



Ombudsman Conclusion Report

This report summarizes the CAO's complaint handling process on the MIGA-supported Interagua project in Guayaquil, Ecuador

Summary of the Complaint and CAO Ombudsman Process

In 2001, MIGA provided an \$18 million guarantee to International Project Water Services Guayaquil (Interagua) – which operates all water and wastewater facilities and systems in the City of Guayaquil, Ecuador. The company began operating in Guayaquil in 1999, when Ecuador's state water utility – *Empresa Cantonal de Agua Potable y Alcantarillado de Guayaquil* (ECAPAG) granted it a 30-year concession. At that time, the company was owned jointly by the US-based Bechtel Corporation, the UK public services company United Utilities, and the Italian power company Edison.

In mid-2008 Bechtel sold the majority of its shares to Proactiva Medio Ambiente. The company is now owned jointly by Proactiva (majority shareholder), the Ecuadorian firm Hidalgo e Hidalgo, and the Colombian company Fanalca. Interagua is regulated by ECAPAG under the terms of the concession contract.

On January 15, 2008, the NGOs *Asociación Movimiento Mi Cometa* and *Observatorio Ciudadano de Servicios Públicos (OCSP)* filed a complaint to CAO about the social and environmental impacts of Interagua's operations. Issues in the complaint included water cuts to low-income residents, lack of service connections in poorer neighborhoods, lack of sewage or wastewater treatment, and concerns about the company's compliance with the



concession contract and with MIGA/World Bank performance standards.

A CAO Ombudsman team conducted an assessment of the issues and the stakeholders' options for resolving the complaint. Following the team's first visit with the stakeholders in February 2008, the Ecuadorian government announced that in October 2008, citizens would vote on a series of constitutional reforms that included, among other things, the right to water and prohibition of its privatization.

Because of the complainants' position that water privatization is a violation of human rights and should not be legal, the stakeholders agreed that the outcome of the constitutional referendum would have implications for how or whether to proceed with a CAO process. (For example, passage of the referendum could potentially result in government's expropriation of Interagua – returning the utility to the public sector.

The CAO team held a series of discussions with the parties about options and potential scenarios stemming from the referendum – including whether its passage would satisfy the complainants' demands; the role of the NGO, government and regulatory agency if the referendum passed or failed; and strategies for closing the CAO complaint. The parties ultimately agreed to postpone a decision about how to proceed with the complaint until after the referendum.



conditional on the disconnected customers paying in full their October 2008 bill.

On October 28 2008, the new constitution was approved by nearly 65% of voters. While results of the referendum satisfied some of the concerns raised by the complainants, they also identified 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.

The agreement also stated that customers who did not meet criteria for cancellation of arrears and re-connection of service were eligible to sign flexible pay agreements to regularize their payments and arrears.

Between November 2008 and July 2010, the parties were engaged in a CAO-facilitated dialogue process that resulted in nine signed agreements and an independent 'Conflict Resolution Table' undertaken by the stakeholders. The agreements and outcomes are summarized below. Full text of each of the agreements is available on the CAO website.

A key concern raised by OCSP at the November 2008 meeting was resolution of nearly 3,500 complaints that individual water users had submitted to the NGO over a period of several years. Stakeholder discussions at that meeting – and throughout much of 2009 – were heavily focused on resolving those complaints. As that topic continued to be negotiated, and while parties awaited the government's implementation of constitutional reforms, two additional agreements were signed by the parties in **February 2009** and **May 2009**, extending provisions of the November 2008 agreement.

Summary of the Agreements

In **November 2008**, following passage of the constitutional referendum, Interagua agreed to reconnect service to households in several low-income areas of the city (where cuts had been made due to lack of payment), and suspension of accumulated arrears until the government provided further clarity on implementation of the reforms. Reinstatement of service was

In an effort to address more systemically the issues of water cuts and debt incurred by low-income people – rather than case-by-case and/or only by resolving the 3,500 complaints filed with OCSP – the stakeholders began focusing their negotiations on the key factors associated with people's inability to pay their bills, and on customer service and the quality of the company's grievance handling procedures.

At stakeholder meetings in **June 2009** and **July 2009**, the parties reached agreements specifying concrete steps toward achieving

those goals. These included undertaking a socio-economic study of people's ability to pay their water bills, and a collaborative project to verify the validity and reliability of meters installed by Interagua.

After several months of negotiations over the study design and meter verification project, Interagua proposed an initiative whereby certain indebted water users could gradually cancel 50 percent of their debt and 100 percent of their penalties and interest. OCSP sought a 100 percent debt cancellation, but in **September 2009** the NGO agreed that water users should be made aware of Interagua's proposal. Interagua then agreed to notify those users whose cases had not been resolved, giving them the option to avail themselves of the offer.

Water users who did not avail themselves of Interagua's offer would become the new universe of users for the socio-economic study, which the parties agreed to undertake in November 4, 2009.

Following the September 2009 meeting, in an effort to break an impasse over how the socio-economic study should be designed and implemented, stakeholders agreed to jointly design and implement a 'Conflict Resolution Table.' The project was aimed in part at resolving the 3,500 claims that OCSP presented to Interagua, and as a pilot project for handling future claims in a more systematic and predictable way. It also sought to help Interagua and OCSP gain a better understanding of the socio-economic factors associated with people's inability to pay their bills, and for Interagua to play a role in helping customers 'regularize' and manage their payments.

The stakeholders worked together for several months to draft the goals and protocol for the 'Conflict Resolution Table'.



In **December 2009** they reached agreement that the project would begin in early 2010, and agreed that notifications would be sent by Interagua to water users who had filed first-instance complaints. Interagua agreed to notify water users about the Conflict Resolution Table in January 2010.

It was agreed the Conflict Resolution Table would involve representatives of OCSP, the company, and water users who were involved in the CAO-facilitated dialogue process. The 'Table' would meet over a period of several months, and the CAO would monitor its progress.

In **February 2010**, part-way through the Conflict Resolution Table project, the CAO team facilitated a meeting to review progress of the Table and help the parties address obstacles. At that meeting, stakeholders agreed on a strategy for finishing the work of the Conflict Resolution Table within a 30-day period. They also agreed to prepare a list of recommendations – based on outcomes of the Conflict Resolution Table – regarding Interagua's customer service and its plans to review its formal grievance mechanism system.

Also at the February 2010 meeting, the parties resolved issues regarding pay agreements for people who had participated in the Conflict Resolution Table, as well as a strategy for involving a larger number of water users in the process.

The parties worked together for several months to complete the Conflict Resolution Table, to jointly draft a final report from the process, and to analyze results and outcomes.

In **July 2010**, the CAO team facilitated a stakeholder meeting to review lessons and outcomes of the Conflict Resolution Table, and to discuss outstanding issues raised in the CAO complaint. At that meeting, the stakeholders presented their jointly drafted report on the Conflict Resolution Table, and signed a final agreement indicating steps that had been accomplished and issues that they would continue to work on.

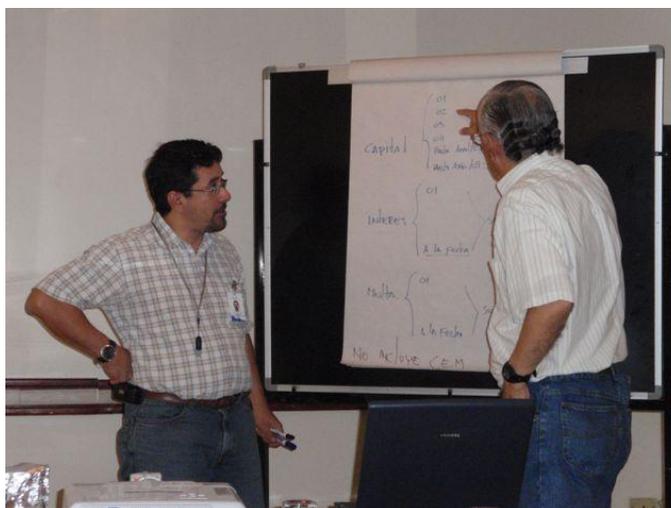
The CAO agreed to formally close the complaint, but to monitor the parties' working agreements for three months.

In December 2010, the CAO team facilitated a final meeting of the stakeholders, during which the parties discussed obstacles, lessons learned and future opportunities.

Outcomes of the Dialogue Process

The CAO-facilitated dialogue table involving the stakeholders in Guayaquil resulted in several systemic changes to Interagua's customer service and complaint handling procedures, and more generally in the company's approach to community engagement and outreach to vulnerable populations.

The most significant of these changes stemmed from the "Conflict Resolution Table", designed and implemented jointly by the parties. Through that process, OCSP and Interagua engaged in face-to-face problem solving with water users over a period of several months in an effort to resolve water users' specific concerns, to better understand the economic and social



situation of water users generally, and to develop a more systematic and predictable approach to Interagua's grievance handling and community engagement.

As stated in the July 2010 agreement, the results and lessons learned from the Conflict Resolution Table enabled Interagua to replicate the experience in similar processes in different sections of the city of Guayaquil.

At the final CAO-facilitated meeting in December 2010, several stakeholders – including one NGO representative – called the Conflict Resolution Table the single most valuable outcome of the yearlong dialogue process. From OCSP's perspective, the Conflict Resolution Table demonstrated that a 'user participation model' was a more trusted and effective approach to complaint handling than a unilateral review and ruling by a single company representative.

Specific outcomes of the Conflict Resolution Table included:

- Design and launch of an Ombudsman (or *Defensoria del Usuario*) Office within Interagua;
- Review and satisfactory resolution of about 80% of the 3,500 cases presented to Interagua by the NGO;

- Replication of the Conflict Resolution Table approach in areas of the city that were not included in the complaint to CAO;
- Changes to Interagua's customer service and community engagement strategy that benefitted users who had presented complaints to OCSP, and other users throughout the city in similar situations.
- Clarifications and other improvements to formal payment agreements between Interagua and customers struggling to pay their bills;



Other outcomes of the CAO-led dialogue process that did not stem directly from the Conflict Resolution Table included:

- Suspension of debt and arrears in the days immediately following the constitutional reform process;
- A visit by the stakeholders to Interagua's meter-testing laboratory;
- A debt-forgiveness program that was made available to water users represented by OCSP as well as other water users throughout the city;
- Establishment of a 'special fund' by Interagua that would serve as an assistance program for water users who are unable to pay their bills but do not qualify for other subsidies.

At the closing meeting in December 2010, OCSP identified several agreements they believed the company had not fully implemented, and they raised additional concerns regarding Interagua's operations and its legal obligation to meet the needs of the Guayaquil's water users, particularly the poor. When asked to appraise the list of

agreements and outcomes reached throughout the collaborative process, OCSP responded with the following concerns:

- Water cuts are still carried out by Interagua in certain cases. Interagua should consider a model adopted by several other countries, in which households with delinquent accounts receive a prescribed minimum amount of water sufficient to meet drinking and personal hygiene needs.
- An agreement to jointly monitor and verify the reliability of water meters was never implemented. This was because a sample group of meters (which had not undergone verification or maintenance by Interagua) could not be identified. The fact that the only accredited lab in the city belongs to Interagua was an additional obstacle to implementing the agreement.
- Certain irregularities in some pay agreements still need to be corrected, such as the formatting of paper agreements, and use of an electronic signature.
- Follow-up is needed of users who signed a pay agreement with Interagua but were not able to keep to the terms of that agreement.
- The 'special fund' for vulnerable groups is not sufficient, and the company should be more proactive in informing people about how to access the program.

- The *Defensoria* office lacks robustness and independence. There has been little information disclosure or public dissemination of the position and criteria under which it functions. This hinders the office from acting in true defense of the user or with participation from water users.
- The dialogue process did not resolve issues related to contamination of water estuaries and resulting public health concern, discrimination in provision of water services, and compliance with MIGA policies and procedures. OCSP expressed its intention to pursue these issues through legal channels and through a new, publicly sanctioned 'citizen observer' process established by the new constitution. Still, in light of questions about compliance with MIGA standards, the NGO believes the guarantee should be withdrawn.



commitment to continue using dialogue as a means to resolve ongoing differences and future conflicts.

Opportunities for the Future

Following the parties' respective reviews of the dialogue process and implementation of the nine agreements, the CAO team highlighted several specific opportunities for the parties to pursue. These included the following:

- Building on the success and insights from the Conflict Resolution Table, the parties should identify a process for continuous monitoring and evaluation of the effectiveness of the debt-forgiveness / payment agreements between Interagua and individual water users. (For example, how many of the signed Payment Agreements were met and closed to the satisfaction of customers? How many people who signed an agreement were unable to meet the terms of the agreement, and what has happened to those customers'?)
- The parties ultimately agreed on a protocol for meter verification, but the project was never undertaken. There is an opportunity for them to move forward

In response to these concerns, Interagua acknowledged its operations were far from perfect, and that the complexity of the technical, political and regulatory environments leaves room for improvement on many fronts. However, from Interagua's perspective, the dialogue process resulted in substantial improvements in customer service, community relationships and engagement, payment options for poor and vulnerable clients, and in the company's approach to resolving conflict and addressing systemic issues.

Interagua also said it believed strongly that the dialogue process resulted in a more productive and transparent relationship between the company and the NGO, which in turn will result in greater accountability and service for water users across the city.

At the closing meeting of the CAO-facilitated process, both parties expressed a

on this project now, in accordance with the terms of the June 2009 agreement.

- Interagua is required to abide by Ecuadorian laws governing the treatment of constitutionally defined ‘vulnerable groups.’ However, both the company and OCSP agreed that people often fall victim to circumstances and vulnerability but are unqualified or unable to access government assistance programs. To address this need, Interagua established a "special fund" within its ‘Corporate Social Responsibility’ and humanitarian programs. There is an opportunity for Interagua to share lessons and experiences regarding this fund and its handling of vulnerable groups. (For example, what are the criteria for qualifying for assistance through the special fund? How has it been applied to date? What are obstacles to its effective implementation?)
- Interagua’s *Defensoria del Usuario* (similar to an Ombudsman) was created to serve as an in-house mechanism for resolving difficult cases, as well as a mechanism for advising management about systemic issues. There is an opportunity for the company to strengthen the transparency and functioning of this role. For example, developing and distributing concise Operational Procedures that include the mandate and roles of the office – including specific steps involved in a grievance handling process, and producing publicly available reports of *Defensoria* cases and their outcomes – could strengthen the offices’ role, credibility, and effectiveness. In addition, there is an opportunity, as suggested during the dialogue process, to develop options for involving representatives of water users as well as representatives from other sectors to serve in an advisory capacity to the *Defensoria* function.



- Quality assurance and safety of water is a shared interest among the parties. There is an opportunity for continued dialogue about the collection and dissemination of credible lab results, and about strategies for joint monitoring of water quality. Such a program could enhance awareness and practical knowledge in households and institutions like schools and businesses about the risks and prevention of waterborne diseases.

Lessons and Insights

The material issues in the complaint about MIGA’s support of the Interagua project centered on the company’s provision of service – including the number of connections in poorer neighborhoods, service cuts due to non-payment, and the quality of water provided by Interagua. The complaint also questioned the company’s compliance with Ecuadorian law and specific water treatment and quality standards.

More fundamentally, the complaint exemplifies the widespread opposition to privatization of water, and the NGO’s deeply held belief that corporate control over a basic necessity of life is unacceptable.

Stakeholders wrestled with the key issues on both sides of this global debate throughout their facilitated dialogue process.

OCSP argued that water should be treated as a common good and the responsibility of government. From their perspective, access to clean water is a human right, not something to be traded or withheld on grounds of cost. Investment from government is preferable to privatization, because the public sector can target the most needy, rather than the most profitable opportunities. Because water supply is a natural monopoly, private companies like Interagua have no incentive to increase quality and reduce prices.



Interagua holds the view that problems of water supply and quality require significant investment, particularly where people have little or no access to clean, potable water. Where the public sector has been unable to provide this investment, private involvement is essential. When companies like Interagua are invited to fulfill this role, they should be allowed to profit through fair and reasonable charges that reflect the cost of supply, and issues of quality, equity and environmental standards should be handled through effective regulation.

Negotiations around this highly controversial issue involve challenges and positions that are difficult to surmount. Generally, the outcomes of the CAO-facilitated dialogue process suggest that some of the contentious issues around water privatization can be resolved through interest-based negotiations and stakeholder focus on mutual gains. Other issues, such as the legality and morality of water privatization, are unlikely to be resolved through mediated or agreement-seeking processes.

More specific lessons and insights that emerged from the CAO process included the following:

- Stakeholders involved in the dialogue process were able to find solutions that

addressed a number of material concerns, and at the same time maintain their respective viewpoints and deeply held positions.

- The parties were often frustrated by a lack of communication and follow-through after commitments were made at the table. In some cases, practical matters or unforeseen obstacles emerged that prevented or delayed implementation of a specific agreement, but those issues were not communicated to the other side in a timely manner. To address this, it is important for both the facilitation team and the stakeholders to consider concise terms or ground rules for implementation of agreements, and for how communication will occur outside the facilitated meetings.
- Ground rules also should help stakeholders identify what constitutes fairness or 'good faith'. In several instances, negotiations broke down because the actions of the other side were seen as inconsistent with the spirit of a collaborative process. For example, the NGO was frustrated when the company undertook an initiative to repair meters just prior to a 'meter verification' project that the parties agreed to undertake jointly. In another example, the company was frustrated by



the NGO's use of public protests and denunciations of Interagua, while it was simultaneously seeking to build trust and consensus.

- Turnover among dialogue table participants is an inevitable challenge – particularly in longer-term processes like the Interagua case – and can disrupt progress or momentum in a collaborative process. For example, it was only after Interagua's current Managing Director joined the staff, nearly a year after the complaint was filed, that the company agreed to engage in a facilitated process with the NGO. And while representatives of the NGO and water users generally remained consistent throughout the process, visitors or new representatives were sometimes invited, unbeknownst

to the other side, to attend meetings and express their viewpoints. While these parties brought important concerns to the table, they often lacked key information and background on the complaint, the CAO process, and on previously signed agreements. To address these issues, facilitators and dialogue table participants should develop concise ground rules regarding who participates in substantive negotiations, how turnover in stakeholder groups will be managed, and a process governing how members of larger constituent groups will participate in formal dialogue table meetings.

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The nine signed agreements and final report of the Conflict Resolution Table are available on the CAO website – www.cao-ombudsman.org