



OMBUDSMAN ASSESSMENT REPORT

Complaint Regarding MIGA's Involvement in
International Water Services Project - Interagua

DECEMBER 2008

Office of the Compliance Advisor/Ombudsman
International Finance Corporation/
Multilateral Investment Guarantee Agency

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1. CAO Mission and Complaint Eligibility

The Compliance Advisor Ombudsman (CAO) is an independent recourse and accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The CAO reports directly to the President of the World Bank Group. Its mandate is to address in a fair, objective, and constructive manner complaints brought by communities or individuals affected by IFC or MIGA projects, and to enhance the social and environmental outcomes of these projects.

Upon determining that a complaint meets the specified criteria for a CAO intervention, the CAO Ombudsman conducts an assessment of the situation to clarify the issues, facilitate communication between the parties about their perspectives and interests, and assist them in identifying opportunities for resolution. The assessment does not gather information to determine fault or make judgments on the merits of a complaint.

To be eligible for CAO assessment, complaints must demonstrate that:

- The complaint pertains to a project that IFC/MIGA is participating in, or is actively considering.
- The issues raised in the complaint pertain to the CAO's mandate to address environmental and social impacts of IFC/MIGA investments.
- The complainant may be affected if the social and/or environmental impacts raised in the complaint occurred.

2. Summary and Purpose of the Assessment

This assessment is in response to a complaint signed by three members of *Asociación Movimiento Mi Cometa* and *Observatorio Ciudadano de Servicios Públicos*. Filed on January 15, 2008, the complaint raises concerns about impacts of the International Project Water Services Guayaquil Interagua C. Ltda (Interagua).

The project was supported with \$18 million from the Multilateral Investment Guarantee Agency (MIGA), first approved in 2001. MIGA provides political risk insurance (guarantees) to the private sector.

Specific social and environmental concerns raised in the complaint include:

- Repeated cuts of residential water to the poor;
- Lack of service provision to poorer neighborhoods;
- Lack of sewage or wastewater treatment;
- Non-compliance with the concession contract resulting in infringements of MIGA's safeguard policies.

The CAO notified the President, Board and public on January 22, 2008, that the complaint meets its eligibility criteria for further assessment. The purpose of the assessment and this report is to (1) summarize the project, the issues raised in the complaints, and key interests identified during the assessment process; (2) inform the stakeholders about the views of the

others; and (3) identify areas of common interest and offer recommendations on next steps toward resolution.

3. CAO Approach / Methodology

Following eligibility determination, the CAO Ombudsman assessment team met with MIGA project team members to summarize the issues raised in the complaint and discuss their understanding of the issues.

The Ombudsman team then spoke by telephone with signatories to the complaint and Interagua representatives to discuss the complaint, describe CAO's mandate and complaint-handling process, and to set an agenda in advance of a February 27, 2008 trip to Guayaquil, Ecuador, to meet with the parties in person.

That assessment trip included meetings with following stakeholders:

- Signatories to the complaint from the NGO *Observatorio Ciudadano de Servicios Públicos* (OCSP);
- Residents who are water users (and thus clients of Interagua) in the neighborhoods of Guasmo Sur, Malvinas and Isla Trinitaria, including one organized meeting of approximately 70 people;
- The Director General and senior management of Interagua;
- The director of Interagua's regulatory agency, *Empresa Cantonal de Agua Potable y Alcantarillado de Guayaquil* (ECAPAG).

Shortly after the February 2008 assessment trip, the government announced that in October 2008, Ecuadorians would vote on a series of constitutional reforms that included, among other things, the right to water and prohibition of its privatization. In response to this announcement, CAO held a series of telephone and email conversations with the parties to discuss the potential impact of the referendum. Key questions included whether passage of the referendum would satisfy the complainants' demands; the role of the government and regulatory agency if the referendum did, or did not, pass; and potential scenarios if the referendum failed to pass.

The parties ultimately agreed to await the results of the October referendum before deciding how to proceed with the handling of the CAO complaint.

On October 28, the new Constitution was approved by about 65% of voters. While the results of the referendum satisfied some of the concerns raised by the complainants, there also were a number of unresolved issues regarding debt forgiveness and service cuts to the poor. The complainants requested continued involvement of the CAO Ombudsman to address those issues. A key concern was resolution of nearly 3,500 complaints that individual water users had submitted to the NGO for resolution.

In November 2008, a CAO Ombudsman team undertook a second assessment trip to Ecuador to discuss options and opportunities for resolution with the parties.

4. Summary of the MIGA Project

In 1999, Ecuador's state water utility – *Empresa Cantonal de Agua Potable y Alcantarillado de Guayaquil* (ECAPAG) awarded International Project Water Services Guayaquil (Interagua) a 30-year concession for the operation of all water and wastewater facilities and systems in the city of Guayaquil.

In mid-2008 Bechtel sold the majority of its shares to Proactive Medio Ambiente, which is owned jointly by the Ecuadoran firm Hidalgo e Hidalgo and the Colombian company Fanalca. Interagua is regulated by ECAPAG under the terms of the concession contract.

The concession requires Interagua to improve services and operating performance of the existing municipal water utility in Guayaquil, especially to poor areas that have little access to potable water and poor sanitary conditions, by reducing the amount of water that is unaccounted for and increasing cash collection. According to project documentation, during the first five years of the concession, improvements must be made in the quality of water services, as well as in the number of potable water and sewage connections. Service coverage is expected to increase during that time by 30-40 percent.

The company is regulated by ECAPAG under the terms of a concession contract that sets targets for quality of water provision, connections of potable water and sewage, and service coverage.

5. Key issues raised in the complaint and assessment interviews

The complaint maintains that, contrary to the objectives stated in the concession contract and MIGA project documentation, Interagua's operation has caused a range of social and environmental problems that are affecting poorer communities and neighborhoods in Guayaquil.

According to the complainants, the company's social impacts include repeated cuts of residential water without any additional supply regulations for water service; water cuts in residences of elderly and low-income people owing to their inability to pay; lack of service extension to specific neighborhoods, especially low income residents; non-compliance of contractual obligations for the refurbishing and expansion of services. In addition, the complaints state the project is responsible for contamination of the Guayas River and some estuaries, and this has resulted in public health problems such as respiratory illnesses, skin rash, and diarrhea due to a lack of proper wastewater treatment.

A key health concern raised in the complaint was an outbreak of Hepatitis A in June 2005, which was investigated by local authorities (Civic Control Commission and Office of the Ombudsman), and according to the complaint, the authorities arrived at the conclusion that the water “was not fit for human consumption.”

The complaint also states that the project does not comply with some of MIGA's Performance Standards relating to social and environmental management systems, pollution prevention and abatement, protection of public health and safety, and MIGA norms on social policy and environmental sustainability, and elimination of liquid effluents.

In addition to the specific issues described in the written complaint, OCSP representatives say that Interagua's complaint handling process is inadequate because it is relatively unknown and

does not address the water users' grievances or respond to their specific economic circumstances. In addition, complainants believe there should be greater civic participation in regulating and monitoring the company and ECAPAG's supervision of it.

The complainants believe generally that access to water is a fundamental human right, and that no one should ever be denied the right to water for basic living needs because of an inability to pay.

6. Perspective of Interagua

The company believes that despite delays in expanding services to certain areas, Interagua is fulfilling its contractual obligation to increase services throughout the city of Guayaquil, and to establish a payment structure that meets the needs of water users.

Regarding the issue of debt and hardship in Guasmo Sur, Interagua's Director General said in the months prior to being awarded the concession contract, in August 2001, ECAPAG installed new water infrastructure in that area. However, when Interagua began its contract, technicians discovered the new infrastructure was substandard, and the entire system had to be replaced. As of December 2008, the company reported 100% continuity of services throughout Guasmo Sur and the city.

As of February 2008, Interagua reported it was receiving approximately 1,200 complaints per month, which represented less than 1 % of Interagua accounts, and a process was in place for handling these concerns.

The company told the February 2008 assessment team that it holds two meetings per week with community leaders from across the city in the offices of Interagua. In February 2008, a system was in place whereby one "community contact point" was assigned to every 400 users. The aim was to collect information and respond to issues brought to those contact points. In addition, the company said it has negotiated with community leaders in a number of neighborhoods across the city to address debt issues. The community of Bastion Popular was cited as one example where 35 leaders approved renegotiated payment terms for consumers.

Regarding water quality, Interagua monitors a network of more than 60 locations each day. It acknowledges there are problems with the quality of the information, particularly where consumers use pumps – which Interagua says results in contamination to the system. The hepatitis outbreak in 2005 was, according to the company, a serious situation that involved poor piping infrastructure that Interagua inherited from the public water provider.

Regarding wastewater and sewage treatment, Interagua is designing a new wastewater treatment system but it is not expected to be operational until 2010. A completed master plan for this system is awaiting approval ECAPAG. As of February 2008, the company said it was behind schedule on completion of this system. The principal reason, according to Interagua, is that the city's and ECAPAG's key focus is expansion of service and connections, and as such ECAPAG has not acted to approve the master plan, and is placing its highest priority on service expansion over wastewater treatment. At present, only 10 percent of city water is treated prior to discharge into area waterways.

Interagua acknowledges there have been problems with infrastructure, service cuts and billing in poorer neighborhoods. These are on-going challenges the company says it is committed to

addressing and resolving. Interagua believes that despite the challenges, it has significantly improved the overall water delivery system for poor residents, and is working hard to balance the terms of the concession contract with on-the-ground realities and the requirements and complexities of its primary client – the city of Guayaquil.

7. Areas of Agreement

Following the November 2008 CAO assessment trip, immediately after passage of the Constitutional referendum, both Interagua and the NGO expressed desire to work together to address water users' concerns, and to improve the quality of engagement between the company, the NGO and the water users. Specifically, the parties agreed that:

- The ongoing Constitutional process – including debt forgiveness and who and how people may qualify for specific types of assistance – should help resolve many of the issues presented in the complaint to CAO. The constitutional process also should determine implementation legislation (i.e., how the government will adapt the legal code governing domestic water provision).
- In the interim – while the parties await the government's reform process – the company and NGO agree that (1) Interagua will reconnect water service to users who pay their October 2008 water bill; (2) debts will be suspended until the government formally defines "extreme poverty"; (3) no services will be cut as long as October 2008 and all future bills are paid, and (4) users will have access to flexible pay agreements if they fall outside the government-mandated category of people qualifying for debt forgiveness.
- Interagua will review the approximately 3,500 outstanding complaints presented to the NGO by water users, and the parties will begin working together to discuss the company's process for reviewing outstanding complaints and explore options for their resolution.

8. CAO Ombudsman assessment of opportunities and next steps

The outcome of the November 2008 meeting between the NGO and company set the stage for future dialogue and agreement-seeking between the parties to address the multiple issues raised in the complaint and assessment interviews. The meeting resulted in an agreement between the company and NGO that each party would abide by the results of Ecuador's constitutional reform process, and that the company would implement interim measures aimed at debt reduction for water users.

The CAO Ombudsman team agreed to monitor implementation of the November 2008 agreement – which was signed by all the parties (see full text of the agreement in Appendix A).

Because the November agreement acknowledges that certain issues will be addressed only after the government announces specific constitutional reform measures, the Ombudsman team believes additional meetings between the parties will be important once those state decisions have been taken.

Regarding resolution of the 3,500 complaints to the NGO, the November agreement lays out the company's intention to review these cases. Once the cases are reviewed, it will be important for the parties to discuss the results of the review, and how the cases will actually be resolved. This

issue also represents an opportunity for the parties to work together to design a systematic and transparent grievance handling system for future cases that may be raised by water users.

Involving the water users themselves in the design of such a system, as well as in discussions about other issues affecting them, will be an important step toward building trust and finding durable solutions to the issues.

The CAO Ombudsman team proposes a day-long meeting in early 2009 in Guayaquil of no more than three representatives from each of the three stakeholder groups – Interagua, OCSP, and representatives of the water users. CAO would facilitate the meeting with the aim of discussing the results of Interagua's review of the 3,500 cases and agreeing next steps; jointly reviewing the remaining issues raised in the complaint and options for resolution; and exploring options for establishing a permanent mechanism for company-community engagement and issue-resolution.

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