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Swings and roundabouts: A narrative on water policy development in Sri Lanka

Rajindra Ariyabandu

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A Narrative on Water Policy Development in Sri Lanka

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List of Acronyms

ADB	Asian Development Bank
CSO	civil society organisations
CWRM	Comprehensive Water Resources Management
FO	farmers' organisations
IMPSA	Irrigation Management Policy Support Activity
IWMI	International Water Management Institute
IWRM	Integrated Water Resources Management
MIWRM	Ministry of Irrigation and Water Resources Management
M/ALLI	Ministry of Agriculture, Lands, Livestock and Irrigation
M/MRBRD	Ministry of Mahaweli, River Basin and Rajarata Development
MNCs	multinational corporations
NWMIP	National Water Management Improvement Project
NWRA	National Water Resources Authority
NWSDB	National Water Supply and Drainage Board
O&M	operation and maintenance
RBOs	River Basin Organisations
RBCs	River Basin Committees
RWRA	Regional Water Resources Agencies
RWRC	Regional Water Resources Councils
STA	Senior Technical Adviser
TA	technical assistance
WMB	Water Mediation Board
WRC	Water Resources Council
WRM	water resources management
WRMP	Water Resources Management Project
WRS	Water Resources Secretariat
WRT	Water Resources Tribunal

Executive summary

This paper deals with the 'swings and roundabouts' encountered in water policy development in Sri Lanka. In recent decades, policy reforms for water resource management – nationally-demanded but designed by external actors – have generated intense controversy and become both a tool and a victim of national politics. Together these factors have led to the failure of major policy reforms, leaving an uncertain future for water resources management in Sri Lanka.

With 60% of people reliant on paddy cultivation, water plays a powerful social, cultural and political role. Whilst water scarcity is not an immediate challenge, since the early 1990s demand has been increasing because of rapid urbanisation and industrial development. Better management faces critical challenges, including a lack of policy clarity on resource development and allocation, the many overlapping institutions and laws in the sector, and an absence of reliable data.

A consensus emerged in the early 1990s on the need for a comprehensive policy to tackle these factors. At the same time, donors – who had a long history of support to the sector – increased their interest in sector institutional reforms. This paper tells the difficult story of a set of Asian Development Bank (ADB) projects in the 1990s which were designed to streamline water resource management arrangements and introduce demand management to the country. In spite of a decade of investment and effort these arrangements have never been implemented. This failure is largely attributable to a lack of understanding of the Sri Lankan context: a multi-party system with governments often held together in fragile coalitions, strong cultural values attached to water, a vocal civil society fearful of water privatisation and a politicised media willing to exploit controversies.

The ADB-funded Comprehensive Water Resources Management (CWRM) project began in 1992. It sought to assess institutional capacity, development a single overarching policy and law to govern water resources, and institute a single 'apex body' with responsibility for coordinating water-related activities. In the years which followed, the CWRM supported the policy development and legal process towards attaining these goals. A Water Resources Management Project (WRMP) loan was signed in 2001 to finance infrastructure construction and follow up the CWRM with capacity support to the apex body. However, the projects were dogged by controversy and, despite intensive efforts, the apex body was never established and the policy development process collapsed.

The guiding principles of the CWRM were that Sri Lanka's water resources management should be holistic and efficient, in line with international concepts of Integrated Water Resources Management (IWRM) and water as an economic good. Alongside a broad effort to make water resources management more integrated and sustainable, the new policy introduced a number of unfamiliar approaches to the sector, some of which were highly controversial, including the idea of entitlements (ownership rights to water) and water tariffs to introduce demand management.

Coming after controversial attempts to institutionalise land reforms in Sri Lanka, and high profile cases of water privatisation elsewhere in the world, these moves were seen by some civil society groups as steps towards the 'commodification' and 'privatisation' of water. The focus on efficiency and increasing tariffs was seen as a threat to paddy cultivation and small farmers, causing public anger, while endogenously-designed strategies for water conservation were ignored as possible alternatives to entitlements and demand-management. In short, in the eyes of its critics the policy privileged efficiency at the expense of equity. Combined together these factors generated major civil society opposition to the whole policy reform process, even though parts of the policy could have brought real benefits to poor people through more integrated and sustainable water management.

The new set of institutional arrangements proposed was opposed by traditional institutions which felt sidelined, and lengthy debates about institutional responsibilities held back the policy development process. The envisaged apex body was never formally established. The political environment, with frequently changing governments which were often fragile multi-party coalitions, meant that numerous new ministries and water institutions were established during the course of the project. This led to shifts in ownership of the policy process which slowed progress, led to confusion and generated ill-feeling between ministries.

Controversy surrounding the policy process was used as a political tool by both politicians and the media. When a coalition government with a strong Marxist element opposed to the ADB-supported process took power, it initiated a parallel 'indigenous water policy' development process further complicating the situation.

A lack of stakeholder consultation and poor communication of the policy also helped to undermine the process. Strong consultation did take place around the water policy but mainly targeted those already supportive of the process, while public consultations around the new water law were rushed. Key documents were only published in English and not made widely available, and public communications efforts to explain the policy largely excluded the more controversial issues and focused only on IWRM. These weaknesses created further suspicion about the new framework, and sections of the media fueled controversy, effectively hindering efforts to highlight the policy's benefits.

The outcome of this controversial process was the suspension of ADB funding in 2004 – and to date the whole CWRM process remains in jeopardy. The legacy of this failure has concerning future implications for water resources management in Sri Lanka: learning lessons, and implementing these lessons, is now of critical importance both for Sri Lanka and for other countries implementing similar processes.

1 Water policy processes and donor interventions in Sri Lanka

The main focus of this working paper is the Asian Development Bank (ADB) supported Comprehensive Water Resources Management Project[1] (CWRM) and Water Resources Management Project (WRMP) which were initiated in 1992 and 2001 respectively. These were technical assistance (TA) projects which attempted to streamline policies and institutional arrangements to achieve more efficient and holistic water resources management (WRM), but stalled because of poor project design and a lack of awareness of the Sri Lankan context, in particular the cultural and political nature of water.

Sri Lanka's own approach to water resources management over the last half century has focused mainly on alleviating seasonal water scarcity in the dry zone, by means of infrastructure such as large-scale storage tanks and trans-basin diversions with their roots in ancient hydraulics. In the 1960s, a Water Resources Board was established to advise the Minister on broader issues of water resources development and policy, however, it did not really fulfil this function and remained largely focused on groundwater and hydro-geological exploration. Against this background, donors have played a key role in water resources management. The current water policy process supported by the ADB has predecessors in USAID and World Bank projects, and these agencies have implemented numerous interventions in the area of water resources management over several decades.

In the 1970s and 1980s, both World Bank and USAID-funded projects were initiated which supported policy development and aimed at enhancing the productivity of irrigated agriculture. These projects promoted the management of irrigation by farmers' organisations (FOs), and the charging of fees for irrigation water. However these moves drew resentment as they were seen as 'commodifying' agricultural water, and many of the interventions did not get beyond the pilot stage. In some cases this was because of poor levels of participation (Bandaragoda, 2005). Learning from this experience, one USAID project (an improved water management project focusing on the Gal Oya Left Bank Canal, 1979-86) took significant steps towards farmers' participation and established the concept of 'institutional organisers'[2] as a means to facilitate the participation of farmers in water management. During the same period, donors actively supported dams and other major infrastructure development, for example the Mahaweli Multipurpose Development Project which was part-funded by the British government.

The dam construction boom that dominated the 1980s gave way in the early 1990s to an emphasis on improving sector management through policy reform and greater financial control. At the same time, the failure of many irrigation projects led water professionals and donors to promote institutional reforms in the irrigation sector. The kind of changes which were widely proposed included new water resources management policies, new legislation, and the establishment of basin-wide organisations.

The 1990s was a decade of widespread water sector reform in South Asia. Many countries attempted institutional reforms aimed at providing a better service to water users, especially the poor. These reforms were driven by a mixture of endogenous factors (e.g. water scarcity, performance deterioration, financial non-viability) and exogenous factors (e.g. macroeconomic crisis, political reforms, international agreements, technological progress) (Saleth and Dinar, 2004). In Sri Lanka, such exogenous factors were the main drivers of reform. Endogenous strategies to counter water scarcity had typically focused on infrastructure, while policy and institutional reforms were primarily advocated by donors.

At the start of the 1990s the IMPSA (Irrigation Management Policy Support Activity) was initiated with support from USAID to carry out a wide-ranging review of water management issues with a primary

1 CWRM consists of two TA projects, IACWRM and ISCWRM. The former was implemented over a period of three months following a request made by the National Steering Committee for Environment, to prepare a water resources master plan. The ISCWRM project, which commenced as a result of IACWRM, was to strengthen the capacity of the Water Resources Council and the Water Resources Secretariat (interim NWRA) and related institutions on IWRM.

2 Social animators who were recruited to form farmers' organisations for water management. Institutional organisers were graduates, and they were expected to improve farmer-officer relationships resulting in better overall water management in irrigation schemes.

focus on irrigation. IMPSA recommended the establishment of FOs to manage irrigation systems, the exemption of farmers from operation and maintenance (O&M) fees in lieu of system takeover[3] and restructuring of irrigation agencies under a coordinating mechanism to manage irrigation. However, critics saw this as a failure by the State to accept responsibility for supporting farmers. Some also feared the 'commodification' of water and were suspicious that the involvement of the International Irrigation Management Institute (now the International Water Management Institute, IWMI) was part of a scheme to 'sell Sri Lankan water resources to multinational companies'.

This coincided with a shift in the prevailing international discourse around WRM away from dams, storage and 'development' and towards policies, institutions and 'management'—from the hardware to the software of management. A global discourse on water scarcity was gaining ground and the World Bank among others was advocating the adoption of water rights to maximise the productive efficiency of water and facilitate a shift to high-value export crops (for example in its 1996 report on 'Non-plantation sector policy alternatives' for Sri Lanka). At the same time the Dublin Principles[4] emphasised both the economic and environmental importance of water, and called for a holistic, integrated approach to water resources management (WRM) with stakeholder participation – the IWRM paradigm.

This interest in IWRM coincided with the ADB's focus on better water resources management to sustain economic development in the Asia region; together these factors resulted in a focus on water sector reforms in Sri Lanka and other countries. In many cases responsibility for WRM was taken away from specific ministries and given to neutral ministries, such as ministries of finance and planning, where depoliticised management through policy initiatives was seen as the best route to take. In this context, IMPSA highlighted the fragmentation of institutions, policies and laws involved in WRM in Sri Lanka, and identified the need for an overarching Water Resources Master Plan and one central body to oversee WRM.

Driven by the recommendations of IMPSA, the government proposed the development of a WRM Master Plan to the ADB in 1992. This led to the CWRM which was to drive policy developments in the water sector for the next decade. The CWRM aimed to assess institutional capacity for WRM, and develop overarching policy and legislation under which WRM should be *holistic* and *efficient*. This emphasis on efficiency once again led to concerns among civil society that the project was an attempt to 'commodify' water. In addition the CWRM was intended to establish a data and information system for decision-making in WRM, for which there was a serious need, and conduct comprehensive planning in selected watersheds. The CWRM was later supported by further ADB-funded programmes and the FAO/Netherlands-assisted Water Law and Policy Advisory Programme, in the mid-1990s.

CWRM and related programmes centred on the identified need for a single overarching water policy, law and 'apex body' to govern the sector. With over 50 laws in place governing water management, involving some 40 poorly-coordinated institutions, the reforms were supposed to streamline WRM and sector processes. From the start it was decided that policy development should take place under a neutral ministry to minimise political conflict around the process. The Ministry of Finance and Planning took on this role. In 1996, following some resistance to the proposed reforms, the government set up a Water Resources Council (WRC) and Water Resources Secretariat (WRS).

The Secretariat (composed of seconded technical experts) was to take responsibility for developing the new policy and legislation, under the supervision of the Council (a high level advisory body comprising ministerial secretaries, line agency heads, and representatives of NGOs, the private sector and FOs). A National Water Resources Authority (NWRA) was to be established as the apex body, but political

3 In 1984, the government introduced the irrigation water fee, at Rs100 per acre. The initial response from the farming community was very encouraging: 80-90% recovery. However, by 1988 payment started to decline for political as well as administrative reasons. A key slogan of left-oriented parties was 'Water is God's gift to mankind and should not be paid for.'

4 The Dublin Principles were put forward at a preparatory meeting for the Rio UNCED in 1992. They state that: 1. Fresh water is a finite and vulnerable resource, essential to sustain life, development and the environment; 2. Water development and management should be based on a participatory approach, involving users, planners and policy-makers at all levels; 3. Women play a central part in the provision, management and safeguarding of water; 4. Water has an economic value in all its competing uses and should be recognised as an economic good.

debate and resistance meant that this never came about. While the WRS has been termed by some the 'Interim NWRA', it never gained legal recognition or authority for this function. A fourth body, the Water Resources Tribunal (WRT), was also to be set up as an independent forum for appeals relating to entitlements issued under the new policy (see section 4.1).

The new '*National Water Resources Policy and Institutional Arrangements*' was passed by the Cabinet of Ministers in 2000. A National Water Resources Act was drafted which would establish the NWRA and set up formalised River Basin Committees for the allocation of water rights, among other functions. To date this has not been passed into law.

The ADB then funded another project, WRMP, aimed at strengthening the NWRA which was due to be established under the Water Resources Act. The WRMP had two components: construction of drinking water infrastructure, and capacity building in the NWRA and other water-related institutions. However the project stalled because of resistance to the policy and law which would formally establish the NWRA, and continued non-agreement around the water policy and the institutional arrangements to implement it. The WRS tried to drive ahead implementation of the policy, but without any legal authority it could only make limited progress. In 2004, the ADB suspended funding for the WRMP.

The ADB accepted many requests from the government for time extensions to meet project covenants, and supported a consultation and awareness-building process among water users aiming to build support for the project. However, none of these efforts could convince the public or inspire a consensus on the water policy. As a result the key institutional reforms could not be achieved, and the capacity building component of WRMP still remains in jeopardy. The infrastructure building component[5] was also suspended in favour of alternatives proposed by the Irrigation Department in 2006.

In 2005, Sri Lanka sought World Bank funding for the NWMIP (National Water Management Improvement Project), primarily focused on dams upgrading and safety, but also addressing capacity building and institutional development. After its experience as lead ministry responsible for policy development under the CWRM and WRMP, the Ministry of Finance and Planning refused to act as the neutral ministry to house the new project.

5 The Kaleni River Conservation Barrage, proposed to control salt water intrusion during low flow thus improving the quality of drinking water provided to the greater Colombo area.

2 The context of resource availability and demand management in Sri Lanka

With per capita water resources availability of 2,400m^3 and average annual rainfall of 2,000mm, Sri Lanka does not face immediate water scarcity. The country's 103 river basins discharge nearly 65% of available water to the sea (Wijesuriya, 2005). The Mahaweli River, with the largest catchment area (10,332km^2), discharges 4,009mcm, and the Kaluganga, with a catchment of only 2,688km^2, drains 4,032mcm. The 16 rivers in the wet zone, covering about a third of the country's area, drain almost half the total run-off.

However, owing to very high temporal and spatial variability some districts in Sri Lanka experience prolonged dry periods.[6] An island nation, Sri Lanka ultimately receives all of its water from precipitation. Out of a total renewable water resource of 43,000mcm, only 11,000mcm (just over 25%) is used for productive purposes. Most of the developed water resources are used for irrigation, and just a small fraction for domestic and industrial needs. Broadly speaking, it is estimated that 80% of rural drinking water supply comes from groundwater while surface water supports the majority of urban water use. However, there is a lack of reliable data regarding water use by sector (Wijesekera et al., 2005), and different studies have produced inconsistent estimates.[7] Some data on surface water use exists for the main irrigation and water supply agencies, but reliable data on groundwater use is patchy. This lack of reliable information has led to the promotion of different approaches to WRM backed by conflicting understandings of the water situation in the country, which has hindered strategy development.[8]

It is often stated that before economic liberalisation there were ample resources available to meet agricultural water demand, so introducing IWRM was not a pressing issue (ADB, 2000). However this situation has changed, with rapid industrial development and urbanisation[9] now demanding more reliable provision of safe water. . Although past records on industrialisation do not show significant increases in demand for water,[10] there is a wealth of evidence suggesting that future water scarcity is unavoidable unless demand management tools are established (Water Resources Council and Secretariat, 2001). Current estimates also suggest an 8-10% increase per annum in the demand for safe water for domestic use. The National Policy on Water Supply seeks to provide 100% water supply coverage for rural and urban areas by 2025, but to meet this target extraction from surface and groundwater sources will have to be complemented by other means such as rainwater harvesting (Wicramage 2002). More accurate knowledge of resource levels, including seasonal assessments, will be essential.

Although per capita water supply is greater than that in many other countries, scarcity is starting to threaten Sri Lanka's development. Demand for water has increased, and at the same time availability

6 Sri Lanka has the second highest annual variability of rainfall of 22 Asian and Pacific countries.

7 For example, the Sri Lanka Water Resources Council and Secretariat (1999) states that 90-95% of developed water is used for irrigation. The Ministry of Environment and Natural Resources (2002) states that 85% of developed water is used for irrigation, 6% for domestic and 5% for industry. Bandaragoda (2005) quoting Waligamage (2002) states that 97.5% of developed water is used for irrigation, with domestic and industry using only 1.25% each.

8 For example, construction of more than 10,000 large diameter agricultural wells in the Northwestern dry zone without any assessment of available groundwater has caused severe depletion. The proposed Kalani conservation barrage is being challenged due to different interpretations and understandings of the issue by two water management agencies. One supports the conservation barrage to prevent salinity intrusion, while the other supports the construction of a storage reservoir to release water on demand during low flow periods.

9 Urbanisation is predicted to increase to 30% by 2025 from the current 24%, with a growth rate of 4% (Department of Census and Statistics, 2001).

10 According to the National Water Supply and Drainage Board (NWSDB) industrial connections were only 0.24% of total connections in 2002, while the quantity of water used by industry was only 1.48% in 2002 (Senaratne, 2005).

has been affected by prolonged dry spells and droughts[11] and the pollution of sources. There is a clear role for demand management approaches, yet in recent years demand management has been widely equated with charging tariffs. Local measures which both save water and benefit livelihoods—such as small reservoirs in the dry zone—have been shown to conserve water and reduce the impact of spatial and temporal rainfall variability on small scale farming and domestic use. However, in spite of their potential promise, these have been largely ignored in favour of pricing instruments. The absence of a consistent allocation and development policy and ineffective institutional governance has also prevented some rational projects and programmes from being taken forward[12] (Dharmasena, 2005).

11 The 1996 drought caused a loss of paddy production and disrupted hydropower generation, leading to eight-hour power cuts and the closing down of several water supply schemes owing to low river flows and salinity intrusion.

12 For example, schemes to address the shortage of drinking water in the cities of Kandy and Anuradhapura, to deal with seasonal saline intrusion into Colombo's water supply and to control pollution of rivers due to industrial waste and human activity have not been taken forward.

3 The policy development process

3.1 Early controversies and mistaken assumptions

By the 1990s there was broad agreement on the need for policy reform. However, many of the policies and policy development processes proposed demonstrated a lack of awareness of the Sri Lankan context and a lack of foresight about how much political, media and public controversy would be generated. For example, the idea of an apex body to coordinate all water sector development and management generated considerable debate, confusion and opposition. Proponents of an apex body believed that the integration of water sector institutions under one umbrella could resolve many of the current problems in WRM. Its opponents protested that the apex body concept threatened traditional water-related institutions, and feared that adding to the multitude of institutions in the sector would only add pressure on the national budget and increase the complexity of implementing legislation.[13]

While there was consensus on the need for a policy for water allocation and development, there was no agreement about how water allocations ought to be determined. Some donor agencies believed that rational allocation should be promoted by establishing a system of tradable water entitlements designed to discourage high water use in crops such as paddy. Water would move naturally towards higher-value uses as trade in entitlements occurred within and between sectors at freely-negotiated prices. Proponents of this theory expected rural towns to pay farmers for water released to them. Hydropower and industry were expected to expand, offering new employment opportunities, and their water supply would be secured through formal entitlements. This approach was based on the belief that Sri Lanka suffered from substantial water shortages due mainly to the misallocation of resources.

These proposals clearly indicated a lack of local knowledge. Paddy cultivation in Sri Lanka, besides providing the staple food crop, is an important cultural tradition. There are many reasons for continued paddy cultivation, including provision of food security and a sense of ownership of land even with small plot sizes, and such instruments are unlikely to change the pattern of cultivation or encourage the allocation of water away from paddy. While the need for a new water policy was accepted, the perceived threat to paddy cultivation created public anger and reduced the credibility of donor projects. This was reinforced by global events in which the poor were seen as sacrificing their rights to water to multinationals, including the 'water wars' of Cochabamba in Bolivia. The water policy development process thus started out mired in controversy and suspicion – an inauspicious beginning which set the scene for events up to the present day.

3.2 The process of policy formulation under the CWRM and WRMP: Commitment, consultation and transparency?

From 1996, policy development and formulation were the responsibility of a foreign consultant working as Senior Technical Advisor (STA) to the ADB, supported by a team of local water professionals seconded from relevant government institutions. Although the five seconded staff represented various disciplines, the approach taken was not multi-disciplinary. In particular, the local team lacked a sociologist and an economist on a long-term basis, which meant that the focus was often rather technical and lacked strategic attention to social issues. In addition, team members' involvement in the project was inconsistent because of problems in securing secondment allowances as well as ideological disagreements on key policy issues.

Initially the policy process and new institutions were to be housed in a neutral ministry, with ownership extended beyond the current policy development phase to the hosting of the NWRA, on approval by Parliament. However concerns were expressed about implementation capacity and effectiveness under a neutral ministry, and there was no clear consensus even among WRC members on the future status of

13 One of the key functions of the apex body was to monitor implementation of the National Water Resources Act.

the NWRA, which was supposed to take forward water sector reforms. As a result, the WRC resorted to proposing that the NWRA reside under the President, being the highest office in the country. Although most WRC members agreed to this 'compromise', some believed that the President should not be burdened with 'unpopular decisions'.

The policy development process was burdened with mundane administrative problems – including secondment allowances – distracting the attention of the WRC from its key tasks. At times, though, it seemed that the WRC was happier dealing with these familiar matters than with complex water sector reform issues. The WRC postponed submitting the draft policy proposal to the Cabinet more than twice, stating that the time was 'inappropriate'.

Physical drafting of policy was undertaken by the STA with the assistance of local counterparts. The turnover of local staff was rapid and staff support from the Irrigation Department (a key counterpart organisation) was intermittent. All in all the question of 'policy ownership' was a serious concern. Changes in the political administration also had an impact on the WRC: over a period of eight years its chairmanship changed nine times[14] and the consequent loss of institutional knowledge seriously affected its functioning.

The policy formulation process took place through consultations and meetings, mainly with water professionals in key cities. An attempt was made to consult small water users, mainly farmers, with the support of an NGO. It is estimated that about 115 such consultations were undertaken by the WRS with the assistance of local and foreign consultants, although due to internal NGO politics[15] these failed to reach some critical groups. In addition, the WRS consulted a number of research and policy institutions on the content of the policy.

Often, however, policy consultations were neither transparent nor sufficiently comprehensive. Awareness-raising efforts were targeted at a large audience, but contentious issues were usually discussed with only a select few. Inconsistent local resource inputs and lack of understanding of policy content were partly to blame for these segregated policy consultations. Key policy documents were only published in English which made them inaccessible to large numbers of the population; this includes the National Water Resources policy itself, of which only 300 English-language copies were made available to the public. The most controversial elements such as entitlements, bulk water use, cost recovery and tradable water rights were also watered down in public information brochures because of their political sensitivity, amid fears of public disapproval. The Cabinet was reluctant to lend formal backing to the consultation process in case of future public disapproval.

The WRC/WRS also established a coordination committee for water research with local and international water institutions, but this held few meetings and had few substantial outcomes. Again good intentions came to nothing because of poor strategy, commitment and understanding. These weaknesses in consultation and communications angered many civil society groups, and reinforced suspicions about the content of the policy proposals.

Despite this controversy, the policy proposals were approved by the Cabinet in March 2000 and were hailed at the time as a landmark achievement by many donor agencies. However, confusion continued when the draft legislation to implement the policy was submitted for stakeholder consultation. The legal draftsmen's office determined that consultation had to be completed in one month before the bill could be submitted to Cabinet and Parliament for approval, and the resulting haste made the public suspicious about the content of the reform proposals. Opposition, mainly based on a distortion of the facts, started to surface in the media. Allegations were made that reservoirs would be sold to multinational corporations (MNCs), and that people would have to pay for water obtained from all sources, even their own household wells. The WRC/WRS attempted to publish the policy guidelines in

14 Although the chairman notionally has a two-year term, in fact nobody ever remained in the role for even one year, because of transfers between ministries and other commitments.

15 The NGO contracted to conduct CSO consultations had political differences with some other NGOs; these later became very critical of the water policy in general and the consultation process in particular.

the daily newspapers to counter such misrepresentations.[16] This could not be accomplished (for undisclosed reasons), but in any case such efforts to explain the process came late in the day.

3.3 The politics of policy development in a multiparty system

Changes in government over the course of the WRMP's life from 2001 seriously retarded progress. While some actors sought to maintain project momentum, others refused to support it at all. The different political parties which in turn gained power had different approaches to WRM, and the project stalled when those who had opposed the reform process in opposition eventually took power. Even when the Prime Minister personally intervened to try to drive the process forward, policy development continued to be piecemeal and subject to political interruptions.

The policy process was significantly affected by the establishment of the Ministry of Irrigation and Water Resources Management (MIWRM) in early 2001.[17] The new Minister claimed ownership of the WRMP and related sector reforms, and pressed for ownership of the process to be transferred to his Ministry. In the end the Minister of Finance (also the President) agreed and the transfer took place, a process which took almost eight months in all. During that time no progress was made in policy development, because the Minister of IWRM insisted that the WRS should not continue policy development during the handover phase. The government recommenced the policy process in late 2001, but was soon forced to abandon it following renewed adverse publicity campaigns. A fresh policy draft was prepared accommodating the public's concerns, but in the process of revisions it lost the institutionalisation of IWRM.

In 2002, the opposition party was elected to power, and did not proceed with the policy development process, having previously opposed it. An attempt to restart the process in 2003 faced more media and public agitation and was abandoned within months because of a procedural disagreement between the minister in charge and the Prime Minister. By this time, most senior bureaucrats had become worried by the difficulties faced and civil society opposition to the project, and presented different stances on the project to different audiences.

With increased donor pressure to achieve project milestones, the Prime Minister himself as Minister for Policy Development and Implementation decided to take the lead in driving the project forward. He was concerned that Sri Lanka should not make a bad impression with the ADB, which was the second-largest and most responsive donor in water development. However it was difficult to sustain this momentum because line ministries took a defensive stance. The Prime Minister appointed a taskforce to proceed with the process, which recommended drastic reforms: the separation of irrigation and water management into two ministries on the basis that water providers and users should not be administered under the same system; downsizing of the Irrigation Department and the Mahaweli Development Authority on the basis that they had completed their functions as water developers and should now be management-oriented; privatisation of the WRB; transfer of the policy advisory function to the proposed NWRA; and creation of five regional water authorities. The taskforce took the view that water management should be decentralised, with water users playing a major role. It also recommended that all tertiary irrigation systems be transferred to FOs for O&M.

Some of the suggestions had merit in terms of making the water sector more efficient and accountable to users, but the process of policy development was opaque and failed to build support for change. There were no consultations with water users, stakeholder ministries or key sector organisations.[18] In the end the taskforce made little progress, because it was only an appointed committee with no

16 This is a common way of obtaining public opinion and views on important national policies. However, it is usually carried out prior to finalising proposals; attempts here were only made after the proposals were approved by the Cabinet.

17 The coalition form of government which became the norm after 1994 had to accommodate the demands of many coalition partners to be ministers—by creating new ministries. This practice continues unabated to the present day, creating major confusion in governance (and government).

18 One of the cardinal mistakes in the process was limiting consultation to just a few meetings with the 'converted', and calling this 'stakeholder consultation'.

authority to make binding recommendations, and some bureaucrats and technocrats were very critical of taskforce members for their earlier involvement in water sector reform processes.

The large number of actors responsible for the policy development process at different times led to the drafting of 15 version of the policy and nine drafts of the bill. This led to confusion and inconsistencies of content between the policy and the law.[19] Realising this, the Prime Minister advised the taskforce to re-formulate the policy in accordance with the draft bill – with all its faults he was determined to take it to parliament. However even this effort had to be abandoned when the President unexpectedly dissolved Parliament requiring fresh elections.

By mid-2004, a left-wing coalition government was in power, with support from Marxist political parties. These Marxist supporters were not in favour of the water sector reforms, although the need for a comprehensive water resources policy was agreed. The new government was faced with a dilemma: the ADB loan had been agreed with the Government of Sri Lanka as the borrower and could not be easily cancelled. Donor pressure persuaded the new Government to accommodate some of the ADB missions which came to Sri Lanka to monitor project progress. However, the newly-established Ministry of Agriculture, Lands, Livestock and Irrigation (M/ALLI) was headed by a Marxist minister who was not willing to meet the ADB mission. Unable to reject the ADB loan already agreed, the Government initiated an alternative parallel process: to formulate a 'scientific water resources policy' using purely local input. In the absence of any new effort to meet the original loan covenants, the ADB decided to suspend the loan in July 2004.[20]

M/ALLI proceeded with the parallel policy formulation process, in spite of the ADB's response. A new draft policy was written promoting traditional approaches and practices. It was produced in Sinhala to make it more transparent to water users, in contrast to the earlier policy. The policy developed by M/ALLI emphasised traditional approaches and practices, totally rejecting private sector participation in water sector development while reinforcing public ownership of water and the State's role as trustee. The intention was to set the new policy clearly against the ADB-supported policy in process and content, and it focused more on short-term satisfaction of the public's concerns than long-term planning. However the government withdrew some of M/ALLI's key functions by gazette notification and vested them with Ministry of Mahaweli, River Basin and Rajarata Development (M/MRBRD)[21], so the draft could not be submitted to the Cabinet. This created confusion and mistrust within the Government; some ministers alleged that it was a subtle attempt to facilitate privatisation of water. The move to transfer key functions to another ministry was criticised in the media, often with water privatisation mentioned in the same breath.

In the midst of this confused process, the revised draft water policy (prepared by M/MRBRD) was approved by the Cabinet in December 2004, which led to severe criticism by the public and some ministers alike.[22] In an attempt to overcome this further impasse the Government appointed a committee representing the four key ministries (M/ALLI, M/MRBRD, Ministry of Environment, and Ministry of Urban Development and Water Supply), with a mandate to review the draft policy. However the committee could not meet because M/ALLI did not send a representative, arguing that it was already in the process of formulating a water resources policy (its alternative parallel process).[23]

The complexity of this process was compounded when the M/MRBRD was established. This was the first time a river basin development ministry had been established, and the reason for its creation is

19 Ideally, legislation should follow policy; it is a matter for the Cabinet to advise the legal draftsman to formulate legislation in accordance with the policy for implementation.

20 Component A of the WRMP dealt with capacity building, including establishment of the NWRA and the policy process. Component B was for infrastructure development and was managed by the NWSDB. Component A was formally cancelled in February 2006.

21 Water resources policy formulation; formulation of river basin plans; flood and drought management; environment protection in riverine areas; and management and establishment of WRS/interim NWRA.

22 Marxist coalition partners in the Cabinet denied approving the policy, emphasising that approval was granted only to establish a committee for further study on the policy content. The Cabinet was divided on this issue; some ministers did not want to disturb the Marxist alliance, which could have had repercussions for the existence of the Government.

23 This was the Basic Policies of Usage, Conservation and Development of National Water Resources, dated 16 August 2004.

unclear. M/MRBRD inherited the former ADB-supported policy development process, and the two policy processes continued in parallel, which created ill-feeling within and between the two ministries. The ADB-supported policy development process was abandoned again in mid-2005, three months before presidential elections in November 2005. An attempt to renew the process in February 2006 had to be abandoned because of further adverse media publicity. Though some political events were unavoidable, better planning could have engaged bureaucrats to play a stronger role, making the process less vulnerable to such political changes.

3.4 Institutional sequencing

While the CWRM and WRMP were ongoing, and working towards establishing the new institutions, there was continual reorganisation of existing institutions in the sector. The country was divided into six water regions with Regional Water Resources Councils (RWRC) (water parliaments) advising Regional Water Resources Agencies (RWRA), which were expected to implement provisions given under the Water Resources Act and by the River Basin Organisations (RBOs). Furthermore, the WRT proposed under the original policy was reformulated as a Water Mediation Board (WMB) to arbitrate on water disputes. Two additional arrangements were also proposed for fundraising in the form of a National Water Fund and a Local Water Fund, the latter attempting to raise money at a local level without involving the State treasury. This would have been a good proposal under a decentralised system of management, but the State treasury objected to the collection of public funds by an organisation it could only loosely control, fearing mismanagement and corruption.

The minister in charge of water management was of the view that the new arrangements, especially the NWRA, should create an organisation large enough for him to be the Minister. As a result, the original proposal of a small regulatory authority of 51 persons was to be expanded to include a minimum of 2,000. Initial investigations were made regarding transferring existing assets to the proposed authority. These proposals were not implemented owing to later events, but at the time they provoked engineers at the Irrigation Department to protest vehemently against the creation of a new authority undermining their expertise and skills, and the downsizing of a traditional department which had been in existence for nearly 104 years.[24]

24 Marginalisation of the Irrigation Department began in the 1960s, through the creation of new institutions and the gradual transfer of authority elsewhere. There is strong evidence of conflict between technocrats and bureaucrats in decision making.

4 Policy content analysis

The content of the policy also contributed to the opposition it faced. The essence of the policy was to establish property rights to water so that water could move from low to high productivity uses; this would also give the user full rights to ownership, while previously water was a common good according to Sri Lankan Common Law. 'Commodification' may be said to require the satisfaction of three conditions: scarcity, utility and ownership (Gunathilake and Gopalakrishnan, 2002). The first two conditions were already in place in Sri Lanka and the new policy would complete the three. The approved policy (March 2000) stated that 'all water including surface and groundwater will be owned by the State and managed by the government in partnership with users on behalf of all Sri Lankans', which was severely contested as being contrary to Common Law principles – the government could transfer ownership to anybody, making water a market commodity.[25]

Although the policy's central principles were said to be *equity* and *efficiency* in allocation, equity concerns were masked in the body of the policy by an overemphasis on efficiency based on demand management. This is reflected in two elements of the policy. While it advocated formal protection of the water rights of bulk users through entitlements, the question of how small farmers' rights were to be safeguarded was addressed only vaguely. The proposal to shift production away from paddy said nothing about ensuring the livelihoods of the many small farmers who depended on paddy cultivation. This failure to articulate equity concerns and the lack of adequate safety nets for the poor and disadvantaged were publicly criticised; the policy was seen as attempting to provide for the 'haves' at the expense of the 'have nots'. The government was seen as favouring the private sector over the public sector, reflected in the privatisation of the Water Resources Board and the downsizing of certain state institutions in an attempt to increase efficiency, reinforcing fears that profit would be prioritised over public good.

It is notable that most of these provisions of the new policy were already present in the Water Resources Board Act of 1964,[26] though they had not been implemented, so there was some confusion and disagreement among water professionals about the need for the new arrangements.

4.1 Entitlements

The new water policy introduced 'entitlements' as a means of conferring rights to water. This terminology was based on allocations in the Murray Darling River Basin in Australia and was alien to Sri Lanka. The policy was also poorly explained. For example, it stated that entitlements would be given only to 'bulk water users', while the rights of small water users would be protected in other ways, but did not give a clear definition of either category or explain how this would be done. There was widespread speculation that bulk water users were being favoured. [27] This element of the policy was also seen by some as allowing ownership of water resources to be transferred to multinational corporations (MNCs). This debate had a history extending as far back as the establishment of IWMI in 1986, which had been portrayed as a forerunner to water privatisation by CSOs protesting against the water reforms. There is no real evidence to suggest that IWMI played a direct role in Sri Lanka's water

25 The government made several changes to the terminology with respect to ownership of water in successive policy drafts. State ownership became 'public ownership', then water was said to belong to all 'living beings' and to be a 'public asset'. None of these changes was made for any reason other than to circumvent periodic opposition.

26 Including: formulation of policy and planning for the water sector; conservation; utilisation; prevention of pollution; integrated planning and coordination of activities on water resources; acting in an advisory capacity to the minister in charge.

27 While the definition of bulk water use was simply "use of water from a water source to a group of users or for a large individual water user" this was interpreted as paving the way for MNCs and large scale companies and also farmer companies, who would indirectly pass the financial cost of water entitlements to small farmers who are directly served by farmer companies.

policy process, but its technical and logistical support (such as the housing of the WRS) was viewed with suspicion.

The rationale for introducing the entitlement system was that it would improve the effectiveness and efficiency of water use. However, this showed a lack of understanding of the local context. An entitlement system could be effective if the following conditions were in place:

- existence of a vibrant water market (demand)
- the necessary infrastructure to deliver the right quantity of water to users (water metering)
- well developed information for decision-making about trading of entitlements by users
- a regulatory system capable of implementation

However none of these conditions is currently met in Sri Lanka. Meeting these conditions would require improvements to infrastructure to enable volumetric water allocation, the development of effective means to monitor entitlement implementation and the establishment of a new administration to manage water allocations. These changes would considerably increase transaction costs and risk generating corruption in granting entitlements, counteracting any possible improvements in effectiveness and efficiency. In addition, the presence of a large number of small water users makes it difficult for an effective entitlement system to work. As mentioned earlier Sri Lanka already has a body of law dealing with water, but lacks effective legal enforcement. Introducing new mechanisms and laws which were highly dependent on the same inadequate state enforcement machinery would achieve little.

Entitlements were intended to improve the equity of water allocation. Bulk water users would be issued entitlements according to demand, guaranteeing a certain quota of water. Small water users would not be issued with entitlements but instead would have their rights to water protected. Assuming users did not abuse the system, in theory more water would be available for everybody to share under the new approach. In practice, however, water use is highly political[28]. According to the draft Water Resources Act, responsibility for issuing entitlements was vested in the proposed NWRA. Clear limitations to the proposed process include the facts that there was no to be credible water resources assessment to survey usage of water, the initial method for awarding entitlements was not described[29], and it was feared that the River Basin Committees (RBCs)[30] – who were given the authority to recommend those eligible for entitlements - might be subject to political influence. Given these problems, using an entitlements system would not guarantee equity. In the midst of mounting opposition to the entitlements system, the Government simply changed the terminology from 'entitlements' to 'permits' and subsequently to 'appropriate measures'. These changes pacified the public to some extent, but did not really alter the substance of the proposal and contributed to confusion and further distrust.

4.1.1 Entitlement or permit fee

The original draft act envisaged entitlement holders paying a fee for use of water. This was contentious as it was assumed to mean a volumetric charge (though this was not specified), which was seen by many as 'commodifying' the resource. The policy recommended that only bulk water users would pay, but bulk water users were not clearly defined either in the policy or the Draft Act[31] and the vague definitions given suggested that FOs would be considered bulk water users. This led to concerns that small farmers accessing water through FOs would therefore also have to pay for water. The government

28 It allows those with authority (state as well as non-state actors) to use water as a tool to vest power. A primary cause of the onset of "Elam war IV" was the rebels' refusal to allow water to flow into government controlled areas. The current water policy process was instrumental in changing the course of at least one elected government in early 2000.

29 Entitlements might be issued according to land ownership or water usage, or through auctions, none of which would protect the rights of the poor.

30 In addition, the act proposes that 60% of RBC stakeholders be non-state water users, which further enraged civil society.

31 The draft Act of December 2003 defines bulk water use thus: 'means of water use from a source to a group of users or large individual users which may include extraction of water from surface, ground or conjunctive water use and as may be prescribed by regulations'.

suggested a number of different ideas to address these concerns, for example changing the term to 'permit fee' (an administration fee rather than a volumetric charge, with state water providers being exempt). However none satisfied the public as farmers were still left facing additional costs. The policy committed the government to paying the fee on behalf of farmers until their economic conditions improved, but with the increased cost of paddy production it was still felt that the future additional costs for water would be a burden. This was a clear case of poor attention to local context and livelihoods in the design and promotion of the new policy.

4.1.2 Water Services Reforms Bill

The entitlements scheme met with further resistance following the introduction of the Water Services Reforms Bill, which was submitted to Parliament without public consultation. Although the bill was not directly linked to the Water Resources Act, it did conform to the overall policy environment. The bill attempted to hand over piped water supply in urban and rural areas to commercial water providers, licensed by the Public Utilities Commission, and to phase out the water supply operations of the National Water Supply and Drainage Board (NWSDB) and local authorities. The bill gave considerable power to commercial providers and aimed to introduce a licensing system for all providers, including existing state water providers. The right to a licence for existing providers, including public agencies, would be held only for five years, after which they would have to compete on commercial terms with others, including MNCs. The bill empowered commercial water providers to negotiate with state agencies and local authorities to access water directly from the source, and these negotiations did not have to answer to open and transparent public scrutiny despite the fact that one of the negotiating partners was a public body (Rajapaksa, 2003). These proposals were seen as another move towards the 'commodification' and possible privatisation of water.

4.2 Confusion in institutional arrangements

There are a number of reasons why the three-tier institutional arrangement proposed to take over all WRM functions did not succeed. The NWRA was to be a small organisation with few technical and support staff[32], and the proposal to establish it as the apex body did not anticipate how traditional departments such as the Irrigation Department and the Water Board would react to this apparent reduction in authority. At the same time efforts to restructure the Irrigation Department into an 'irrigation authority' to develop and manage irrigation, drainage and flood protection schemes led to confusion, as the NWRA was also expected to perform similar functions. The WRC suffered from poor political commitment and its role eventually diminished. The WRS, established in 1996 and due to be converted into the NWRA on approval by Parliament, was supposed to act only in support of the WRC, however in the end it was forced to take ownership of policy development, despite lacking the authority to function effectively in this role. Key water sector stakeholders opposed proposals to grant the WRS greater authority, limiting its ability to drive through reforms. In general the policy proposals did not offer enough clarity on the roles of different institutions in the sector or adequately describe how staff of existing agencies would be integrated into the new bodies.[33] The engineering community was worried about the proposed reforms and opposed any form of restructuring in the name of water management; some even stooped to more sinister methods of opposition.[34] The failure of the proposed institutional arrangement, and the lack of clear authority granted to central institutions, was a key factor in the eventual collapse of the water policy process — and the WRS.

32 It was envisaged that NWRA would consist of only 51 staff, including technical and support staff. It was designed to be small as its functions were essentially coordination and management.

33 A subsequent Cabinet memo on water sector reforms by the incumbent Prime Minister reinforced the importance given to the NWRA and proposed a series of changes, divesting most of the functions held by irrigation agencies to line departments and FOs.

34 Waskavi, stanzas used to curse people, were circulated by email to those responsible for water policy at the WRS.

4.3 Civil society and media objections

Civil society and media campaigns against the reform process were undoubtedly one of the reasons for its failure, in combination with the political difficulties described above. Their resistance had antecedents in earlier moves towards land reform, supported by donors, which were seen as attempts to take away the land rights of poor farmers. Efforts to grant full land title ownership to the poor were ostensibly to enable poor farmers to use land as collateral for bank loans, but some assessments by NGOs and CSOs concluded that the real aim was to open up land markets in which land would be transferred to the highest bidder. This was seen as 'commodification' of land, and attempts to establish water rights and markets were felt to be a dangerous extension of this policy. It was feared that they would ultimately dispossess rather than benefit the poor, as the poor would be compelled to sell resources to escape the poverty trap. In their opposition, civil society groups highlighted a number of policy reforms, driven by donors, which they claimed had undermined the security of countries of the South, and argued that the new water policy was just another such move which would remove water from paddy farmers in the dry zone. Such criticisms of the land and water policies argued that they were attacking the social, economic and spiritual reliance of the peasantry on possession of land and their rights to cultivation (Seneviratne, 2000).

Civil society groups were also concerned to make sure that any new policy would effectively protect water resources for the future. The water conservation measures imposed on bulk water users in the new policy were hailed as a step in the right direction, but the policy was silent on watershed management and water pollution control raising public suspicion that it was not a genuine effort to protect water resources.

5 Conclusions

Water policy development in Sri Lanka is a classic case of natural resources management under a multiparty system of governance where water has been used as a political tool. This was possible in part because of flaws in the policy design and formulation process: policy content debates were not addressed in a constructive process and instead came to undermine efforts to develop a comprehensive national policy, legal and institutional framework. This framework required – but did not receive – broadly-based political and civil society support.

The poor articulation of societal needs and dependence on donor and external support prevented agreement on a strong national water resources policy. A water policy for a country bestowed with a strong hydraulic tradition should have given emphasis to traditional practices and water values, but the proposed new policy instead highlighted demand management by pricing and ownership instruments, reflecting dominant global narratives at the time. Unable to find a pro-poor solution to the balance between equity and efficiency, the policy prioritised efficiency at the expense of equity in a country where 60% of the population are small farmers who depend on high consumption under paddy cultivation. This led to considerable opposition from civil society groups and the media.

The policy advocated strategies which had been adopted successfully in more developed countries, but which were poorly suited to the Sri Lankan context. External policy advocates were ignorant of the political climate in Sri Lanka and failed to recognise either the politicised nature of water or the complex multi-party dynamics which would come to undermine the policy development process. Moreover, policy formulation began without any stakeholder demand, and without even a basic database on the resource. Without this it was difficult for advocates of the policy to convince the public of an impending water crisis, and hence the need for rational allocation systems to help avoid it. The strong cultural values attached to water, and paddy cultivation, were also inadequately recognised.

The policy reforms advocated by the ADB lacked a well-articulated strategy which could enable them to succeed in the Sri Lankan context. The new institutional arrangements were not clearly explained which led to confusion, particularly as ownership of the reform process frequently shifted from ministry to ministry. Some of the proposed institutions were never established and at one point two parallel policy processes took place simultaneously. The new policy itself included new concepts and terminology such as 'entitlements' and 'apex body', and did not communicate these new approaches to the public adequately. Documentation was seldom produced in local languages and few copies of key documents were circulated. The Government made attempts to explain the process in pamphlets and the media, but shied away from addressing publicly controversial elements of the policy for fear of opposition. Consultation around the new policy was weak, and altogether the process lacked transparency and open dialogue.

The lack of transparency in the policy development process reinforced fears amongst civil society groups who were already inclined to oppose the policy, seeing it as a continuation of earlier moves towards liberalisation and privatisation and believing that the livelihoods of poor farmers would be threatened. Certainly the attempt to discourage high water-use paddy farming failed to take into account the great importance of paddy cultivation in Sri Lanka, and this inspired particular opposition. With better communications efforts the policy might have fared better. As it was, the media, as well as politicians opposing the process for their own agendas, were able to seize on the privatisation controversy and use it to generate opposition to the policy process, rather than focusing on the core goals of the policy and its more positive elements such as moves towards IWRM and sustainable water use. Policymakers seriously underestimated the complexity and difficulty of the process which had to be undertaken to develop and approve new policy, and devoted inadequate efforts to communicating effectively; this was probably the main cause of failure.

Future prospects for water policy and management in Sri Lanka remain uncertain. One component of the WRMP has been cancelled and the other remains in jeopardy. More than ten years of a mismanaged policy process have left a legacy of doubt and suspicion, and any efforts to address the serious water

management issues facing Sri Lanka are now met with public and media opposition. This is a sad end to a decade of effort the most recent part of which (the WRMP) alone has cost over USD $28 million. There is now little prospect of the policy reform process being revived in the near future.

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Annex 1: Timeline of events