

An Integrated Defense: The Ministério Público of Rio de Janeiro and the Protection of Water Rights

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Indeed, we must be aware that water - an essential and indispensable good that the Lord has given mankind in order to maintain and develop life - is considered today, because of the pursuit and pressure of multiple social and economic factors, as a good that must be especially protected by means of clear national and international policies, and used in accordance with sensible criteria of solidarity and responsibility. The use of water - that is valued as a universal and inalienable right - is connected with the growing and peremptory needs of people who live in poverty, taking into account that inadequate access to safe drinking water affects the well-being of a huge number of people and is often the cause of disease, suffering, conflicts, poverty and even death. With regard to the right to water, moreover, it should be stressed that this right is founded on the dignity of the human person; it is necessary in this perspective to examine attentively the approach of those who consider and treat water merely as an economic commodity. Its use must be rational and supportive, the result of a balanced synergy between the public and private sectors.¹

-Pope, Benedict XVI

As these words of the Holy Father echo throughout the world, the eyes of all turn toward Brazil. Brazil is located in the eastern central part of South America, bordering all South American countries, with the exception of Ecuador and Chile. Bathed by the Atlantic Ocean, it has innumerable beaches, cliffs, marshes, dunes, reefs, bays, and lagoons, and enjoys year-round favorable conditions.

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¹ Letter of His Holiness Benedict XVI to His Eminence Cardinal Renato Raffaele Martino Representative of the Holy See to the Day of the Holy See at the International Expo in Zaragoza (July 10, 2008), available at http://www.vatican.va/holy_father/benedict_xvi/letters/2008/documents/hf_ben-xvi_let_20080710_expo-zaragoza_en.html.

Brazil is very rich with water, having within its territory a large part of the Amazonian Water Basin, which is considered the largest in the world. Unfortunately, human beings do not give this gift its due value, polluting it in various forms, and bringing harmful consequences to the environment and to human health. With these urgent consequences in mind, the mission of the Brazilian Ministério Público (literally “Public Ministry”) plays an important role in society: that of combating and holding responsible those who degrade nature and specifically, those who abuse Brazil’s water supply. Sensitive to this urgency, the National Constitutional Legislation granted the Ministério Público the task of defending the environment. For example, the Ministério Público of Rio de Janeiro safeguards the Paraíba do Sul River, a water source depended upon by millions of Brazilians. This essay provides a brief glimpse into the Ministério’s important work.

The Fundamental Right of Water: To Care for Water is to Care for Life

In 2004, with the growing awareness among the international community of the right to water, the National Confederation of Catholic Bishops of Brazil launched the theme of “Water, Source of Life” for their annual Fraternity Campaign.² The objective of this campaign was to solicit discussion in the Brazilian civil society about the current use of this resource found so generously in nature. This was done with the hope that the Brazilian people might realize that they are privileged to live in these lands, and because of this privilege, have a great responsibility to know how to preserve and use the resources rationally.

² See, <http://www.cf.org.br/cf2004/concurso.php>.

One can consider the right to water from different legal standpoints. Article VI of the Federal Constitution established that health is one of the Social Rights.³ To have water is vital to the health of all living beings. Article 225 of the *Magna Carta* states that “all have the right to an ecologically balanced environment, a good of common use of the people, essential to the healthy quality of life, imposing on the Public Power and the collectivity the duty to defend it and preserve it for present and future generations.”⁴ These constitutional norms suggest that water should be considered a fundamental human right. From these norms comes a necessity to adopt means to take care of water and the environment, and thus the mission of the Ministério Público is manifest.

The Ministério Público as Defender of Life and Society

In the 1988 Federal Constitution, which is still in use, the Ministério Público was inserted into the chapter regarding the Essential Functions of Justice, independent of the Judicial, Executive, and Legislative Powers. With divisions operating on both the federal and state levels, it was configured as one of the mediums through which the state manifests its sovereignty, incapable of being extinguished or having its functions passed off to other institutions. Article 127 establishes that, “The Ministério Público is a permanent institution, essential to the jurisdictional function of the State, charged with the defense of the democratic regime and the indispensable social and individual interests.”⁵

³ 1988 Constitution of Brazil, available at <http://www.senado.gov.br/sf/legislacao>.

⁴ *Id.*

⁵ *Id.*

The 1988 Constitution integrated a rich historical development of the office, and conferred on the Ministério Público diverse privileges, all of which are indispensable to the independent exercise of its relevant functions. This provided adequate protection against the retaliations of those with corrupted political or economic interests.

From a constitutional standpoint, the principal characteristic specific to the Ministério Público that distinguishes it from the other national departments is its institutional principles of unity, indivisibility, and functional independence. We now turn to the significance of each principle.

The principle of unity holds that the Ministério Público is a unique institution whose members constitute one body with one will. Therefore, the position of each individual constituent will always have merit and an opportunity to be heard, particularly when encountering differing positions.

As to the principle of indivisibility, by merit of the principle cited above, the members of the institution are able to substitute for one another when necessary, as happens in cases of a holiday, excused absence, impediment, etc., without being prejudiced in the exercise of ministerial activity.

The functional independence guarantees that the members of the Ministério Público are not intellectually or ideologically subordinate to those who may be hierarchically superior for the sake of hierarchy. In other words, there is freedom to offer critique without fear of illegitimate hierarchical pressures. They act in harmony with the juridical ordering, explaining the foundations of their positions to contribute to the fluidity of the institution in its role.

The role of the Ministério Público is not just to be the guardian of the law, though its roles in this capacity are diverse, accumulating the missions of defending the city, the environment, public patrimony, and the Democratic State of Law against those in opposition. Contrary to the Judicial Power that acts only through provocation, the Ministério Público can also take action by its own initiative as long as it protects a valid social interest that is legitimately threatened. This type of action is illustrated in the following example of the Ministério Público's work.

The Action of the Ministério Público in Safeguarding the Paraíba do Sul River

In the State of Rio de Janeiro, the Paraíba do Sul River runs through thirty-seven municipalities, extending for 500km, which is almost half the State territory. Its strategic importance for the fluminense population can be seen by the fact that the Paraíba do Sul River is the only source of water supply for more than twelve million people. This includes eighty-five percent of the inhabitants of the metropolitan region. It is also the means of capturing related streams in the localities as well as the Guando River, which receives water from the Paraíba do Sul for utilization in hydroelectric power.

To further emphasize its vital importance, the Paraíba do Sul is designated as a river within federal jurisdiction, extending through three states of the Federation. Since the 1980s, the environmental management of the Paraíba do Sul River is performed by the Executive Committee of Integrated Studies of the Hydrographic Basin of the Paraíba do Sul River (Comitê Executivo de Estudos Integrados da Bacia Hidrográfica do Rio Paraíba do Sul – CEIVAP).

The evolution and diversification of the productive activities in the Paraíba do Sul River Basin gave rise to conflict among the users of the water.

When the water resources were abundant in relation to the demand, the same with priority of use for the production of electric energy, there were no conflicts over the use of the water in the Paraíba do Sul River Basin. However, this situation has changed with the development of the region, and the necessity to accommodate to multiple users of the water, and the different social actors involved, further complicate resource management.

As a downstream recipient, the State of Rio de Janeiro was impacted by the conflicting uses of the Paraíba do Sul River. On one hand, water was destined for the public supply, and on the other, it was subject to the high growth demand for electric energy, final destinies for wastes and industrial and agricultural effluences, etc.

The considerable demographic expansion and the intense and diversified industrial development that occurred in the recent decades in the Southeastern Region have impacted the quality of the water in the Paraíba River. It has increasingly more significant sources of pollution of industrial, domestic, and agricultural origin. This is beyond the pollution resulting from accidents in its basin. The Paraíba do Sul River basin is especially subject to accidents, not only from the express concentration of industries with great potential to pollute, but also from the dense mesh of bus and train stations servicing the area. With their intense movement of dangerous loads through the highways of Presidente Dutra (Rio-São Paulo), BR-040 (Rio-Juiz de Fora), and other passageways, the area is particularly vulnerable.

Yet another problem is deforestation. Deforestation in the marginal areas of the Paraíba do Sul hydrographic basin is primarily responsible for the accumulation of sand in the river. The sand, accumulating as a result of erosion

caused by the diverse forms of occupation and soil use, has greatly altered the vegetation of the Paraíba do Sul River Basin.

Considering all of these problems, the most notorious and harmful sources of pollution in the Paraíba do Sul River Basin are the domestic wastes and solid residues originating in the cities with mid to large sized ports located along the banks of the river. The only action capable of changing this situation is the preparation and construction of waste receiving and treatment stations that can counteract the effects.

An Integrated Defense Requiring Solidarity

Since the Paraíba do Sul River runs through the states of São Paulo, Minas Gerais, and Rio de Janeiro, an integrated plan of action began to take form in the mid 1990s and was ultimately established among those in the committee for the Integration of the Hydrographic base of the Paraíba do Sul River and those states. An interstate decision making process was envisioned regarding actions affecting the river. A fruit of the Ministério Público's action was the "GT" (Grupo de Trabalho/Work Group), which was created to marshal forces from the diverse actors in the collective defense of the Paraíba do Sul River through legal arrangements with the National System of Water Resources and the different organs and institutions responsible under its execution.

The principle focus of the project is the development of conditions for the integrated and interstate action of the Ministérios Públicos of the aforementioned states, and to foster discussion of the pollution of the waters of Paraíba do Sul River. To create these conditions the project established the following goals.

- a) Motivate, link, prepare, and organize the Departments of Public Prosecution of the Ministérios Públicos of the States of São Paulo, Rio

de Janeiro, and Minas Gerais that act in Judiciary Districts of the Rio Paraíba do Sul Basin and have interest in the environmental area for integrated action in the solution of the environmental problems, particularly in reference to the quality of water in this basin.

- b) Create mechanisms for planning, coordination, and control of these actions.
- c) To guarantee the continuity of this process, until the environmental recovery of the Basin is assured.

The plan of work contemplated the following stages:

- 1) Survey of the Environmental Context
 - 1.1 -Characterization of the hydrographic basin.
 - 1.2 -Survey, compilation, and synthesis of the water management and environmental impact studies completed regarding the Hydrographic Basin of the Paraíba do Sul.
 - 1.3 -Survey of the institutional and legal context.
 - 1.4 -Identification of the Judiciary Districts, Departments of Public Prosecution, and institutions of other interested states in the water quality and environmental preservation of the basin.
 - 1.5 -Systemization and divulgence of materials and information regarding the Basin.
 - 1.6 -Organization of an agenda to facilitate the meeting of the State Ministério Públicos.
- 2) Elaboration of the Plan of Action
 - 2.1 -Finalizing information regarding the actual situation of Paraíba do Sul River Basin, its challenges, and the situation and actions contemplated in the state and municipalities concerned.
 - 2.2 -Preparation of materials and presentations for the meeting.
 - 2.3 -A meeting of the State Ministério Públicos for the preservation of the environment and water quality of the Paraíba do Sul River Basin.
 - 2.4 -Elaboration of the Integrated Plan of Action of the State Ministérios Públicos and Judicial Districts.
 - 2.5 -Identification of and specification for monitoring instruments and assessment of results.
- 3) Identification of Social Innovation Projects
 - 3.1 -Identification of the municipalities, populations, and economic sectors that will be potentially affected by the actions of environmental preservation of the Paraíba do Sul River Basin.
 - 3.2 -Formulation and directing the competent institutions in the projects that can mitigate these impacts.
- 4) Realization of the Plan of Action
 - 4.1 -Regional meetings for the dissemination of the Plan of Action.

Moving Toward a Rational and Supportive Use

The coordinated efforts and procedures revealed that in 2004, degradation was caused by:

- a) Billions of liters of released untreated domestic waste;
- b) Industrial Pollution from organic effluents, heavy metals and toxic agents;
- c) Flooding caused by inadequate disposal of solid residue, leading to erosion and causing sand accumulation in the rivers;
- d) Abusive extraction of minerals and sand without the needed repair or replenishment;
- e) Inadequate use of agrototoxin;
- f) Disordered occupation of the land;
- g) Predatory fishing; and
- h) Lack of environmental consciousness.

Starting from these principle sources of pollution, the State Environmental Engineering Foundation (Fundação Estadual de Engenharia do Meio Ambiente- FEEMA) is registering the industrial polluters, and demanding that they conform to and abide by environmental legislation. For their part, the Ministério Público has adopted the administrative and judicial responses necessary to safeguard the compliance with these environmental norms by the guilty parties, due to the information and evidence gathered in this investigation.

However, to go one step further, the Federal Government launched the program “Sanitation for All” (“Saneamento para Todos”) that finances credit operations for the execution of basic sanitation actions. States and municipalities can solicit financing for the implantation and amplification of water supply and sanitation networks exceeding that of the present sources and services management. This program is being launched in the State of Rio de Janeiro with the vision of reducing the release of wastes in water systems to minimize the negative environmental impacts in the Paraíba do Sul River and other rivers.

Once again, the Ministério Público stands ready to ensure proper compliance in fulfillment of these efforts.

Conclusion: The Hope of a Balanced Synergy

Considering that water is a fundamental right to all living beings and that Brazil is most richly endowed with aquatic resources, the responsibility of the society and government grows for reason of the valor involved. The Ministério Público, according to the Constitutional text and the legal norms that guide the institution, has the mission to defend the environment, and to guarantee a better quality of life for present and future generations. To this end, investigatory proceedings and judicial actions against those who cause environmental damage must be implemented so as to ensure that this hope becomes a reality.

In the case of the Paraíba do Sul River Basin, the principle source of water supply for the States of Rio de Janeiro, São Paulo, and Minas Gerais, this protective action is illustrated by the coordinated efforts of the diverse legal actors involved with the Ministério Público, the foundation of the project. We can conclude that the action of the Ministério Público in the defense of Brazilian society and its water rights are fundamental, striving to meet the objective of the recent Campanha da Fraternidade: “Water, Source of Life.”