

Brazil

Between neo-liberalism and progressive reforms

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The debate regarding public services in Brazil is characterised by acute tensions between defenders of the neo-liberal paradigm and proponents of progressive reforms. The 'mixed approach' of the present government includes resolute support for the introduction of *public-private partnerships*, which would signal the prolongation of the privatisation model implemented by preceding governments.

The complex structure of public services in present day Brazil is the result of various waves of expansion – and retraction – of the public services in the twentieth century. For this reason, it is not possible to talk about a single management model, but rather a framework composed of several administrative levels – federal, state and municipal. Some sectors are still predominantly public, for example the postal service, whilst others are already predominantly private, such as telecommunications and transport. In other sectors, such as health and education, a struggle between public and private provision is taking place.

The first part of this chapter describes the large scale transformation that took place in the second half of the nineties, when the wave of privatisation reached public services on a huge scale. It is not possible to understand this wave of market-driven reforms without taking into account the history of public service provision in Brazil. An initial phase of 'private initiative' and *laissez faire*, particularly in the fields of railroads, energy generation and distribution, and telecommunications, lasted until the late fifties and early sixties. At this point, there was a confluence between the idea of a welfare state and a developmentalist drive which agreed on the strategic 'need' to integrate Brazil's national territory in order to

guarantee the country's sovereignty. This model was consolidated in the sixties and seventies but has since receded, at a variable pace, up to the present day. The period that saw the greatest dismantling of public services policies began with the government of Fernando Collor de Mello (1990-92), and even the presidency of Luis Inácio Lula da Silva's since 1 January 2003 has resulted in only slight pauses in this process.

The present government's main hallmarks in the field of public services are the result of three 'tensions': (1) the tension between a privatised structure and the will to implement public policies; (2) the tension between the prioritisation of a model based on negotiation and public consultation, and a managerial model with the support of the free market. This tension has been highly evident when resolutions from the many councils and consultative bodies on public policy – from the National Development Council to large-scale consultation on work and education carried out in 2004 and 2005 – have been implemented; and (3) the tension between the government's orthodox wing, which in economic terms reproduces the neo-liberal growth recipe, and a nationalist/developmentalist wing aimed at recreating a Brazilian welfare state model.

The second part of the chapter analyses the present state of some key public services: energy, health, telecommunications and water. The third part of the chapter describes what is termed the 'mixed approach' of the current government through examples from ongoing discussions on the reform of higher education and the introduction of public-private partnerships. These show continuity with the privatisation model implemented by preceding governments.

The general framework of changes during the nineties

Brazil was no different to the majority of countries in Latin America and the world which began their 'structural reforms' arguing that the state was inefficient in terms of administration and service provision and a loss-maker in financial terms.

The change of paradigm experienced in the nineties strongly affected the concept of public services. The strategy for the provision of services mutated from one that considered the state as 'guarantor' of citizens' rights and responsible for looking after the strategic interests of the nation, to a strategy with the state as 'manager' of a public administration apparatus, settling conflicts between market actors but abandoning its role as a provider of services and guarantees to its population. In the nineties the idea of an 'energy market' and a 'telecommunications market' began to gain favour at the same time that reforms aimed at the mercantilisation of water were introduced. These changes coincided with an increased decentralisation of federal government functions, with responsibility moving to the state and municipal levels. As with other countries in the region, Brazil followed the advice and conditions of the International Monetary Fund (IMF) and the World Bank (WB).

The process of privatising the state's goods and services began in 1979, during the military government, with the creation of the Special Ministry for the Control of State Companies, whose main function was to control expenditure. As a result of the Ministry's directives, the first state company sell-offs began – at a relatively slow pace – and were extended throughout the following decade, during the democratic government of President José Sarney. The outcome of this first change was the sale of 38 companies, the merger of eight and the leasing of one, amounting to USD 780 million. The government got rid of state-owned productive enterprises and a wide

range of small-sized companies.

From this point onwards the process of privatisation was radicalised, leading to the complete transformation of the institutional structure of the services and role of the Brazilian state. This period can be divided into three phases.

The first phase, corresponding to the beginning of Fernando Collor's government in 1990, aimed to 'reform' the state, remove productive activities from its remit and bring it back to its 'basic' or minimal functions. In March 1990 the legal framework for the National Privatisation Programme (PND) was created, which consolidated a process of privatisation that continued unabated for almost the whole of the subsequent decade. The Privatisation Commission for the National Bank for Social and Economic Development (BNDES) was also created to administer the sale of state assets. During the brief Collor government, 68 companies were included in the privatisation programme and 18 companies from the metallurgical, agrochemical and petrochemical sectors were sold (BNDES, 2002). Among other benefits, the PND offered interested parties the facility to purchase federal bonds – mainly accounting for unpaid debt – at a nominal value. This form of payment greatly benefited the buyers, due to the strong depreciation of such bonds on the market.

The second phase, between 1993 and 1995, was marked by a certain lack of definition, a characteristic of Itamar Franco's presidency. However, the substantive change during Franco's period in government was the legislative reform that allowed foreign investors to bid for companies which were part of the National Privatisation Programme (PND).

The third period began in 1996 with the government of Fernando Henrique Cardoso (popularly known as *FHC* in Brazil), which privatised most of Brazil's public services and infrastructure. During this period, privatisation took on a fundamental role in the process of macroeconomic stabilisation (Modiano, 2000). Between 1995 and 1998, 23 companies were transferred into private hands, which generated USD 14 billion for the state and transferred USD 26 billion of national debt to the private sector.

The administrative reform implemented by the FHC government became significant when it stipulated the decentralisation of public services, the creation of regulatory agencies and a wider use of management contracts for the supply of public services under private sector control (Carneiro and Rocha, 2000).



The FHC government privatised federally controlled infrastructure including mining companies, railways, ports, motorways, telecommunications, banks, and water and sanitation services. At the same time, state and municipal authorities also accelerated the privatisation process. The Brazilian government not only encouraged the sale of state companies through BNDES, but also sold its minor stake in various companies. In the area of public services the biggest sell-offs, and those that generated the most public opposition, were those of the Light electricity company in 1996, and the telecommunications company Telebrás in 1998. In 2001, mobile phone providers joined this growing list of privatised companies.

During the Cardoso administration the opening up of public services to foreign capital was also deepened. Through the Concessions Act of 1995 the distinction between Brazilian companies owned by national capital and companies owned by foreign capital was abolished. From then on foreign corporations could have a 100 percent stake, with the power of veto in company management. Private sector participation increased from a negligible one percent in 1994 to 42.2 percent by the end of 1998.

The end result of a decade of privatisations was the sale of 115 state companies, amounting to almost USD 69 billion. The bulk of these privatisations affected public service companies operating at state and municipal level.

As a result of the transfer of public services into private hands, the problems of regulating service provision became more acute. Problems in relation to the quality of services were also confirmed. The worst results were registered in the municipal sphere where privatisation, in parallel with accelerated decentralisation, produced a clear deterioration in the provision of services (Carneiro y Rocha, 2000).

Four model cases

Electricity

The model of centralised management of Brazil's electricity sector developed during the seventies, with the setting up of the national Eletrobrás company in response to technical requirements – the geographical size of the country and emphasis on generation of hydroelectric power – and to political and economic factors related to the chosen growth model, based on strong state intervention.

One fundamental characteristic of the Brazilian electricity system has been generation based on hydraulic power and great lengths of transmission cables. At present the consumer market is concentrated in the South and South-Eastern regions – the most industrialised and most demographically dense. As for the North, that region is served by small power stations, most of them thermoelectric. In short, the system is based on the centralised production of energy, the interconnected transmission under federal government responsibility, and decentralised distribution systems managed by individual state governments. The increase in demand for energy (greater than the increase in Gross Domestic Product) and the lack of investment have put enormous pressure on the system and facilitated the will for privatisation which FHC's Government subsequently put into practice.

As has already been mentioned, the passing of the law on Public Service Concessions opened up a privatising breach. This was then widened in July 1995, when new regulations for energy market concessions were approved. The following year, the National Electrical Energy Agency (ANEEL) was set up with the aim of “*providing favourable conditions for the market in electricity to develop in a balanced way between the operators and for the benefit of society*”. The regulatory agency finally took shape, after several reforms, in November 2004. It features a decentralised structure which combines the agencies established by ANEEL itself in certain states with the joint work carried out by the regulatory agencies under the jurisdiction of state governments.

At present the idea of an ‘energy market’ is preponderant and it alternates with the need for access to energy in regions where the system has not yet been universalised, as in the Northern Region and large parts of rural Brazil. Similar issues affect plans for the extension of transmission lines. There are currently 1,095 operators working in this market.

Water and sanitation

Until the mid-nineties, the network of public water and sanitation providers in Brazil was organised in one system known as PLNASA, which included municipal enterprises and a few private companies. The privatisation process began with the 1997 Water Resources Act, which institutionalised a legal framework for the privatisation of sanitation and drinking water provisions. The new *laissez faire* policy consecrated the commercialisa-

tion of water. However, federal regulations did not allow private companies to make much headway, since most of the legal framework and regulations for the administration of water and sanitation had always been passed at municipal and state level. But combined pressure from the IMF and World Bank managed to get states and municipalities to approve the privatisation of about 30 municipal drinking water and sanitation services.

But despite the privatisation of the distribution service for drinking water and sanitation, the state's role is still considered of key importance, since it remains the principal investor in something which for many companies implies a 'non-recoverable' investment. 10.7 percent of urban homes in Brazil still lack drinking water and 23.3 percent have no sanitation. The Ministry for Cities estimates that an investment of approximately 9 billion Brazilian reals per year (USD 3.6 billion) would be needed in order to meet targets for the universalisation of the service by the year 2020. Private enterprises are not prepared to make these investments, unless they are offered the reinsurance which public-private partnerships imply. But the present government has made a historic effort to meet this shortfall, increasing investment in water and sanitation to 14 times the level achieved by the previous government over the 1999-2002 period.

Many Brazilians oppose the privatisation of these services. The National Environmental Sanitation Front argues that privatisation always ends up being much more expensive for the consumer, and claims that if the investment were made by municipal bodies, the price of water would be between 37 and 48 percent lower than that offered by the public-private partnerships. The Front also highlights the fact that the companies participating in the privatisations get most of their resources from the BNDES and the FGTS (Time of Service Guarantee Fund, a retirement scheme based on monthly deposits made by firms on behalf of their employees, in an amount equivalent to eight percent of their salaries). It argues that these funds could be better assigned to municipal- or state-run companies.

Lastly, we cannot omit to mention the present government's openness towards dialogue and its desire to formulate a sanitation policy agreed by consensus. The process of public consultation has resulted in a draft bill for a new National Sanitation Policy which is at present in the hands of the Executive and which is expected to begin its legislative stage in the near future.

Health

The Brazilian healthcare service is provided by the state through the National Health System (SUS). The private sector supplements these provisions both directly – offering its own surgeries, clinics and private hospitals – and indirectly, through a system of prepaid medical cover run by the big healthcare market operators. In total, 43 million Brazilians are covered by some sort of private healthcare plan, whilst the remaining 132 million are covered only by the public system, according to official data from the National Households Survey.

The SUS was set up by the 1988 Federal Constitution and later regulated by the National Health Act, which gave all citizens the right to public healthcare and outlawed charging for services offered by the state. The SUS comprises hospitals, local health centres, institutes and foundations for medical research. It is financed by resources which come from all three levels of government: municipal, state and federal. The private sector has a complementary role in the system, providing services to the public sector by means of contracts and agreements.

Since 1990 the SUS has allowed the general public to hold its management to account by means of the Health Conferences and Health Councils. The first bring all of the sector's stakeholders together every four years in order to formulate the guidelines of public health policy at the three levels of government. The councils also monitor the SUS at the three levels. They are composed of health-related professional workers and users, and function as permanent deliberative bodies.

The municipalities play a central role in Brazil's public health policy. This has been strengthened by various statutes and laws emphasising decentralisation, so that today the municipal level forms the keystone of the SUS. The flip side of these advances, however, is the increasing fragility of public health services in the poorest municipalities.

Telecommunications

Brazil's telecommunications system, transformed by the process of privatisation during the nineties, reflects the strategic visions of previous governments. But it remains highly diverse, due in no small part to the huge geographical size of the country. Telebrás was formed in 1972 as a national company responsible for administering a system composed of smaller companies that had been run by individual state governments and, in a few



cases, by municipalities. These smaller companies were the main providers of the local telephone service. Telebrás was also meant to unify services with Embratel, the national operator responsible for connecting long-distance calls between the different telecommunications companies operating in each state.

In July 1997 the General Communications Act was passed, which included provisions for the privatisation of the Telebrás system. The creation of the National Agency for Telecommunications (ANATEL) was intended to regulate 'free competition' in the telecommunications market. This agency was, in theory, independent, but in practice it remained under the jurisdiction the Ministry of Communications (in a similar manner to ANEEL, as described above). A few years later, a new law on mobile phones completed the legal framework for telephone franchises. Telebrás then transformed itself into a *holding* company, comprising the three regional licensees which operate the Fixed Converted Telephone Service (STFC), plus a number of other firms authorised to participate in the communications market.

As far as tariffs are concerned, one of the key arguments in defence of denationalisation was that the system suffered from incongruities which meant that local rates were very low whilst those for middle and long distance calls were very high. Privatisation gave companies the ability to adjust the rate each year based on the IGP-DI (inflation rate), which includes among its variables the exchange rate for the US dollar. Private companies were also authorised to increase their charges at up to nine percent above the rate of inflation. According to the IDEC, this has resulted in the transfer of an extra 13 billion *real* from consumers to the franchise-holders. According to the IBGE (the federal statistics centre), the increased tariffs now consume 32 percent of the average Brazilian family income, compared with around 16 percent at the start of the period. In some cases the fixed basic residential subscription went up by 5.155 percent, for instance in the city of Curitiba, capital of the state of Paraná.

The charge of a basic subscription was added to users' contracts with the operators after these had been signed, in some cases fraudulently. The arguments around these subscription charges runs deep, including the question of what should happen with the 100 pulses included in the original contracts, and whether users have the right not to pay for them if they are not used. In some cases, these calls are charged as a basic subscription but have not been discounted from what the user has consumed,

meaning that they are paid for twice.

Critics of privatisation, arguing from a framework of basic rights, have shown that one of its structural effects has been to decrease 'teledensity' (the number of lines per hundred inhabitants) in lower-income social sectors. This clearly indicates that discrimination exists in terms of access to landline telephones. Regional providers operate in a monopolised market, which provides the conditions for abuses in terms of the quality and price of services. Yet these companies have been able to shelter behind a regulatory agency, which, far from seeking a balance between the needs of users and company profits, has turned into nothing more than a mouthpiece for the private franchise-holders.

The privatisation of Telebrás was one of those that met with the widest popular resistance. During 1998, large demonstrations were organised which brought together the *Central Única dos Trabalhadores* (CUT, National Trade Union Council), the *Movimento dos Trabalhadores Rurais Sem Terra* (MST, Movement of Landless Rural Workers), the *União Nacional dos Estudantes* (UNE, National Union of Students) and a whole range of social organisations, against what they termed 'denationalisation' and the consolidation of monopolies in the hands of private capital.

In the framework of a 'telecommunications market' with such consolidated rules and with such powerful players, the current government is trying to give the management of the telephone public service a social profile. In September 2005, the Ministry of Communications launched a proposal for a fixed popular line for the monthly sum of about eight dollars, with the right to 100 minutes in local calls, offered to families with incomes of up to three times the minimum wage (USD 375). This proposal would modify the franchise contracts and has the potential to affect the profits of the sector's private companies. For this reason, its implementation has so far been mired in conflict.

The present government's mixed approach to education

Given the magnitude and complexity of the overall framework of education in Brazil, the analysis that follows is centred on the specific proposals for the reform of higher education and the University for Everyone Programme (ProUni), which have both been subject to a range of polemics in recent years.

The University Reform

In the context of Latin America, Brazil is the only country with an education system which includes the federal, state and municipal levels in a single scheme (Carneiro y Rocha, 2000), and which encompasses all levels of education. Both the public and private providers offer primary, secondary and university education services, but since the nineties there has been a marked increase in the supply of services by the private sector.

The reform proposed by the present government has been motivated by the fact that in the last ten years there has been an intense deregulation and commercialisation of higher education which has resulted in the loss of the state's leading role in the sector. This period saw the neglect of public universities and the expansion of the private sector, while the standard of teaching plummeted. This was compounded by the fact that private universities are not subject to the National System of Higher Education Evaluation (SINAES), (SECOM, 2005).

The opening up of higher education to the private sector, promoted by the Cardoso government, led to a great imbalance between the number of places offered by federal public universities and by private universities. In 2003, only 21 percent of available places could be found in the 55 federal universities that presently exist (SECOM, 2005). Nevertheless, some states have their own public universities that maintain their autonomy in relation to the current federal universities legislation, so its implications are not universal.

In 2005, the Ministry of Education outlined a plan which aims to offer 400,000 places in the federal university system during the four years of the da Silva government. A target has been set to achieve 40 percent of university places being offered by the federal public sector by 2011. The same proposal had already been legally sanctioned in the past; however, President Cardoso vetoed it (Lobo, 2005).

Most prominent among the measures already implemented by the present government is the 1.7 billion *real* (USD 680 million) increase in the budget for federal universities. With regard to the hiring of teachers, a problem that is frequently taken up by student associations and other civil society organisations, the present government has hired more than 2000 teachers and hopes to hire another 6000 by the end of 2006. This would amount to a doubling in the number of newly hired teachers in comparison with the previous government (Ministério da Educação, 2005a).

Some of the main points of conflict around the project relate to the two issues of university autonomy and social transparency. The government's proposal to create a Social Transparency Council, which would be a consultative body formed of civil society organisations, has been criticised for supposedly interfering with university autonomy. But the ex-Education Minister Tarso Genro – who led a large part of the reform process before leaving the Ministry – claims that the criticisms of the proposed Councils are based far more on political interests than they are on defending autonomy.

Another measure that will be enforced as soon as the reform is approved aims to raise the level of requirements for granting institutions university status. According to figures from the Ministry of Education, 99 of the current higher education institutions in Brazil would currently fall below this new minimum standard. Around 70 of these are private (*Folha Online*, 2005).

The government's timetable established that public hearings would be carried out in the country's five large regions between June and August 2004, with the aim of listening to the opinion of civil society representatives and local communities on the subject of the reform. It was also forecast that in June 2005 the higher education bill would be signed by the Executive and sent to the National Congress. However, by October 2005 the project had still not overcome the final phase of evaluation and fine-tuning by the Civil House, a presidential body in charge of packaging law proposals to be sent to Congress. The problems resulting from the political crisis linked to cases of corruption in the governing Workers' Party (PT), which began in May 2005, and hindered the debate on a countless number of bills sent to the Congress, including the university reform bill.

The methodology behind the debate and public consultation promoted by the government has been evaluated by different Brazilian civil society institutions. The organisations closest to the issue, such as the National Union of Students (UNE), the National Association of Higher Education Teachers (ANDES-SN), the National Union of Directors of Higher Education and Federal Institutions (ANDIFES), the Brazilian Society for the Progress of Science (SBPC), the Brazilian Academy of Science (ABS) and the National Confederation of Industry (CNI), among other groups, were strongly involved in the debate about the higher education reform project.

A year after public consultations began, the diver-



gence between different groups was explicit, and the construction of a consensus seemed unlikely. For the National Confederation of Industry (CNI), the reform should be geared to meeting the educational demands of the twenty-first century and towards production, pointing to the creation of more places for night students and distance learning (Ministério da Educação, 2005b). Teachers from ANDIFES defended the expansion of the public system to improve quality and inclusion, a struggle which has been historic for this organisation. To achieve this, ANDIFES supported the proposal to create a single regulatory framework for public and private education, as long as the autonomy of the universities, the freedom to direct and conduct research, and administrative and financial management were maintained by universities (ANDIFES, 2005).

The autonomy of universities is also defended by the Brazilian Society for the Progress of Science (SBPC), which is demanding a more rigorous accreditation system for private institutions and, in addition, questions the pivotal role of private foundations working ‘in association’ with public universities (SBPC, 2005). On this issue, the draft bill originally planned for the end of private foundations, a clear signal that the government considers that in many cases these foundations are actually used as a way of privatising universities, with the focus on a few elite institutions. However, aware of the need to create alternative funding streams for universities, there is a growing tendency to back a proposal made by ANDIFES which suggests that the foundations be maintained, but makes them subordinate to a university’s political and administrative management. Proponents of this scheme argue that it would help to ensure that concrete mechanisms of control and transparency are in place (Lobo, 2005).

The strongest opposition to the government’s draft bill has been expressed by university lecturers, who denounced the “*tendency for privatisation and the lack of funding for public universities*” (ANDES-SN, 2005). They also criticised the opening up of education to foreign capital, as the law authorises up to 30 percent of university funds to be raised in this way. The union has also criticised the government for reducing the original number of courses required to accredit higher education institutions from 12 to 8 in the final version of the draft bill. This is contrary to the official rhetoric espousing the need for more rigour and control, especially in private institutions.

The student sector, represented by the UNE, favours the reform as it considers it a “*necessary transition*” and believes that, even though educational companies have strong economic and political power and exercise substantial pressure over the Congress, in the draft bill the “*main ideas of the neo-liberal paradigm such as flexibility, productivity and reduction of costs were removed from the crux of the debate and, in addition, there is a clear tendency towards the revaluing and strengthening of public universities*” (UNE, 2005). The UNE’s main criticisms refer to the limited policies of financial assistance to students; the lack of equality between teachers, students and university management staff in the government of universities; and the fees charged by private institutions.

Even though the political crisis overshadowed the debate on university reform, it is important to point out that the proposal truly involved Brazilian society in a discussion on the higher education model to be constructed. The discrepancies centred on the highly republican and inclusive character of the reform, the notion that education is a public good, and on the need for transparency in, and public control of, educational policies.

Universities for Everyone – ProUni

The Universities for Everyone (ProUni) programme has been in place since 10 September 2004, when the Ministry of Education was approved as the body responsible for the granting of scholarships to private universities. The scholarships were to be given to those who could not access higher education and whose monthly family per capita income did not exceed one and a half times the minimum salary. In practice, the federal government is literally buying places in private institutions as a way to increase access to higher education for those on low incomes. However, it is spending less than is required to increase the number of places in the public education system.

Inside ProUni there is a policy of special quotas: 36 percent of grants are given to those of African descent. Of the total number of university students, only 25 percent are Afro-Brazilians, while 45 percent of the Brazilian population is of African descent.

The programme has not been accepted without controversy, and is criticised by some social groups as another form of private sector subsidy, to the detriment of the necessary structural investment in the public university system. This project has also been criticised for supposedly damaging one of the main pillars sustaining aca-

demic life: rewards based on merit. The government has declared that as the granting of scholarships and quotas on a permanent basis would amount to a paternalistic policy, this project will only be applied for a limited period.

ProUni and the broader university reform are independent but highly complementary projects, and together represent the present government's thinking on the strategic role of higher education in the development of an inclusive national project. According to this view, the university will not cease to be an elite institution but the government's efforts will, according to Genro, change the emphasis from elitism in an economic sense to the creation of scientific and technological prestige that can be closely linked to development policies. Democratising access to the universities is necessary if this objective is to be reached (Lobo, 2005).

In the reforms are approved, they will only bear fruit in the long-term. Nevertheless, it is already possible to discern that the general framework of public policy in Brazilian higher education is changing in comparison to the neo-liberal model established between 1994 and 2002.

Public Private Partnerships (APP) – Implementation à la Lula

Discussions about the adoption of a programme of public private partnerships in Brazil started in 2002, under the left-wing government. In December 2004 the national congress approved Law 11.079/2004 which regulates them. According to studies by the Brazilian Network on Multilateral Financial Institutions, the creation of legislation on PPPs (known in Portuguese as APPs, *Associações Público-Privadas*) in the so-called 'developing' countries is intimately related to a restructuring of funding from the IMF, World Bank and Inter-American Development Bank (IADB) towards infrastructure projects, following a period of decreased investment in this sector (Rede Brasil, 2005).

The analysis put forward by these institutions starts from the assumption that the public sector is in a state of fiscal collapse. As a solution, an opening of markets for large private companies is proposed, in areas such as energy, transport, telecommunications, water and sanitation. In relation to Brazil, this change in the programmes of the multilateral financial institutions coincides with the emphasis the Lula government placed on various

forms of economic incentives – including credits from the BNDES and specific legislation on APPs – to encourage investment projects in sectors that have a large social and environmental impact.

Brazilian law defined some general norms regarding bidding and contracting as a way of incorporating elements that were considered key in the success of APPs in other countries. These included: the adaptation of the existing legal system; a focus on fiscal discipline; an 'adequate' distribution of risk between the public and private partners; guarantees to the private sector; and the creation of a central body to coordinate the process of implementing the partnerships called the APP Management Committee (Brito y Silveira, 2005). The 'adequate' distribution of risks and guarantees given by the state to private investors through guarantee funds is perhaps, according to the Brazil Network, "*the cornerstone of the APP scheme*" (Rede Brasil, 2005). The guarantees against risk constitute a defence of private investors against eventual state regulations that might in the future protect citizens' rights.

The Brazilian model can be defined in the following way (Brito and Silveira, 2005:9):

APPs are a way of providing infrastructure and public services whereby the private partner is responsible for the design of the project and the finance, construction and operation of the apparatus which will subsequently be transferred to the state. The public sector becomes a partner in so far as it is the buyer, of a part or all, of the services that are made available. Control of the contract is determined by performance indicators related to service provision and no longer through the physical and financial control of the work.

The law also offers the possibility of combining the receipt of income through the charging of rates with state subsidies, and defines the APP contract as a public works concession contract, either sponsored or managed. In the traditional concessions that come from privatisation, income the company receives through charging rates is sufficient to generate a return on the investments made, while in the APP system it is possible that income that results from the charging of rates can be further complemented with public funds, allowing for investments to be made.

On the other hand, new Brazilian legislation establishes the creation of a management body, composed of



delegates from several ministries, which will be responsible for choosing the services that will be hired, controlling the procedure for the drawing-up of contracts, authorising the opening of bidding, approving its documents and evaluating the implementation reports of the contracts being carried out. Even so, most of the doubts and criticisms of the development of APPs in Brazil are related to the possibility that the project evades the Fiscal Responsibility Act, which limits public sector expenditure at all levels of government. The projects designed on the basis of this arrangement would, according to its critics, require the state to make future payments for depreciation, and remuneration for the capital invested. As this means future expenditure, they should be accounted for as public debt (Leitão, 2004).

The project would also evade requirements laid down in other laws which establish a clear separation between public and private interests, leading to the possibility that

a 'promiscuous' relationship between the public sector and private sector could exist, given that the state would in large part be responsible for the risk of the project. The inclusion of pension funds from state-owned company workers raises the risk that the costs of the project would effectively be financed by the public sector, either directly or indirectly, with the role of the private sector being simply to reap the economic benefits.

The APPs bill was passed by the Senate in December 2004 and signed by the Council of Ministers in February 2005. A year after the original plan, in September 2005, the APP Management Committee approved the rules and regulations governing guarantee funds, under the management of the Bank of Brazil. The regulation was the last obstacle for the launching of the APP. The government expects that the first calls for bidding will start between the end of 2005 and the beginning of 2006.

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