ratified only two months after the *coup d'état* against Manuel Zelaya (June 28, 2009) during the transitional government from Roberto Micheletti, which remained in power until January 21, 2010. In this seven months core concessions were delivered, especially for hydropower, mining, forestry and agroindustry on more than one-third of the country's water resources projects without any parliamentary debate or prior social consent. Hence leaders of social and ecological movements opposed to this neoliberal onrush claiming against a free concessionaire and extractivist policy that implies usurpation, alienation of local rights and environmental destruction, were persecuted and hundreds of them have already paid their commitment with their lives, as illustrated by the brutal murdering of indigenous ecologist Lenca Berta Cáceres in March 2016 (Raimbeau, 2016).

Official figures show a relatively high level of coverage of drinking water service - 82.9% in urban areas and 63.2% in rural areas - while the quality of services is not adequate: 90% of water supply is intermittent, only 44% have effective chlorination and no water quality monitoring data are available (PAHO, 2010). Diseases caused through bad water quality occupy the first place of morbidity and the second in infant mortality (Ministry of Health, 2010). Only a quarter of the population has its own infrastructure to this end, most housings depend on services offered by means of latrines.

The FLWS from 2003 foresees the decentralization of services form the national company *Servicio Autónomo Nacional de Acueductos y Alcantarillados* (SANAA) towards the municipalities that have the legal ownership of the water services. Decentralization of 298 municipalities means connections for 3740 villages or 19,937 hamlets; all of them require local control and support units. The municipality law (*Ley de Municipalidades*, ML, 1990) empowers them to associate among each other's or together with other national or foreign (private) entities, in order to better fulfil their objectives and attributions (National Congress, 1990).

More than ten years after the FLWS, SANAA still operates 13 municipalities out of 298, including Tegucigalpa. SANAA until the reforms of late 2014 has been judge



and part of the process itself by continuing to be a service provider, operator and trying to fulfil its role as technical assistant.<sup>6</sup> The entity has been criticized for not operating the systems, not providing the technical assistance to the Water Boards and illegally increasing its staff since 2002.<sup>7</sup> Another upcoming issue might be corruption: several water plants financed through international grants and loans do not operate adequately.<sup>8</sup>

In order to coordinate the decentralization process the FLWS created a governing body (*Consejo Nacional de Agua Potable y Saneamiento*, CONASA) and a regulator (*Ente Regulador de los Servicios de Agua Potable y Saneamiento*, ERSAPS).<sup>9</sup> Whereas the sectorial policies are defined by CONASA, chaired by the Secretary of Health, the regulation and control of the provision of drinking water and sanitation services is the responsibility of ERSAPS. ERSAPS “social responsibility” can only be operational thanks to financial support from international entities and assistance

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<sup>6</sup> The handover of SANAA's full operation to municipalities had as *conditio sine qua non* a previous total sanitation, financial resources and capacities available in the municipalities. The fragmentation of the WASH service is remarkable in the 602 neighbourhoods and colonies of Tegucigalpa: SANAA only provides water service to 60% of the metropolitan population. In 252 neighbourhoods the service is provided by water boards, only 172 are connected to the SANAA network; 38 districts receive water from other unidentified providers, while 30 colonies from drilled wells, 50 from cisterns (ERSAPS 2010a). What happens in the remaining 40% of the population is kept secret, at least in terms of official data.

<sup>7</sup> The labour liabilities of SANAA were the central argument of the defenders for the reforms. Meanwhile the SANAA board insisted on negotiating the contracts collectively, the government reacted earlier with a trust in January 2014 that meant a privatization of SANAA even against its constitutional law of 1961.

<sup>8</sup> In 2013 a total of 43 treatment plants did not operate properly. During a field visit on December 5, 2013, I verified the complete inoperability of both BEKOX and SETA plants in Comayaguas, a city with almost 150,000 inhabitants (Gentes, 2013).

<sup>9</sup> Before the enactment of the FLWS (2003) no regulatory framework for decentralization of water and sanitation services existed. This led cities to carry out own initiatives, such as in the city of Puerto Cortés, where a regulatory body which includes civil society representatives selected by their respective professional associations was created, or San Pedro Sula which in 2001 constituted a unit of supervision of concessions being in 2015 still the only city in the country with a complete concession to a private company (<http://www.asp.com.hn/quienes-somos/>, November, 2016).

from regional, municipal and citizen audits. The strategy is to implement Local Supervision and Control Units (*Unidades de Supervisión and Control local*, USCL), the training of Municipal Technical Assistants (*Asistente Técnico Municipal*, ATM), legal advice and the development of a single information system.

CONASA came into force four years after the FLWS in 2007. The agency built to carry out policy formulation (sectorial and financial) and the development of national and municipal WASH plans was built as a council of ministers<sup>10</sup> that is supposed to meet periodically entailing guidelines and take binding decisions WASH policies for each of the 298 municipalities together with the COMAS (*Comisiones Municipales de Agua y Saneamiento*), another entity institutionalized in 2003 at the local level. Though, there are only few municipalities - such as Comayagua or Tela - where both COMAS and USCL are functioning properly and sustainably (Gentes, 2013).

The National Water Act (2009) recognizes water as a human right, an overall priority and strategic resource for national security and development (article 3). Three indicators refer to the WASH systems: level of WASH regulation, participation and management in municipalities (30), coverage (31)<sup>11</sup> and quality (32). A total of 10% of the national budget is supposed to be passed to municipalities for investment in the WASH sector. The Country Vision Plan (2010-2038) makes more explicit the process of urbanization of the country, and counteracts the prioritization of economic corridors by the State - connoting that the investments should be concentrated in cities of more than 5,000 inhabitants and in the localities of development corridors corresponding to those 10 km to the sides of the axes that articulate the major cities reiterating that the 700,000 people in rural areas without access to WASH systems “...should not be left out” (CONASA, 2014: 1ss). The sectorial financial policy -

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<sup>10</sup> The Technical Committee is led by the Ministry of Health and included six representatives of the government, three from civil society (RASHON, National Convergence Forum, AHJASA) and three representatives of the Ministry of Health (IDB, SDC, UNDP) (Gentes, 2013).

<sup>11</sup> Indicator 31 implies four requirements for municipalities: (i) forming and operating a Municipal Water and Sanitation Commission (COMAS); (ii) forming and operating a Local Supervision and Control Unit (USCL) with its respective Annual Operational Plan (POA) and a Regulatory and Control Technician (TRC); (iii) decentralized and specialized providers who periodically report to ERSAPS; and (iv) an instrument for delegating the management of services - whether a contract or operating status - issued by the holder (ERSAPS, 2013).

which would be the mechanism by which government investments could be governed in the form of investment programs or projects - in December 2014 has not yet been approved (CONASA, 2013c).

The Pan American Health Organization insists that the national discharges standards agreed in 1996 are not met (PAHO, 2010). Many wells in soybean growing areas are highly contaminated with pesticides, as stated by representatives of the Hydrobiology Laboratory of the National University of Honduras (UNAH). Public laboratories do not have technical capacity to follow up standards and none is accredited according to international standards (ISO17.025) (Gentes, 2013). The States Health Management Unit (UCSA) is not operational<sup>12</sup>, and the process of accreditation of public laboratories, has still not been concluded.<sup>13</sup> Core information on water pollution – generated from the Centre for Studies and Control of Contaminants (CESCCO) – is been “privatised” and does not necessarily pass to the Secretary of Health nor it is been published on official web sites.<sup>14</sup>

A look at the great Tegucigalpa shows the impact of this governmental inertia: of the 232 wells managed by *Juntas de Agua* (Water Boards), or private companies in condominiums only 32 are authorized by the Secretary of Health. In 2001 the last latrines were built. By 2014 20% of the latrines were on the verge of collapse; a time bomb for the city since all the discharges drain into the Choluteca River causing outbreaks of Dengue. Public medicines claim that some communities do not

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<sup>12</sup> Interview of Ing. C. Rodríguez, Honduras-Calidad, September 17th, 2013 (from Gentes, 2013).

<sup>13</sup> The problem of lack of reagents occurs in all public laboratories. Public water labs in Honduras are not independent units, as so they do not handle budgets, especially for logistics or operational expenses (Gentes, 2013; 2014).

<sup>14</sup> Interview of Dra. G. Suazo (Secretaria de Salud), R. Osorto (SIG/DGPC), C. Rodríguez (SEPLAN, *Sistema Nacional de Calidad*), Iris Lorena Galeano (SESAL, *Dirección General de Regulación*), L. Madrid (SEPLAN, *Sistema Nacional de Calidad*), E. Gutiérrez (PAAPIR, *Sistema Nacional de Calidad*), Dra. L. Reyes (SANAA, *Laboratorio*), S. Hernández (SS-DGRS), September 24th, 2013.

chlorinate because of the high cost of this input.<sup>15</sup>

In Honduras, there is the peculiarity that a Sectorial Law (FLWS, 2003) was created first before the General Water Act (2009), and until today the national authority (ANA) has not yet been constituted. Challenges require adjustments in the FWLS and political decisions - beginning from water rights affecting existing property rights (article 65) to the irrevocability of water rights in case “... *the owner complies*” (art. 72.3). Public Authority should adapt water rights to changes in land use and irrevocable climatic changes.<sup>16</sup> The water act does not provide aspects of conservation of aquatic ecosystems - such as minimal ecological flows - or ways of recovering or restoring the public domain of water by allowing interventions on private land. Both, the control and the regulation of spills, are hardly outlined. Temporality of water rights is not specified, nor is authorizations, their modifiability and conditioners referring to the quality of the effluent and that of the receiving body clearly stated (Cano, 2009, 2010; Gentes, 2013).

According to the National Water Act (2009) the Ministry of Natural Resources and Environment (SERNA) and not the municipalities charge for groundwater extraction; this involves high losses - in the case of the municipality of San Pedro Sula up to 25 million Lempira per year (about one million Euro) – that normally are invested in protection and conservation of protected areas (such as the Merendón river basin) (Gentes, 2013). And in the “institutional field”, the multiple levels of Councils basin (basin, sub-basin, micro-basin) with identical functions lead to an overlapping of powers and antagonism between different levels (Cano, 2010; SERNA, 2013).

### **Power, sweet power: socio-legal analysis of “top-down” changes**

The Government of Juan Orlando Hernández (2014-18) decided an institutional

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<sup>15</sup> Interview of Lic. Z. Díaz, A. Miralda, C. Ardón, Y. Andino, R. Aguilar & H. E. Urdea (*Secretaría de Salud, Laboratorios de Alimentos y Laboratorio de Aguas Envasadas*), September, 25th, 2013.

<sup>16</sup> Honduras is exposed to severe climate change mainly expressed by tropical storms and hurricanes, according to the long-term climate risk index (CRI) (Harmeling & Eckstein, 2013).

change for the WASH sector in 2014. The presidential Decree No. 01-2014 of February 2014 created the Cabinet Sector Development and Social Inclusion and was composed of various institutions with the main purpose of reducing poverty and improving quality of life. In this new Cabinet a new entity was housed: the Institute of Water and Sanitation and Community Development (IDECOAS) encouraged to coordinate policies, planning and integrating the WASH sector. However, these changes in the “social-political field” of the WASH sector, specifically the top-down creation of IDECOAS, generated several fields of conflict (Gentes, 2014):

- (i) The means and scope of an “Institute”, and if or not an Institute can become be an executing agency of state policies;
- (ii) The use of the concept “Community”, which in Honduras stands more for the rural area, excluding the urban, and therefore, if the IDECOAS can lead and unify the WASH sector;
- (iii) The “legality” of the process itself, specifically, if executive decrees can be on top of constitutive laws - in this case revoking the law for the autonomous National Potable Water and Sewerage Institute (SANAA since 1961) and the Honduran Social Investment Fund (FHIS, since 1990).

In the following I will review the core outputs of these decrees facing our guiding research questions:

*Legislative Decree No. 266-2013. La Gaceta, January 23rd, 2014:*

Resulting from the outgoing government of Porfirio (“Pepe”) Lobo (2010-2014), the law decree No. 266-2013 grants extraordinary powers to the President of the Republic regarding intervention, regulation and political, economic and social leadership. The decree reforms the public procurement law, establishing dispute resolution platforms, and public-private alliances and promotes *self-sustainability* and *self-financing* of public administrative management. Concerns regarding the human right to safe drinking water and sanitation - as prescribed by PLANASA and the international agreements ratified by the government – are not mentioned nor is it specified how to achieve government’s goals in WASH in the rural perspective, which

requires special attention in order to reduce gaps and inequalities in WASH.

The decree explicitly prioritizes the participation of private companies (article 2). The fulfilment of a new public-private goals, intended to be achieved through a re-engineering of the State strengthening command-control instances centralized in “top-down-policies” and personalized power highlights “... *the creation, modification or suspension of the Secretariats of State or of the decentralized organizations or any entity, may only be made by the President of the Republic in the Council of Secretaries of State*” (Article 4). The decree establishes an obligation for planning (sectorial, annual and multiannual) within the framework of the Country Vision and National Plan and under the control and supervision of the General Coordination of the Government (article 29), putting an end to autonomous public instances from state control, such as SANAA.

*Legislative Decree No. 266-2013. The Gazette, February 22nd, 2014:*

This decree ratifies the creation of new sectorial cabinets, so the Institute for Community Development, Water and Development (IDECOAS, article 20), as well as the re-grouping of secretariats, institutions and semi-autonomous entities of the State. IDECOAS groups together with other SANAA, FHIS and PRONADERS, a rural development programme, in the new Sectorial Cabinet for Development and Social Inclusion (article 3). All this happened, without repealing the constitutive laws of FHIS or SANAA (1961) nor previous consulting of the Council of CONASA. This public-private re-engineering of administration causes new fragmentation to IWRM and makes the co-management of social and infrastructure policies even more complex in relation to the WASH sector. The invention and movement of institutions such as chess pieces reinforces the weak engagement of institutional roles; the overlap or lack of competencies and capacities (in the case of CONASA) is not been solved, nor does it indicate consistency with the social organization in between the water boards. CONASA results as a clear loser of this new policy: its functions do not even appear in the new structure.<sup>17</sup> At the same time, while the new executive

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<sup>17</sup> Its future seems uncertain and depends on a change of the FLWS (2003) (interview with L. Romero, Executive Secretary, CONASA. Tegucigalpa, March 13rd, 2014).

powers emphasize the decentralized and decentralized nature of public management, the State now forces them into inter-sectorial and sectorial planning by results (article 13):

*Legislative Decree No. 266-2013. The Gazette, February 28th, 2014:*

Legislative Decree No. 003-2014 rationalizes the institutional structure and public expenditure (article 1) and reorders the social policy sector (articles 2, 3), allowing budget readjustments by the Ministry of Finance (article 4). In relation to the WASH sector, in particular to SANAA's labour liabilities, an evaluation of the personnel transferred by the Secretary of State will be carried out, involving cuts and numerous dismissals (article 5).

*Legislative Decree No. 266-2013. The Gazette, march 10, 2014:*

Law decree No. 008-2014 ratifies a trust between SANAA and the FICOHSA bank called “Recovery of losses in water distribution, purification and treatment of wastewater in the services provided by the National Autonomous Service of Water and Sewage (SANAA)” (clause 1). It stipulates that the fiduciary will receive from the private bank (FICOHSA, until July 2014) the total amounts of subscribers' fees and payments received by SANAA and the right to administer the cash flows of SANAA for WASH services (Republic of Honduras, 2014c: clause 4). In this way, the operational assistance that SANAA still lends to the cities is to become a public-private tender project. As justification the ruling party mentioned a non-compliance with the FLWS (2003) regarding decentralization and transfer of WASH services from SANAA to municipalities and a lack of technical assistance and financial losses (República de Honduras, 2014c: clausula 2). SANAA's union appeal was received by the Court of Appeal in June 2014, alleging that there were shortcomings and inconsistencies of the decree, such as the role of SANAA's technical assistance in the area of decentralization to municipalities is not clearly considered<sup>18</sup>: SANAA must

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<sup>18</sup>The court appeal against argues that: (i) the decree did not repeal the constitutive laws of autonomous institutions (SANAA, ENEE, among others), (ii) the total percentage of gross annual

now sign contracts with municipalities for each assistance it provides, thus increasing the suspicion of a “covert privatization” of the autonomous public entity. The municipalities, which could be the most affected, were not consulted, nor are they part of the technical committee.

*Legislative Decree No. 266-2013. The Gazette, may 30th, 2014:*

This “New Constituent Law of the Institute of Community, Water and Development (IDECOAS)” - because of its rather administrative and non-regulatory nature - seeks to “articulate the functions and attributions of PRONADERS, FHIS and SANAA2 (article 5a). IDECOAS is encouraged with the “... *basic development of necessary infrastructure*

*ure for (...) urban and rural population in drinking water and sanitation, among others”* (article 6d). The financial assets of IDECOAS will be constituted by: “... (a) PRONADERS, FHIS and SANAA programs and projects and others related to the water and sanitation sector; (b) the movable and immovable property owned by PRONADERS, FHIS and those assigned to SANAA programs and projects and others related to the water and sanitation sector; (c) donations, transfers and legacies” (article 19). The IDECOAS will thus obtain technical capacity by means of a “temporary transfer” of the selected personnel of the SANAA-Technical (article 22).

#### *Presentation and Discussion of Findings*

The public management of water in Honduras is still guided by a strong tendency for demand, not for supply, facing serious difficulties to meet the legislative requirements of continuity, quality (service and water), and charging the real cost for an adequate sanitation (Banco Mundial, 2012a, b; OPS, 2010). The discursive narrative of a land management in river basins is not crystallized in a systematic policy

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income obtained from the operation and maintenance of the property registration system for the period in question was not mentioned; (iii) that the technical losses were around 25 to 30% and not 50%, as stated in the decree; (iv) that CONASA, although it appeared in the Technical Committee of the trust, did not appear as signatory of the previous contract; neither the had Council nor its representatives been consulted on these substantive changes; (v) that the Council of Ministers operated just at a time of transition from two governments - from Pepe Lobo to Juan Orlando Hernández - so its legitimacy could not be ensured.



of allowances and funds (and salaries) of public entities. Only core municipalities – such as San Pedro Sula o Puerto Cortéz - were considered in the planning process of decentralization, especially in international programs; none of them in the WASH reforms from 2014. There is still a need to recognize the pre-existing rights and duties of rural municipalities to provide drinking water, and the roles of the Water Boards (*juntas de agua*). The institutional structure of water provision differs by law between urban and rural municipalities. Demands for territorial and financial decentralization, which involves transferring financial resources to municipalities, and from them to its “social partners” the Water Boards (*Juntas de Agua*) to make the process viable, and in the allocation of human resources and special powers to local governments for the management of their WASH systems, are pending (ERSAPS, 2010; CONASA, 2013c).<sup>19</sup>

The Nation State does not dispose on a systematization of (good and bad) experiences and latent conflicts, nor is public water administration data accessible and up to date (SANAA, 2007, Gustavo & Lentini, 2012; Gentes, 2014). Translating this into a “political field”, ministries mostly decide on a process of decentralization, without systematized information. Until the present, access to water and basic sanitation is not listed as an indicator in the social policies of the country, but in the national development plan. This notable exclusion means not only ignoring municipalities’ rights and duties, but also neglecting the experiences of social organizations in the areas of training, design and co-execution of policies and regulations. Academic and non-governmental bodies<sup>20</sup> that could certainly contribute to citizens’ rights and new

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<sup>19</sup> According to the Association of Municipalities of Honduras (AMHON) State must prioritize three actions: (i) compliance with the legal device to transfer 11% of the national budget to municipal governments; (ii) removing municipalities 1% payment of its budget for the Superior Court of Auditors and (iii) the transfer of financial resources to the associations to install and manage their own WASH systems ([http://67.19.177.28/~amhon/index.php?option=com\\_content&view=article&id=73&Itemid=85](http://67.19.177.28/~amhon/index.php?option=com_content&view=article&id=73&Itemid=85), accessed 15 September 2013).

<sup>20</sup> In October 2013 an initiative of six NGOs emerged in the WASH sector called *Total Coverage forever* (*Cobertura Total para Siempre*, CTPS) seeking to create conditions for Honduras to

issues such as groundwater extraction, regulation and control, environmental monitoring, watersheds and land use, were not part of the re-engineering of the state.<sup>21</sup>

The above analysis states that the struggles in the political field of water occur around the powers and functions established by the FLWS (2003), the National Water Act (2009) and the substantive changes to public administration between 2014 and 2015, highlighting the following: (i) the lack of an institutionalized and plural operating body - role that according to the FLWA should have the National Water and Sanitation Commission (*Comisión Nacional de Agua y Saneamiento, CONASA*) - to develop proposals, formulate regulations, viable resolutions and issued provisions, make monitoring and evaluation and coordination actions with other national, regional and municipal management plus financing and concreteness, to benefit the sector entities. While the recent establishment of IDECOAS seeks to reverse this situation, this analysis reiterates that rather it worsened it; (ii) a body for monitoring, controlling and sanctioning - role lies at the bottom to the Regulatory Authority for Potable Water and Sanitation (*Ente Regulador de los Servicios de Agua Potable y Saneamiento, ERSAPS*) - that has sufficient resources to carry out the regulation of the sector, enabling it to verify compliance with the law by municipalities and by providers of water and sanitation services throughout the country; (iii) a body of instrumentalization and maintenance of the necessary water infrastructure and on-going training (in and out - role stipulated since 2014 to the National Potable Water and Sewerage Institute (SANAA) - but as a technical assistance agency has no formal processes for operationalization, and whose union is not assumed for years to face a re-engineering required for entailing de-concentrated technical assistance for the

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minimize dependence on foreign aid for development and provision of WASH (<https://www.waterforpeople.org/country-pages/honduras/>, visited September 14<sup>th</sup>, 2016).

<sup>21</sup> Intersectorial partnerships, especially between the Secretary of Health and Education, NGOs, Universities (UAH) and Association of Municipalities are likely better to train human resources than State agencies (Gentes, 2013; 2014).

benefit of municipalities and water boards in the most vulnerable areas of the country (Chama, 2007, SANAA 2007; 2013). Adding to this the lack of integrity and transparency in the act of officials or private companies are not pursued by the General Attorney or strongly sanctioned by the Court.<sup>22</sup>

The present analysis was embedded in the social field theory of Pierre Bourdieu (2003) assuming the applied social science as a participant objectification. Our interest was to support emancipation of the excluded actors in conscious actors and therefore active assets. A more democratic field of water policy in Honduras undoubtedly requires governance that previously consults existing institutions and recognizes collective action taking into account the regulatory framework already in place to improve local management around more effectiveness, efficiency and tangible impact in the communities and territories. Imposing a legal command-and-control system that lacks social policies and cohesion is indicated the current governmental and historical authoritarianism. Regarding our case study, State agencies should consult the Honduran people on progress and setbacks to the institutions and their representatives go beyond social and communitarian action in vogue before making abrupt legislative changes and counter-productive resulting in further fragmentation within the public administration and less social cohesion. Violations by the State against fundamental rights and the human right to water and sanitation delay the necessary modernization and democratization of all public, private and civic sector.

A first reflection allows us to hold that neither drinking water nor sanitation has been a priority of Honduran governments in power since the *coup d'état* of 2011. The public-private interests at stake of parliamentarians around or belonging to the family enclaves allow a tacit allocation process and a strip of exclusive priority rights ranging, for example, from illegal withdrawals from private companies bottling water to the no registration or fees of extraction for mining companies. Corporate interests face weak institutions regarding imposition of regulatory framework, especially studies of

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<sup>22</sup> The WASH sector in general is very conducive to private profit interests, weak controls and monitoring, not only in the supply chain and sanitation sector but throughout the tendering system, provision, management and operation as a whole (TI, 2008; Gentes & Laxen, 2011).

socio-environmental impact, participatory monitor alongside a criminalization of peasant movements, their territorial defence of ecological heritage. Despite the three assignments mentioned in the National Plan for WASH, the information system is neither real nor reliable. Furthermore, our research found evidence on several water supply, and local sanitation systems, where community involvement is first and then municipality prioritizes them (Gentes, 2013; 2014). Neither has the national WASH sector taken them into account nor empowered them. States monopoly on water, on the one side, but totally (physically) absence and suppression of local management models in the last decade, on the other - especially in tasks of health monitoring and enforcement of quality standards drinking water - has led to a political field of extractivism.<sup>23</sup>

A second reflection of “political-social field” emphasizes that the FLWS was never dimensioned according to the necessary investments. The FLWS determines the role and responsibilities for management-operation, regulation-control, planning and technical assistance – but has not actually been agreed with the population and different sectors, leaving many gaps such as: (i) a CONASA is set at a very high ministerial level which is dysfunctional in operation; (ii) it is not specified how the Secretary of Health and Education could be involved. The FLWS do not reform the autonomous Law of SANAA, creating a divorce between conservation and water management, causing power struggles between Ministry of Natural Resources and Environment (SERNA) and SANAA and the Ministry of Agriculture and Livestock (SAG) who, before the National Water Act of 2009, had the responsibility for the use of water resources. Today SERNA with highly limited personal and financial resources must control the granted water rights and ensure a river basin management (Congreso Nacional, 2003). This negligence causes serious problems to governance, especially a generalized non-payment of water fee, and extended field for water

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<sup>23</sup> Interview with Dr. M. Marín, Autonomous University of Honduras (UNAH), Laboratory of Hydrobiology, November 26th, 2013, and Dr. M. Argueta, SANAA, Head of Public Water Labs, September 13th, 2013.

licenses awarded by the SAG through its programs and projects.<sup>24</sup> There is no public institution systematizing conflict or environmental licenses. The results from 40 interviews demonstrate a non-compliance with principles set by the environmental law (precautionary, rewarding water damage, pay for polluting, payments for services).<sup>25</sup> A public registry of water rights and their different purposes - industrial, private – and location - surface and groundwater - aspects affordable for the general public and the collection of water charges (extraction and use, starting with industrial sectors in the country) is pending. In addition, SERNA must make a sensible monitoring and promoting certification - by standards and good management – of the major basins and seeking to recover heavily damaged ecosystems - such as Lake Yojoa - starting from a formation and operation of regional councils for environmentally sustainable development.

A third reflection insists that, as a consequence of the decrees ratified in 2014, SANAA remained as a “public-private partnership project”, as such State enforced a “secret privatization” of an autonomous entity and heritage of the state, since the seventies of the twentieth century. The changes generated a new internal conflict regarding powers and subordination *de facto* of the two autonomous entities (SANAA and FHISS) incorporated in the IDECOAS. The tax changes will require mediation regarding an effective capacity to carry out the national country goals. Our analysis indicated another imminent risk: a lack of clarity and overlapping in the powers granted to IDECOAS with negligent competencies in national water policies and a missing national budget supporting programs in the WASH sector. As a consequence and hand in hand with the legal contradictions IDECOAS may have the effect of negatively impacting water and sanitation provision.

A fourth reflection urges that an integrated water resources management (IWRM) faces the great challenges of the National Water Act (2009): greater coordination and

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<sup>24</sup> Interview with G. Cabrera, Head of the Watershed Unit (SERNA), September 5th, 2013 and Ing. M. Ochoa & Ing. J.F. Rosales (SAG), September 23rd, 2013.

<sup>25</sup> A negative example of a non-operating state control is the activity of Tilapia farming and mining (El Mochito) that impact on Lake Yojoa, the second largest river in Central America (Sandoval, 2003: 21).

state control and joint delegate in the development and management of land, surface and groundwater, river basins and adjacent coastal and marine environments. IWRM in WASH systems is not limited to the management of physical resources, but also involves the reform of the mentioned “social and political fields” in order to enable the population to the benefits derived from those resources equitably reverse it (Fernández et al., 2009; Lentini, 2011). Our studies reiterated that the “reality of water provision” varies greatly across Honduras’ contrasting urban-rural, continua and wet-dry supply, high to low supply gradients, including excluded areas from “official” WASH supply, such as great part of the Mosquitia. This has important ramifications for effective water provision, and there are places in which the water boards (*juntas de agua*) have been successful by clever leverage of limited financial and technical support with alliances with NGOs and certain international programs. Therefore we assume important to recognize the diversity of experiences, along with the reality that the legal framework is been implemented and interpreted in different ways and degrees across the country.

In Honduras, water justice “is been played” in an atmosphere of “political and administrative extractive field”; decisions “do not download” to nor taken from the communitarian sector, and are not reflected in concrete social practices, or an effective educational and training system. The large gap between the legislation and the implementation is supported by overall colluded and corrupt practices of private-public policies, supported by the statements and our on-the-ground interviews. Added to a “despotic and negligent state” more and more purposed entities rule by running parallel institutions that fight each other, without an inter-institutional coordination among them. In addition there is another risk that loan agreements from international donors (UE, WB, principally), and the actions of some donors and NGOs, establish areas of priority providing them with the resources generating nee and a priori exclusion zones (UNICEF, 2011). State, as an absolute authority, is no longer limited by laws but self-generates the abuse of power aiming to “hold in check” its individuals and collectivises, in a permanent situation of disadvantages, alienating them from their essential rights, creating “ghost or adjudicative institutions” (Bobbio 1989). Our analysis shows that these indirect usurpation of the

human (and national!) rights to WASH is also fed by a systemic unsustainability, the weak anchor of rules, the failure to consider social practices in water management, as well as low representation and legitimacy of central policy in shift. Neoliberal policies are repressive and indicate a “development towards the underdevelopment”, as Andre Gunder Frank would express it, and, in effect, do arise “frightened citizens” without public power and real capabilities to find the right answers carrying out own and more appropriate actions in their water and sanitation systems.

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