

Murky Waters: A Look at the Perpetual Puzzle of Water and Sanitation Services in Guayaquil, Ecuador

In 2002, the United Nations Committee on Economic, Social, and Cultural Rights published a “General Comment on the Right to Water,” that affirmed access to water as a universal human right. The document interprets the “International Convention Regarding Economic, Social and Cultural Rights,” a treaty signed by 151 countries around the world, including Ecuador. According to this document, the human right to water implies access to sufficient, safe, high quality, physically accessible and affordable water for personal and domestic uses. Among the explicit obligations concerning national governments, the document demands action to respect, protect, and enact the right of all people to healthful and accessible water resources.¹ In other words, each national government is responsible for providing basic water services to each citizen.

However, over the course of many years the debate has not been resolved with regard to possible solutions for development problems, among them water and basic sanitation. The international financial institutions entered the vacuum of possible solutions to the lack of adequate infrastructure, a lack of available capital, and a deficient management of the resources by governmental organizations. Their analysis proclaimed that the private sector would be the correct solution to the deficiencies, and their internal politics began to promote this solution by requiring eventual privatization as a condition for the receipt of loans. But at the same time that the private sector possesses the capital necessary for investment in the region’s infrastructure it also complicates development problems, because of the private sector’s at times implied and often explicit motivation to generate profits. The large population living below the poverty line in “developing” countries is at high risk of suffering from exclusion from necessary services due to an inability to pay adequately. A basic service is converted in a business, and ultimately, someone has to pay for the water.

Antecedents

The provision of safe, accessible, sufficient, acceptable, and affordable water for all citizens of Guayaquil remains an elusive goal, in spite of various legislative attempts to ensure this human right at a national level. This legislation includes Article 23, No. 20, of the Political Constitution of Ecuador that explicitly declares “the right to a quality of life that assures health...potable water, environmental sanitation...”² In other words, according to Ecuadorian law, each citizen is deserving of access to water and sanitation, and this right has precedence over the private interests of businesses. Guayaquil’s government thereby represents a paradox: it recognizes its responsibilities to its citizens, its public decrees honor this duty, but in the moment of regulating its responsibility it retires from action through the privatization of the service. However, the City of Guayaquil cannot legally renounce its responsibility to assure potable water services to all of its citizens.

The failure of the city to provide potable water and sewerage services cannot be reduced to a simple debility of a single cause or responsible factor; in reality, the subject involves every aspect of municipal life in Guayaquil. It is definitively tied to the precarious coastal geography of the city, the rainy climate and the social and economic history of the city. But at the same time, it cannot be denied that the subject has profound roots in the lack of governmental responses to the social necessities of a profoundly poor population. This

¹ Right to Water Programme. “Clean Water for the Poor?” www.cohrc.org/water viewed 26/1/06, pub. 2005.

² Andrew Bovarnick y Erik Swyngedouw. *Guayaquil Futuro: La crisis del abastecimiento de agua en Guayaquil*. Quito: Instituto Latinoamericano de Investigaciones Sociales (1994), p. 124.
Asamblea Nacional Constituyente. *Constitución Política del Ecuador*. (2002) Art. 23, No. 20.

factor is demonstrated in the absence of urban planning and inefficient public administration, circumstances documented by various foreign entities such as the Inter-American Reconstruction and Development Bank, USAID, and the Ecuadorian Ministry of Social Provision and Work.³ Basically, the city has grown without the infrastructure necessary to providing water and sewerage services to all of its residents. Therefore, one must avoid the argument that the services are deficient due to particular circumstantial difficulties unique to Guayaquil's case. The circumstances unique to Guayaquil have not been adequately dealt with, and they do not justify the permanent deficiencies present in the city. And meanwhile, the complexities of the case do not eliminate the constitutional rights of each citizen of Guayaquil to receive high quality potable water and sanitation services.

Historically, potable water and sewerage services have been managed with an efficiency corresponding to the degree of the city of Guayaquil's commitment to its urban planning. The various companies that have been charged with the provision of the services have been municipal departments, cantonal committees, and companies managed by the government at various levels. The common characteristic of all of them has been their deficient administration of borrowed funds and the inefficiency of their staff. In 1989, the Provincial Potable Water Company for Guayas assumed control of the water provision systems in an attempt to rescue the services from suspected political corruption and the manipulation of the Municipal government. This company operated with a degree of success, increasing the production and distribution capacities through the construction of a new water treatment plant and the construction of new pipelines in some poor sectors.⁴ Additionally, its improved administrative efficiency regained international credit lost by EMAP-G.⁵ However, at the same time that it completed projects necessary for its citizens, EPAP-G operated with an annual deficit of 24.1% that made it unsustainable as a business.⁶

Approximately during the same period as EMAP-G and EPAP-G, during the 70's, the City Sewerage Company of Guayaquil (Empresa Municipal de Alcantarillado de Guayaquil – EMAG) was created. This company was responsible for the elimination of waste waters and the drainage of rainwater, services that in 1976 were provided to 16.7% and 36.5%, respectively, of Guayaquil's population.⁷ In 1993 when the city government began to study the project of merging EPAP-G and EMAG, 90% of Guayaquil's citizens reported problems with their sewerage services, and the administrative inefficiencies of the company were monumental.⁸ The subject of sewerage in Guayaquil had never been taken seriously, left in the hands of a company that barely functioned. The combination of so many geographic difficulties in Guayaquil and the lack of productive investments left the city with real necessities in the area of sewerage.

It is crucial to note that the dependence of Guayaquil's municipal government was demonstrated not only in its economic dependence upon international markets but in its way of approaching the problem of under-development. The politicians looked outside their country to foreign professionals in order to obtain suggestions, rather than depending on their own technicians who would have been most familiar with the unique characteristics of Guayaquil. However, the real failure caused by the lack of urban planning and the rapid

³ Bovarnick, *Guayaquil Futuro*, p. 53.

Acción Internacional Técnica. *El Otro Guayaquil: Servicios Sociales del Suburbio – Intimidaciones y Perspectivas*. Guayaquil: Junta Cívica de Guayaquil (1976), pp. 5-6.

⁴ Bovarnick, *Guayaquil Futuro*, p. 49.

⁵ Julio Estrada Ycaza. *Guía Histórica de Guayaquil* v. A-C, n. 2. Guayaquil: Poligráfica (Nov. 1996), pp. 38-39.

⁶ Bovarnick, *Guayaquil Futuro*, p. 49.

⁷ Acción, *Otro*, p. 59.

⁸ Ycaza, *Guía*, p. 39.

growth of the city has been the fact that the city government has not effectively sought to respond to the basic necessities of its citizens. By investing in plans and studies that were never put into practice, the city government misspent its human resources, its international credits, and its credibility in front of citizens who continued to suffer from a lack of basic services.

The Transition

During the 1990's, the privatization of public services became an integral aspect of the politics of many Latin American countries, including Ecuador. Country after country sold its large public companies in hopes of obtaining capital for other projects.⁹ At that time, a chronic lack of government funds and limited foreign investments weakened the development of economies already predisposed to substantial unemployment. Additionally, the dependence on transnational companies and the exportation of primary products hurt them even more, because the natural resources were used and the economic benefits were funneled to other countries. Consequently, the public services suffered from a parallel lack of investment that left the governments unable to fulfill their constitutional responsibilities to provide those services to citizens.¹⁰

Meanwhile, international politics began to demand the privatization of water, arguing the necessity of preventing the negligent waste of a highly precious resource. The World Bank predicted that by 2005 two-thirds of the world's population would be living without access to a source of clean water.¹¹ With these threatening predictions, water is assumed to be unsustainable as a public good. Rather than the public or the government, private companies must control sources of water in order to insure that water is sufficiently valued to prevent the negligent abuse of the resource. The World Bank, a significant source of loans for development projects, supported privatization politics, often requiring the eventual concession of public companies as a condition for obtaining credit. In fact, from 1990 to 2002 the World Bank made 82 loans for development projects that included eventual privatization as a condition.¹² Additionally, international companies exploited the theory in order to promote their interests and justify the acquisition of contracts and credit.¹³ In the end, whether or not limiting access to water makes economic sense, the politics of privatization helped governments to shrug off their social responsibilities to provide clean, safe water to all of their citizens.

In Ecuador, the privatization process began in 1993 when the Law of Modernization of the State was written, formally permitting the privatization of public services and creating the National Council for Modernization.¹⁴ The Council's purpose was to create an Ecuador with high quality, accessible public services for all citizens, based upon a methodology of decentralization, privatization, concession of public companies to private companies, and reform of the State.¹⁵ The Social Christian Party (PSC), who controlled Guayaquil's

⁹ José Eduviges Rivas. "Triste Historia de las Privatizaciones en Latinoamérica." 29 March, 2002. (viewed 8 May, 2006) <<http://www.nadir.org/nadir/initiativ/agp/free/imf/privatizaciones.htm>>.

¹⁰ Ing. Miguel Delgado Cabrera. Entrevista personal realizada por Emily Joiner. 13 marzo 2006.

¹¹ Public Citizen. "Water Privatization: Debates & Issues." <http://www.citizen.org/cmep/Water/articles.cfm?ID=10842>. (visto 23 enero 2006).

¹² Cecilia Cherréz, Acción Ecológica. "Algo feo se cocina con el agua." www.accionecologica.org/otros2.htm (18 Junio 2006).

¹³ Ing. Miguel Delgado Cabrera. Entrevista personal realizada por Emily Joiner. 13 marzo 2006.

¹⁴ Ing. Miguel Delgado Cabrera. Entrevista personal realizada por Emily Joiner. 13 marzo 2006.

¹⁵ "Consejo Nacional de Modernización del Estado." <http://www.conam.gov.ec/default.html>. (visto May 8, 2006).

government at that time, strongly supported privatization. In August of 1993, Leon Febres-Cordero, Mayor of Guayaquil and member of the PSC, announced in an interview with the newspaper *El Universo* that “everything that may be privatized must be privatized. To privatize is not a synonym of worsening but of technifying, depoliticizing, de-bureocratizing, of making institutions more efficient.”¹⁶

The Council of Modernization is a national body charged with the privatization of the public services; however, Guayaquil is the only city where this process has been completed. In cities like Cuenca and Quito, substantial popular resistance prevented privatizations. Rather, the cities created public companies for public services that worked in a variety of services in order to provide them efficiently and at a high level of quality. For example, the telephone, potable water and sewerage company of Cuenca, ETAPA, provides a continuous water service, and the water is actually consistently consumable directly from the tap.¹⁷ In Guayaquil resistance to privatization was lacking, consistent with historical precedents of a political culture that discourages demonstrations and public protests. In the end this political culture allowed the termination of the privatization process.

ECAPAG, the Cantonal Potable Water and Sewerage Company for Guayaquil, was founded by Decree-Law No. 008, signed into effect on August 19, 1994. The law was dispatched by the National Congress and the President of the Republic, Architect Sixto Durán Ballén, specifically for the city of Guayaquil in its attempt to fuse the potable water and sewerage services within a single company.¹⁸ ECAPAG was a direct response to the economic inefficiencies and poor quality of services provided by its predecessors: Municipal Potable Water Company (EMAP), Provincial Potable Water Company of Guayas (EPAP-G), and Municipal Sewerage Company of Guayaquil (EMAG).

These companies typically had a relationship of temporary trust with international lenders, gaining and losing loans with the changes of their administrations. However, they consistently operated with a significant deficit and were all dependent on external funds. It was hoped that a merged company would insure regular financial functioning due to the balance struck between the potential profits to be found in potable water provision and the large, uncertain investments necessary to obtain an efficient sewage system. Additionally, taking the company away from the explicit control of the government gave ECAPAG an improved ability to acquire the foreign investments necessary for construction projects.¹⁹

Above all, the justification for the creation of ECAPAG was based upon the idea that “potable water and sewerage services are part of a unique process of water management that the community requires for its wellbeing, and which also includes rainwater drainage...”²⁰ More specifically, Decree-Law No. 008 explicitly identifies five purposes for ECAPAG: to deal with the permanent deficiencies of the services, unify water and sewerage services due to the interdependence of the two services, and provide consumers with water that is potable, clean, healthy as required by international standards and the Ecuadorian government. In terms of the permanent problems with water services, ECAPAG is responsible for the improvement of public health, the improved state of the environment, and the promotion of ecological conservation policy, each one of which is a responsibility of the national government.²¹

¹⁶ “No es fácil gobernar a Guayaquil.” *El Universo*, p. 14. 11 agosto 1993.

¹⁷ “Ilustre Municipalidad de Cuenca: ETAPA Cuenca.”

<http://www.municipalidadcuenca.gov.ec/empresa.php?id=34> (visto 8 julio 2006).

¹⁸ “ECAPAG: Historia de la ECAPAG.” 18 Julio 2005

<http://www.ecapag.gov.ec/SoloPortalECAPAG/portal.html> (visto 8 Marzo 2006).

¹⁹ Congreso Nacional del Ecuador. Ley de Creación de la Empresa Cantonal de Agua Potable y Alcantarillado de Guayaquil (ECAPAG). Decreto-Ley No. 008. (12 agosto 1994) Intro y Art. 4

²⁰ Congreso Nacional. Ley de Creación de (ECAPAG). Intro.

²¹ Congreso Nacional. Ley de Creación de (ECAPAG). 12 agosto 1994.

Additionally, ECAPAG's goals in terms of public health and the environment contradict the goal of economic efficiency, and the legal documents founding ECAPAG fail to clearly determine the health standards for the services, leaving public health to the company's judgment. On the environmental side, prior to the concession ECAPAG would choose the environmental facts "most attractive" to potential concessionaires.²² These contradictions undermine the argument that the company would do anything more than pay lip service to the goal of high quality services for more citizens of Guayaquil, reducing their negative effects on the population's health and the environment.

Ultimately, ECAPAG was planned as a response to the inefficiencies of the municipal and provincial companies that existed previously.²³ Responsible for responding to the government, they were not fully autonomous. It was hoped that ECAPAG would be a more efficient company if it were free of patronage and demands from the city government. This goal was apparently met by its financial independence from the city. However, with the Mayor of Guayaquil seated on the Board of Directors of ECAPAG, the company did not manage to break its most fundamental ties with the city government.

It is interesting that these stated justifications for the company do not include the putting in order of the water and sewerage systems for the prospective concession process. Even so, it may be supposed that the concession was already planned by the government, an idea reinforced by the existence of CONAM, whose declared purpose was that of encouraging the participation of the private sector in the public companies of this period. The following March, in 1995, ECAPAG's Board of Directors resolved to pursue privatization of potable water and sewerage services in the "least possible time" through a concession process, including the presentation and revision of potential concessionaire's bids based upon the Master Plan for Works written by ECAPAG.²⁴

At the end of the 1990's, the city's evaluation of ECAPAG's works was very positive. Its report, published in *Urban Indicators for the City of Guayaquil* in 2002, indicated that as a consequence of the investments of EPAP-G, ECAPAG had achieved a 70% coverage for potable water service. At this point, the water production capacity in Guayaquil had reached 1 million cubic meters per day; however, 80% of that water was lost from the pipes due to their poor quality throughout the distribution networks. During the same period, 1993 to 1999, ECAPAG reduced water prices for industrial consumption from \$1.68/m³. But, at the same time prices for domestic use rose from \$0.04/m³ to \$0.25/m³. These changes were made as part of a "real price" policy that encouraged the elimination of subsidies. Additionally, in 2000, 42% of homes were connected to sanitary sewage systems; nevertheless, only 9% of wastes collected through those connections passed through a primary treatment process before being released into the Guayas River.²⁵ The improved functioning of water services seems to have been based on the use of loans from the Inter-American Development Bank for the rehabilitation of pipes, treatment plants, and the cleaning of the sewers.²⁶

From a certain perspective, the positive results brought about by the administration of ECAPAG suggested that privatization was not necessarily a crucial course of action. With the help of external funds but still under the auspices of a public company, large steps were taken

²² Ing. Marcos Gorelik Ajzenberg y Econ. Hugo Sergio D'Oliviero. "Plan Maestro de Agua Potable y Alcantarillado Sanitario - Análisis Técnico Socioeconómico - Etapa Uno." Guayaquil: 1994.

²³ Congreso Nacional. Ley de Creación de (ECAPAG). 12 agosto 1994.

²⁴ "ECAPAG: Proceso de Concesión." 18 Julio 2005 <http://www.ecapag.gov.ec/SoloPortalECAPAG/portal.html> (visto 11 Junio 2006).

²⁵ Alba Arias de Vera. *Indicadores Urbanos Ciudad de Guayaquil 1993-2000*. Mundo Grafico: Guayaquil (2002), p. 14.

²⁶ Ing. Miguel Delgado Cabrera. Entrevista personal realizada por Emily Joiner. 16 marzo 2006.

toward improving the quality of services, public health, and the environment. However, ECAPAG received the funds necessary to conduct these activities through a loan from the Inter-American Development Bank, a lending institution that only loaned its funds under the stipulation that the services be privatized within a restrictive time period. ECAPAG was trapped by the local government in Guayaquil and its representatives on ECAPAG's Board of Directors, the foreign lenders responsible for their economic function, and the need for efficient and high quality services for Guayaquil's citizens.

The Concession

On April 12, 2001, what the newspaper *El Universo* would call a "new stage for ECAPAG" began with the signing of the concession contract between ECAPAG and International Water Services.²⁷ The concession of potable water and sewerage services was the culmination of a long transition process motivated by the demonstrated inability of public companies to improve the quality of services for all citizens of Guayaquil. It was hoped that the concession would bring private capital to the city for investment in infrastructure construction and rehabilitation projects, would eliminate political participation in the company's matters, and would bring the technology used to provide services up to date. The goals were appropriate for the circumstances at hand. However, ECAPAG did not manage to guarantee any of these goals through the concession contract. In the end, the urgency to privatize felt by the authorities motivated them to essentially sell the services without making any demands of the concessionaire. The concession contract was the first demonstration of ECAPAG's incompetence for protecting consumers by guaranteeing the provision of the high quality services that they deserved.

One may speak of a process of transition to the inclusion of the private sector in water and sanitation services that began with the development of the "strategic modernization plan" prepared by the national government in 1993. Beginning on that date and with the launching of National Congress for Modernization of the State, the way was paved for concession processes.²⁸ In 1996, following a failed attempt to concede the commercial side of water and sewerage services, ECAPAG's Contracts Committee received funds from the World Bank in order to create a concession team within the company. This group was responsible for the planning of the consulting work necessary for the preparation of a second solicitation of bids and later, of the concession contract.²⁹ ECAPAG's concession team moved quickly, contracting Banque Paribas in April 1997 to begin preparations for the first solicitation of bids. Their analysis of the concession models supported ECAPAG's decision to continue with a process of integral concession (concession of all aspects of the services) and helped them to define the concession's term of 30 years. Their research of "legal, technical, social, economic, environmental, commercial, and financial factors," and their estimations of necessary investments, formed the basis for ECAPAG to approach potential concessionaires.³⁰ In July of that year, the national government undersigned a loan from the Inter-American Development Bank that financed Paribas's services, repairs to the water and sewage systems, and ECAPAG's transition from an operational service provider to a regulatory body.³¹ The loan was provided with the condition that the services be privatized, a

²⁷ "Interagua opera desde hoy agua y alcantarillado." *El Universo*, sección "El Gran Guayaquil," p. 2. 11 Abril 2001.

²⁸ "ECAPAG: Proceso de Concesion." 18 Julio 2005 <http://www.ecapag.gov.ec/SoloPortalECAPAG/portal.html> (viewed 11 June 2006).

²⁹ Javier Díaz. "La participación del sector privado en los servicios de agua y saneamiento en Guayaquil, Ecuador." Banco Interamericano del Desarrollo: Washington, DC (2003), pp. 6-8.

³⁰ Díaz, "Participación," p. 11.

³¹ Banco Interamericano del Desarrollo. "BID aprueba US \$40 millones para mejorar agua y saneamiento en Guayaquil." www.iadb.org/exr/PRENSA/1997/cp16497c.htm (16 Julio 1997), visto 18 Junio 2006.

condition called “the first effort to relieve Interagua from required investments” by one critic of privatization.³² As the loan’s underwriter, the national government was obligated to push along plans for concession of potable water and sewage services. In February 1998, they took the first step to fulfilling this obligation, declaring the beginning of the first international solicitation of bids for integral concession.³³

The first solicitation was planned to be as quick and competitive as possible, without allowing the companies to find out about the bids submitted by the others. All of the available information regarding ECAPAG and Guayaquil’s systems was received by several consortia, including the research conducted by Paribas. Additionally, ECAPAG imposed a variety of requirements considered necessary by the concession team. The water rates charged by the concessionaire could not be changed during the first five-year period from a standard fixed by ECAPAG. In terms of investments, a minimum was set at \$72.5 million to be invested during the first five-year period and \$520 million over the 30 years of the concession. And the winning consortium would be that which proposed the most potable water and sewage system connections during the first five years, understanding that ECAPAG could determine where these connections were installed.³⁴

In the end, no one responded to the solicitation, and it was declared “deserted” in December, 1998.³⁵ A follow-up investigation conducted by Paribas indicated that two aspects of Guayaquil’s case were unfavorable for the city: political and social instability and a lack of Ecuadorian precedents in the area of privatization contributed to this aspect. Investing in Guayaquil simply implied too much risk for a foreign consortium, particularly due to the insistence of ECAPAG that Ecuadorian arbitration be utilized in case of disputes.³⁶ Aware of this information, ECAPAG’s concession team and Paribas resolved to soften the requirements for concession in order to be able to privatize the services through a subsequent solicitation.³⁷

The second solicitation was opened in January, 2000, with the prequalification of three consortia, Suez Lyonnaise des Eaux, International Water Services, and Thames Water Overseas. Following this action, the three consortia participated in the “communication of appearances” in order to give their suggestions regarding the concession requirements.³⁸ By incorporating the companies’ opinions in this way, ECAPAG tried to avoid the consortia’s rejection of the requirements as too demanding. In legal terms, Ecuadorians agreed to allow international arbitration in order to lessen the political risk perceived by the consortia. Also, the requirements eventually written into the concession contract eliminated the minimum investment for the first five-year period and total investments over the 30 year term were “estimated” at \$520 million. The minimum water pressure in the distribution network was lowered for the first five years, and the location of the new connections was made more flexible by the elimination of the mandatory installation schedule. Additionally quality standards for the first five years were fixed by ECAPAG, but the standards proposed for

³² “ECAPAG: Historia de la ECAPAG.” (18 Julio 2005)

<http://www.ecapag.gov.ec/SoloPortalECAPAG/portal.html> visto 8 Marzo 2006.

Cecilia Cherréz, Acción Ecológica. “Algo feo se cocina con el agua.” www.accionecologica.org/otros2.htm (18 Junio 2006).

³³ Díaz, “Participación,” p. 10.

³⁴ Díaz, “Participación,” pp. 11-13.

BPD. “Diagnostico Rápido – preliminar – Guayaquil: Inclusión de los pobres en el contrato de concesión y el manejo de aguas fluviales.” Marzo 2006.

³⁵ Díaz, “Participación,” pp. 13-14.

³⁶ Díaz, “Participación,” pp. 14-15.

³⁷ BPD, “Diagnostico,” pp. 3-4.

³⁸ Díaz, “Participación,” pp. 15-16, 18.

subsequent years were presented as “quality” indicators rather than requirements with contractual significance. Just as before, the winner would be the consortium that promised the largest quantity of connections during the first five-year period.³⁹ It may be debated whether all of these changes to the contractual requirements actually benefited the city of Guayaquil. The city found itself obligated to comply with the terms of the IABD loan that financed all of its construction and rehabilitation projects. Therefore, avoiding another deserted solicitation had to be one of its priorities. Meanwhile, by softening the requirements to this degree, it basically sold the ability of ECAPAG to demand projects necessary for public health and the protection of the environment. In fact, no standard or quantifiable work would exist for the years subsequent to the first five-year period.

In addition to the lightened requirements imposed on the concessionaire by ECAPAG and Banque Paribas, the international financial institutions also supported the concession. To start, the water companies in Guayaquil received a loan in 1986 in the amount of US\$31 million, and in 1996 they received 30 million more. The two loans required an eventual concession to the private sector. In the case of the concession contracted by ECAPAG, International Water Services (Guayaquil) BV and MIGA considered it excellent that ECAPAG agreed to foreign arbitration in case of conflicts during the concession. However, the risk of civil disturbance, negatively concentrated on foreign investment, and particularly foreign investment in water services, continued to worry them. The World Bank, by way of the Multilateral Investment Guarantee Agency (MIGA), provided International Water Services with an insurance policy valued at \$28,000,000.00, valid for 15 years, to protect its investments in International Water Service-Interagua Guayaquil LTDA-Ecuador. MIGA is considered a partner of the World Bank, because its insurance policies encourage Direct Foreign Investments (DIE) that the World Bank deems “necessary” for development. This MIGA insurance protects against the risks of transfer restrictions (including inconvertibility), expropriation, war and civil disturbance, and breach of contract.⁴⁰ These characteristics indicate that the real purpose of MIGA with regard to International Water Services (Guayaquil) BV, was to assure the company that investing in Guayaquil would not end like the investments made in Cochabamba, Bolivia, by the subsidiary Aguas del Tunari. The compulsion felt by International Water Services to have insurance prior to investing in water services seems to imply their acknowledgement that these privatizations were not generally popular, perhaps for their poor results for the poorest members of society.

From an analysis of the water privatization process in Guayaquil we can affirm that the principal actors involved in the process are the principal beneficiaries of the water business. Conducted between the traditional political actors at various levels of government, local or transnational companies, and the international financial institutions, privatization negotiations do not allow for social control and oversight. Consequently, they damage the well-being of the society by failing to consider the necessities of its poorest members. The profitability of the business always takes precedence in the negotiations.

The Implications of the Concession

In December, International Water Services applied to ECAPAG with its proposal to be the concessionaire for potable water and sewage services for Guayaquil. It is not known exactly why there was only one proposal submitted, but in any event ECAPAG, Economist Edgar Naranjo of auditing company Parnell, Kerr and Foster, and Paribas evaluated International Water Services’s proposal, and they determined that it was beneficial for

³⁹ Díaz, “Participación,” p. 17.

⁴⁰ “MIGA – Multilateral Investment Guarantee Agency: Managing Political Risks with MIGA’s Guarantees.” 2006. <http://www.miga.org/sitelevel2/level2.cfm?id=1058> (visto 19 noviembre 2006).

Guayaquil.⁴¹ Perhaps it was truly a beneficial proposal for Guayaquil, or perhaps it was selected for being the only proposal offered to a selling company in legal need of privatizing its services. On April 11, 2001, the contract between International Water Services and ECAPAG was signed in the Washington, D.C. office of the IADB. The signers, Yvon Mellinger, representative of Interagua, and Rodrigo Andrade, president of ECAPAG's Board of Directors and representative of Ecuador's president on that Committee, met with the president of the IADB and Ecuador's Minister of Economy. These last two people were witnesses to the realization of the concession, and thereby, compliance with the terms of the 1997 loan between the IADB and the Ecuadorian government.⁴²

International Water Services (Guayaquil) Interagua Cia. Ltd. is a subsidiary of the consortium International Water Holdings B.V. (IWH) that was created in order to comply with the concession contract's requirement that the concessionaire have its principal office in the city of Guayaquil. Thereby, Interagua manages its daily operations independently from its office in Guayaquil, depending on its own management team. The function of IWH is to guarantee and be ultimately responsible for the concession's results, given that it was its experience and reputation as a company that earned the confidence of ECAPAG during the solicitation process.⁴³

Meanwhile, the consortium IWH is not a company with independent roots either. The company was founded in 1996 as a subsidiary of Bechtel Corporation headquartered in San Francisco, CA, USA. Until 1999, Bechtel had 100% interests in IWH and its water, sanitation, and drainage projects in various countries around the world, including Poland, India, Australia, and Bolivia. Presently Bechtel shares those interests with Edison S.p.A. and United Utilities.⁴⁴ Between the three companies: Bechtel, Edison and United Utilities, IWH found itself with impressive references for previous projects in this field.⁴⁵

At the same time, the activities of Bechtel, the principal actor in IWH, continue to inspire controversy. The company has a long history of employing U.S. government authorities from a variety of departments and posts, a fact complicated by the large quantity of government contracts that the company has received from the government. For example, between 2003 and 2004, Bechtel received two contracts valued at \$2.8 billion for the reconstruction of Iraqi infrastructure destroyed during the controversial American occupation that began in 2002. The conflict most relevant to Guayaquil's case is that of Bolivia, where the actions of a Bechtel subsidiary named Aguas del Tunari unleashed a conflict called the "water war." The Bolivian people struggled against the massive increases in the potable water rates charged by the company. The citizens questioned the company's actions, marching and demonstrating in protest, and they succeeded in throwing Aguas del Tunari out of the company. The company filed suit against the Bolivian government for damages of \$25 million.⁴⁶ However, the trial concluded in favor of the Bolivian people, and

⁴¹ Díaz, "Participación," p. 18.

ECAPAG e Interagua. "Contrato de Concesión," Anexo D. 11 abril 2001.

⁴² "Interagua asume servicios de la ECAPAG." *El Universo*, p. 1. 11 Abril 2001.

⁴³ "ECAPAG: Referencias de la Concesionaria." 18 Julio 2005

<http://www.ecapag.gov.ec/SoloPortalECAPAG/portal.html> (visto 11 junio 2006).

⁴⁴ International Development Bank, Private Sector Department. "Environmental and Social Impact Brief: Ecuador." (18 April 2003) Art. 1.6.

⁴⁵ "Bechtel and Edison Reach Agreement on Edison's Acquisition of a 50% Stake in International Water Limited." Bechtel Group. 9 Noviembre 1999 www.bechtel.com/newsarticles/162.asp (visto 18 Junio 2006).

⁴⁶ Center for Public Integrity. "Windfalls of War." 31 Marzo 2004

<http://www.publicintegrity.org/wow/bio.aspx?act=pro&ddlC=6> (visto 12 Junio 2006).

Aguas del Tunari did not receive any substantial compensation for the earnings they had hoped for in the country.

Due to the antecedents previously mentioned it is not difficult to believe that the interests of Bechtel and its subsidiaries and affiliates do not coincide with the social needs of the communities where they do their work. It is troublesome to think that there could exist a pattern of action among the various subsidiaries, including Interagua, which promotes low quality standards, such as those found in the concession contract for Guayaquil, and the overlooking of legal norms. Above all, the contract for Guayaquil recognizes the right to profit, without taking social considerations into account. This fact forms the strongest argument against the privatization of basic services: private companies conserve their right to earn profits, without a legal obligation to invest their resources where they are needed most.

On April 11, *El Universo* published its account of the concession contract's terms. The article announced that International Water Services proposed the installation of 55,238 water connections and the same number of sewage system connections, and it mentioned that the concessionaire was not obligated to work in "projects apart from that goal" during the first five-year period. Additionally, the article relates that after 10 years the coverage of potable water and sewerage had to reach 95% and 90%, respectively, and that the rate structure would remain the same as ECAPAG's structure during those first five years. All of these statements were consistent with the actual requirements established by the concession contract. However, the document also states that these connections will be for "the sectors that lack them," a specification that was not made in the contract itself in order to make the contract more appealing for the concessionaire. At the same time, *El Universo* states that Interagua's investments in Guayaquil's infrastructure would be \$250 million during the second five-year period and that "close to \$1,000 million" would be invested over the course of 30 years.⁴⁷ This way of presenting the news was a way to soften the matter, representing the actual facts in such a way that they would appear most promising to the people of Guayaquil.

In reality, International Water Services had committed itself to several goals. The 55,238 connections were the quantity that the company proposed in its bid to ECAPAG. The company was responsible for seeing that the installation of those connections be connected in the sectors designated by ECAPAG. However, they had no obligation regarding the construction schedule. In the same way, although the contract imposed some quality standards for the first five-year period, the concessionaire was not responsible for continuing to improve the service quality provided during subsequent years. In terms of financial investments, no time frame regulated the speed of investment.^{48 and 49} Additionally, it was understood in the contract that any investment in the services would be compensated by the rates paid by the citizens and the telephone taxes, also paid by Guayaquil's consumers.⁵⁰ This leaves the question: why was the concession necessary if no fixed investments in construction projects or repairs could be required that would improve service quality without substantially raising costs to the consumers?

The new role of ECAPAG consists of overseeing that the concessionaire complies with the contract's terms and that the consumers receive the services that they deserve. It is to go about its work through control and supervision of the technical, administrative, financial

⁴⁷ "Interagua opera desde hoy agua y alcantarillado." *El Universo*, sección "El Gran Guayaquil," p. 2. 11 Abril 2001.

⁴⁸ Díaz, "Participación," p. 16.

⁴⁹ Díaz, "Participación," pp. 19-20.

⁵⁰ "ECAPAG: Obligaciones de la concesionaria." 18 julio 2005

<http://www.ecapag.gov.ec/SoloPortalECAPAG/portal.html> (visto 8 marzo 2006).

and management aspects of Interagua's operations. Additionally, they would evaluate the rate structure, customer service and quality of the services provided.⁵¹ This explanation, in principal, presents the fundamental contradiction of ECAPAG. If the contract barely proposes quality standards and coverage expansion requirements, it cannot be supposed that all of the citizens will receive adequate service. On the contrary, ECAPAG was an operational country in potable water and sewage services during seven years, from 1994 to 2001. ECAPAG is largely lacking of practical experience. The inability of the contract's composers to demand quality standards and expansion expectations left ECAPAG even more unable to effectively assume its regulatory role. Meanwhile, ECAPAG also freed itself from any responsibility for receiving the complaints and demands of consumers. The citizens ended up without any resource or method for demanding changes to the services that they received, at least while the flexible quality standards are complied with. This type of "captured regulator" is a practice considered common among observers of privatizations, and it typically ends up setting the stage for inefficient and ineffective regulation.

In conclusion, then, the concession contract is impressive for its violations of the *Political Constitution of Ecuador*. Every Ecuadorian has a right to "a quality of life that assures health, nutrition, potable water, a sanitary environment, education, work...and other necessary social services."⁵² By imposing few obligations upon the concessionaire regarding the quality standards of the services and coverage expansion plans, the contract violates the rights of Guayaquil's consumers. The people of Guayaquil cannot legally escape from the contract, nor can they look for alternative provision options due to the monopoly signed over to Interagua in the concession contract. At the same time, it is questionable whether the contract is legal due to its violations of Ecuadorian laws and norms. The people of Guayaquil are obligated to complain with the hope that their doubts and complaints do not fall on deaf ears. But, the true failure of the concession contract belongs to ECAPAG for violating the rights of Guayaquil's citizens by composing a socially irresponsible and technically ineffective contract.

On October 21, 2002, the IADB internally awarded the staff team that participated in the concession of water and sewage services in Guayaquil.⁵³ And from that point of view the experience had been successful. The Ecuadorian government solicited a loan for the rehabilitation of its distribution systems and it accepted the stipulation that the services be privatized. With the help of Banque Paribas, this goal was achieved in only four years. However, the victory for the people of Guayaquil is more ambiguous. As one gentleman commented to *El Universo* on the day services were transferred to Interagua in August, 2001, the people were "skeptical" of the promises of improvements to the services through the concession. One woman supported his comments, stating that she doubted that Interagua would do a satisfactory job.⁵⁴ In the end, the concession's results would depend on Interagua's disposition to invest funds where it was not required and the ability of ECAPAG to make itself an effective regulatory body. In the words of the president of ECAPAG's Board of Directors during the concession process, Rodrigo Andrade, "ECAPAG would have to enforce

⁵¹ "ECAPAG: Nuevo rol de ECAPAG." 18 julio 2005

<http://www.ecapag.gov.ec/SoloPortalECAPAG/portal.html> (visto 8 marzo 2006).

⁵² Asamblea Nacional Constituyente. *Constitución Política de la Republica del Ecuador* (15 noviembre 2002) Art. 23, No. 20.

⁵³ BID. Carta de premio escrito a equipo técnico. 21 octubre 2002

<http://www.ecapag.gov.ec/SoloPortalECAPAG/portal.html> (visto 18 junio 2006).

⁵⁴ "Interagua con el servicio de agua potable y alcantarillado: Transferencia por 30 años." *El Universo*, sección "El Gran Guayaquil," p. 2. 10 Agosto 2001.

compliance with the contract's terms, and if no, apply representative fines" to Interagua.⁵⁵ Up to the present date, neither of these goals has been fulfilled, leaving the people of Guayaquil trapped in a concession contract that would last a generation with only the smallest chance to escape.

The First Five Years With Interagua

According to Interagua's presentation in the First Ecuadorian Water Forum in March 2006, over the past four years Interagua has achieved some success in the expansion of potable water networks, reduction of un-accounted for water, increased water pressure and continuity, quality improvements, and environmental education. As of August 2005, they had installed 37,966 connections, surpassing the goal made in their economic proposal; although it was announced in August, 2006, that Interagua did not meet the goal of 55,238 connections installed during the first five-year period.⁵⁶ Unaccounted for water was reduced by 11% to 68% of the total production between 2001 and 2005. Additionally, the construction of a new pipeline, the "express line" to the south, is underway in order to offer continuous service to all consumers in August of 2006 as the contract requires. Concerning potable water, Interagua reports a 100% fulfillment of water quality norms, supporting its claim with the results of the 45,000 monthly tests carried out by their laboratory. Also, the company proudly notes its events and seminars in schools and communities, focused primarily in the adequate storage of water and reduction of waste.⁵⁷ These achievements surpass the accomplishments of the government-operated companies that preceded the concession process.

Without forgetting these accomplishments, the potential abilities of Interagua as a transnational company must be considered in comparison with its actions. As part of a powerful consortium, the company possesses a strong capacity for obtaining loans. However, it is not clear whether Interagua has made an effort to search for private resources to finance investments in its projects. In 2003, Interagua requested a \$50 million loan from the Inter-American Development Bank in order to carry out part of its expansion plan for potable water for the first five-year period of the concession.⁵⁸ Also, public information indicates that in September of 2005, Interagua received a \$280,620 award from the U.S. Trade and Development Agency, an organization that administers government funds obtained from U.S. tax dollars. This donation was designated for Interagua's composition of the capital development plan for the second five year period of the concession, 2006-2011.⁵⁹ However, this money will not be applied to investments in concrete public works. On the contrary, considering the significant increases of consumer water tariffs it appears that Interagua has taken advantage of the lenient investment requirements made by ECAPAG and the concession contract, and it is waiting for profits from the sale of water rather than risking borrowed funds. Prior to the concession it was recognized publicly that Guayaquil lacked infrastructure and that substantial investments would be necessary in order to correct the deficiencies. Interagua's policy of minimizing investments that will not be definitely compensated from tariff payments is permitted contractually; however, it deals irresponsibly with the social needs inherent to the provision of public services.

⁵⁵ "Interesadas en concesión de ECAPAG con amplia experiencia compiten por dar servicios." *El Universo*, sección "El Gran Guayaquil," p. 2. 13 enero 2000.

⁵⁶ "5 años después: Interagua no alcanzó metas de concesión." *El Universo*. 6 agosto 2006.

⁵⁷ Interagua. "Los desafíos del agua: una responsabilidad de todos." I Foro Ecuatoriano del Agua. Marzo 2006.

⁵⁸ International Development Bank, Private Sector Department. "Environmental and Social Impact Brief: Ecuador." (18 April 2003) Art. 1.7.

⁵⁹ U.S. Trade and Development Agency. "USTDA Grant Supports Study of New Water, Wastewater, and Drainage Projects in Ecuador's Largest City." 6 septiembre 2005
<http://www.ustda.gov/USTDA/Press%20Release%Archive/Press%20Releases/2005/September06_05Ecuador.htm> (visto 10 julio 2006).

Guayaquil's communications media effectively documents the difficulties that have risen out of Interagua's work during the first five years of the concession, as well as the frustrations that consumers face on a daily basis. A review of television news coverage during the months of April and May 2005 revealed more than 100 reports on the deficiencies of water and sanitation services. Almost every single reference complains about the poor quality of the water, the dysfunction of the sewer systems, or the total absence of services.⁶⁰ This substantial presence in television news coverage is repeated in the written press where space is dedicated on a weekly basis by Guayaquil's high circulation newspapers: *El Universo*, *El Telégrafo*, and *El Expreso*.⁶¹ The press clearly articulates the poor quality of the water that reaches some sectors of the city. Commentaries about the quality of the water were published in May 2005, but they were rebutted by Interagua, who explained that nearby construction projects had affected water quality because "during all repair projects the closest pipelines suffer."⁶² However, in November of 2005, pictures of water with floating mud were published in *El Universo*, along with commentaries about the "nauseating" and "unbearable" odor" of the water.⁶³ Newspaper clippings clearly demonstrate that the situation did not change and indicate that the poor water quality is a systemic problem rather than a circumstantial one. During the same period, the newspapers publicized information regarding the low water pressure and inconvenient water distribution schedules in outlying sectors of the city.⁶⁴ Broken pipelines, floods due to the lack of functional sewerage systems, billing without meters, and environmental damage due to the lack of treatment of waste water complete the image of the concerns and complaints expressed about Interagua's services during this first five year period.⁶⁵

The poor quality of Interagua's services has inspired not only news reports but also opinion pieces and editorials published in newspapers. In these articles, the writers tended to review the daily technical problems experienced by the people of Guayaquil, and often ended their discussion of the issues at hand with the unanswerable question: where is ECAPAG?"⁶⁶ In October of 2005, *El Universo* revealed that ECAPAG had fined Interagua for \$56,180 due to their actions during the first four years of the concession. At this point the Commission for Civic Control and the Public Defender's office had declared the water "not apt for human consumption." However, it is recognized that these sanctions only dealt with aspects of billing and failure to fulfill requirements for reports and debriefings that passed between ECAPAG and Interagua and that the quality of the services themselves did not weigh on the sanctions.⁶⁷ In November of 2005, the Citizen's Public Services Observatory conducted a survey about the basic water and sanitation services. In this survey, 88.8% of the 41,901 participants agreed that Interagua and ECAPAG were not fulfilling their responsibility to provide quality services. Additionally, 93.1% expressed their desire that the contract between ECAPAG and Interagua be dissolved.⁶⁸ These opinions, expressed at the end of the fourth year of concession strongly indicate the consumers' dissatisfaction with the services that they receive from Interagua. So many people, voicing their opinions in unison, cannot be ignored.

⁶⁰ Observatorio Ciudadano de Servicios Públicos. "Monitoreo Televisivo Interagua." Febrero 2006.

⁶¹ Observatorio Ciudadano de Servicios Públicos. "Respaldo Mediático Denuncia Interagua." Julio 2006.

⁶² "Quejas en moradores del sur por agua pestilente." *El Universo*. 22 mayo 2005.

⁶³ "El agua llega turbia a las redes de 4 zonas del sur." *El Universo*. 26 noviembre 2005.

⁶⁴ "En cooperativas del Guasmo solo habrá agua por las noches." *El Universo*. 19 enero 2006.

⁶⁵ Observatorio Ciudadano de Servicios Públicos. "Respaldo Mediático Denuncia Interagua." Julio 2006.

⁶⁶ "Que pasa en ECAPAG?" *El Expreso*. 2 julio 2005.

"Agua y alcantarillado." *El Universo*. 31 agosto 2005.

Observatorio Ciudadano de Servicios Públicos. "Respaldo Mediático Denuncia Interagua." Julio 2006.

⁶⁷ "\$56,180 suman las multas de la ECAPAG a Interagua." *El Universo*. 8 octubre 2005.

⁶⁸ "Observatorio ciudadano dio a conocer resultados de consulta." *El Universo*. 30 noviembre 2005.

Magnifying the general dissatisfaction of the public is the knowledge that a large part of the funds managed by Interagua come directly from the consumer's pocket through monthly water tariffs. These water tariffs are assigned to cover the maintenance and administration costs of the company and to insure the financial sustainability of the provision and expansion of the services. Meanwhile, a tariff structure has been designed with the goal of eliminating consumption brackets and subsidies on the billed price of water.⁶⁹ ECAPAG began to promote the change toward "real prices" for potable water in 1995, in agreement with the corresponding World Bank policies. However, in 2002 the policy was further consolidated with a decrease in the percentage of the population of poor people that would benefit from subsidized prices.⁷⁰ Additionally, one may detect in the monthly water bills that the fixed charge billed by Interagua to cover its administration costs and the base tariff for potable water consumption increase with the passage of each trimester. The difference registered is of little importance from one trimester to another; however, the cumulative effect of the increase of the tariffs is a reduction of the economic resources that the consumers can use for other needs.⁷¹ Due to the agreement reached in the concession contract, ECAPAG is responsible for the fixing of the tariff structure. This role appears to offer ECAPAG the opportunity to impose a concept of social responsibility by which water will remain accessible to all consumers. However, with the passage of each trimester, ECAPAG raises the "adjustment factor" that is imposed in order to maintain the "real values" of the services.⁷² In reality ECAPAG is charged with maintaining the economic efficiency of Interagua, and therefore it is just as important for ECAPAG as it is for Interagua to impose a tariff structure that supports the sale of water to the consumer that can pay most.

The Human Cost: the Outbreak of Hepatitis A

Up until June, 2005, it is quite possible that Guayaquil's citizens did not seriously consider the gravity of problems associated with inadequate water and sewerage services. However, the outbreak of Hepatitis A in Suburbio Oeste, a sector of neighborhood, presented a demonstration of the varied sanitary deficiencies in the city. After the public announcement of the outbreak of the illness in June of 2005, a controversy divided the healthcare, legal, government, and public services authorities. In the end, authorities concluded that the water and sanitation services provided by Interagua were and are deficient and were largely to blame for the public infection. The case catalyzed a paradigmatic change in and challenge to the concession: citizens from all sectors of Guayaquil were awakened to the public health risks associated with inadequate public services.

Hepatitis A is caused by a virus that destroys hepatic cells, and its symptoms include jaundice, fatigue, abdominal pain, vomiting, fever, joint pain, and dark urine. Unfortunately, in low-income areas Hepatitis A is very prevalent, but its diagnosis may be easily confused with a common cold if the characteristic jaundice does not appear.⁷³ The virus enters the body through the digestive tract, ingested in water or foods contaminated by feces. Following infection, blood and urine tests are required to confirm the presence of the virus and make a definitive diagnosis.⁷⁴

⁶⁹ ECAPAG e Interagua. "Contrato de Concesión de los Servicios Públicos de Agua Potable y Saneamiento de la Ciudad de Guayaquil Celebrado Entre ECAPAG e International Water Services (Guayaquil) Interagua CIA Ltd." (11 abril 2001) Anexo 9, Art. 1.

⁷⁰ Ing. Miguel Delgado Cabrera. Entrevista personal realizada por Emily Joiner. 12 julio 2006.

⁷¹ Observatorio Ciudadano de Servicios Públicos. "Estudio Técnico de Planillas de Agua Potable y Alcantarillado." julio 2006.

⁷² ECAPAG e Interagua. "Contrato de Concesión." Anexo 9, Art. 10.

⁷³ "La Hepatitis A o infecciosa, la causa un virus," *Comercio*. 10 julio 2005.

⁷⁴ "Las manos sucias atraen a la hepatitis." *Comercio*. 27 junio 2005.

The epicenter of the infection was the zone of Suburbio Oeste, in the neighborhood known as Plan Piloto. The June 15th edition of *El Universo* announced the presence of cases of Hepatitis A in various schools in the neighborhood: Alberto Perdomo School with nine cases, Progreso School with five and approximately 30 cases in surrounding areas.⁷⁵ By June 21st, five elementary schools and three high schools confirmed the presence of the virus among their students to the newspaper *Expreso*.⁷⁶ By the end of June provincial authorities reported 85 cases of Hepatitis A (39 confirmed and 46 suspected), while the Perdomo School's doctor reported a total of 158 cases.⁷⁷

Fear of imminent contagion propelled the immediate action of the sector's residents and authorities to improve the sanitary conditions of the schools and the city. On June 17th, the provincial Director of Education ordered communal clean-up projects and disinfection of the cisterns and bathrooms on the campuses of the neighborhood's schools.⁷⁸ Nevertheless, the epidemic nature of the outbreak produced a great deal of fear of contagion. The deputies of Pichincha, Cotopaxi, and Esmeraldas provinces formally requested of the National Congress and the President of the Republic that "a SANITARY EMERGENCY be declared immediately in Suburbio Oeste of this city and that pertinent measures be implemented in order to eliminate the causes of this outbreak of Hepatitis A."⁷⁹ President Alfredo Palacio denied the petition that same day, attributing the outbreak to a localized incident of unsanitary and poorly maintained schools' cisterns.⁸⁰ Despite of Palacio's decision, the incidence of Hepatitis A created a high risk situation for all residents of the sector. In so much as the epidemic was due to water quality, the adult residents of the zone ran the same risks as their children in the consumption of the supposedly potable water provided by Interagua.

The implication that the outbreak was caused by contamination of food or water has generated a lot of controversy regarding the source of the contamination. The residents of the sector Plan Piloto report that the water received from Interagua via the residential pipelines was of extremely poor quality. One survey conducted in the sector on June 26th revealed that 76% of the Plan Piloto residents characterized their water as turbulent and foul-smelling.⁸¹ In another study, carried out by the Second Adjunct Public Defender's office in July 2005, 45% of residents classified their water as yellow or dark, and 74% compared its smell to feces. However, Interagua maintains that its services were not deficient and that the water provided was really consumable, pointing to the samples tested in their laboratory that indicate 100% compliance with contractual quality standards.⁸² Their implication with this declaration is that the water contamination occurs in the hands of the consumer, and that the company is not responsible for the water's quality alter its delivery to residences or school campuses.

While the investigation of water quality continued, the public's attention focused on questions about the quality of the sector's infrastructure. Although a network of pipelines had existed in the sector for more than a decade, the sewage system no longer functioned adequately, forcing the population to construct septic wells beneath their homes.⁸³ ECAPAG

⁷⁵ "15 escolares infectados por insalubridad: Hepatitis alarma en escuelas." *El Universo* 15 junio 2005.

⁷⁶ "Hepatitis se expande hacia ocho escuelas." *Expreso de Guayaquil*. 21 junio 2005.

⁷⁷ Ing. Miguel Delgado Cabrera, Observatorio Ciudadano de Servicios Públicos. "Incidencia de Calidad de los Servicios en el Brote de Hepatitis A en el Suburbio Oeste de Guayaquil." julio 2005.

⁷⁸ "Cercos epidemiológicos en Plan Piloto por hepatitis 'A'," *Telégrafo* 23 junio 2005.

⁷⁹ Luis Villacís Maldonado, Xavier Cajilema Salguero, y Rafael Arazo Reasco. Oficio no. 232 BPMPD. Congreso Nacional de la Republica del Ecuador. 21 junio 2005.

⁸⁰ "No a emergencia en sector con hepatitis." *Telégrafo*. 22 junio 2005.

⁸¹ Delgado. "Incidencia." julio 2005.

⁸² Interagua. "Los desafíos del agua: una responsabilidad de todos." I Foro Ecuatoriano del Agua. Marzo 2006

⁸³ Antonio Ricaurte, Entrevista. *El Universo*. 28 junio 2005.

was familiar with the aged state of the sector's pipes, and communicated these problems to Interagua in July 2004. In fact, ECAPAG asked Interagua to replace "the totality of the infrastructure included in its work area, owing to its being obsolete and containing considerable damages, consideration which should exonerate consumers from any charges for use of the system." Interagua recognized this information and offered to build a new network of pipes, but they never set a precise date for beginning the project.⁸⁴ These effects of an inadequate sewer system are the principal cause of contamination of the potable water system.⁸⁵ Therefore, the poor state of sewer systems contributed directly to the deficient quality of the potable water that reached the residences of Suburbio Oeste.

It cannot be denied that the campuses of the schools lacked sufficient sanitary infrastructure. Representatives of the National Institute of Hygiene and Tropical Medicine (INHMT) examined the campuses and documented the lack of hygiene and sanitation in each of the campuses. In the schools' cisterns investigators found "water turbulent due to dirtiness" and rusted lids. Restroom facilities were dirty, in some cases covered in excrement and insufficient for the number of students enrolled.⁸⁶ Recognizing the dangers of these unsanitary conditions, parents conducted clean-up projects and dismissed food vendors of questionable quality off from the campuses. These actions helped to improve sanitation, thereby lowering the risk of illness due to the lack of sanitation on the campuses. In this way, the families assumed responsibility for improving sanitation of the schools, while continuing to hope that the authorities of Interagua would do the same.

At the end of June 2005, the organization responsible for the regulation of Interagua, ECAPAG, published the results of twelve water samples tested by the Laboratory of the Universidad Católica Santiago de Guayaquil in its "Memory Aid" document. The document declared that the water in the public network of the sector, collected for testing outside of the schools, complied with all of the INEN standards of residual chlorine and fecal traces and other bacteria levels. The report concluded that these results contradicted the possibility that "the Hepatitis A outbreak has occurred due to the poor quality of water in the public pipelines." According to ECAPAG, the poor quality of the schools' infrastructure was the only factor to blame for the outbreak.⁸⁷ At the end of the same month, ECAPAG defended itself in an "*Acta de Audiencia*" conducted in cooperation with Interagua. ECAPAG's representative testified that "...when the technical information signals to us the existence of a deficiency, we will obligate the concessionaire to make the necessary and pertinent corrective measures immediately."⁸⁸ This attitude was consistent with an article published in *El Expreso* that observes that ECAPAG "comes out to confront accusations and defend its concessionaire with documents in its hands."⁸⁹ ECAPAG's support of Interagua should have generated confidence among consumers, but in reality it had the opposite effect. If the regulatory body does not seriously investigate the consequences of potable water services, the people of Guayaquil cannot assume that the service delivers truly consumable water.

Two civil organizations, the Commission for Civic Control of Corruption and the Public Defender's Office finally deciphered the controversy surrounding the outbreak of Hepatitis A. The CCCC's investigation incorporated information and reports from various

⁸⁴ "Investigación procesal por los casos." *Comercio*. 25 de junio 2005.

⁸⁵ Delgado. "Incidencia." julio 2005.

⁸⁶ Oficio No. 266-DINHMT-LIP-05. Instituto Nacional de Higiene y Medicina Tropical. en Expediente Defensorial No. 314-DASLG-05 de la Defensoría Adjunta Segunda del Litoral y Galápagos. 28 septiembre 2005.

⁸⁷ ECAPAG. Ayuda Memoria. Julio 2005.

⁸⁸ Expediente Defensorial No. 314-2005. "Acta de Audiencia." Defensoría del Pueblo. 30 junio 2005.

⁸⁹ "ECAPAG defiende a Interagua de los informes que la acusan." *Expreso*. 22 junio 2005.

authorities, including ECAPAG, Interagua, the Provincial Health Director of Guayas, the Public Defender's office, the INHMT, MIDUVI, the City of Guayaquil, and the Citizen's Public Services Observatory. With regards to the quality of Interagua's water, it was concluded that the concession contract must be immediately corrected to coincide with the accepted norm for residual chlorine accepted by the involved authorities. Additionally, the concession contract must be written in agreement with Ecuadorian laws which require that all technical norms be established by INEN.

The CCCC's subsequent analyses of water quality found Interagua responsible for the outbreak of Hepatitis A, strengthening public complaints against the company. The CCCC concluded that the presence of fecal traces in the distribution pipelines conclusively determined the poor quality of service provided by Interagua. In summary of their findings, the CCCC pronounced that the water was not apt for human consumption. Specifically, although the tests conducted by Interagua concluded that the water leaves the distribution pipes in an uncontaminated state, the high possibility of contamination due to the indicators of the poor state of pipelines, low water pressure, and discontinuous service was a breach of contract and a violation of Article 32 of the Consumer's Defense Law and Article 87 of the Potable Water Provision Code by Interagua. The CCCC added that by not taking alternative measures to compensate for the inadequate pipelines, Interagua's actions "represent a shortsightedness that constitutes a grave infraction in the provision of the service." In the final document, signed October 3, 2005, the CCCC asked that a fine in agreement with the Penal Code be imposed on Interagua for the damages caused by the provision of inadequate services.⁹⁰ The Public Defender's office also passed resolutions against Interagua in what was considered a "historic resolution exemplary in its application of human rights, civil rights, and rights established by the Consumer's Defense law," asking for compensation for all victims of the outbreak, and pleaded for the public court system and international courts to sue Interagua for consumer rights violations.⁹¹

The cumulative effect of these legally substantive resolutions from credible organizations was a fine imposed on Interagua by the General Intendency of Police for Guayas. The Intendency did not find information that contradicted the validity of the fine requested, and decided to impose a fine of \$1,000 due to the violation of the INEN norm for water quality.⁹² Unsurprisingly, the fine garnered the attention of Interagua and provoked a definitive response. On December 2nd, the General Manager of Interagua, Guillermo Domingo Mingolla, sent a letter to the Intendency of Police, denying the validity of the fine. Despite Mingolla's arguments to the contrary, the fine stood as a final resolution, and it was the conclusion to a long process of investigation and debate.

The outbreak of Hepatitis A is an extremely important event in the evaluation of the concession. Its implications are grave: Hepatitis A converted the provision of water into a question of security or public health risks. The thorough investigation of water quality revealed the deficient norm agreed upon in the contract, and in the end it was concluded that Interagua's services constitute a threat to public health. The impact of this message coursed through society with considerable force, severely marring confidence in Interagua's ability to

⁹⁰ Comisión de Control Cívico de la Corrupción. "Presuntas Irregularidades en el Sistema de Tratamiento y Abastecimiento de Agua Potable Distribuida en el Suburbio Sur – Oeste de la Ciudad de Guayaquil por Parte de Interagua, Concesionaria de ECAPAG, como Causa Coadyuvante del Brote de Hepatitis A, Aparecido en el Suburbio Oeste de la Ciudad de Guayaquil." 3 octubre 2005.

⁹¹ Abg. Patricia Castro Coronel, Defensoría del Pueblo. "En el caso del agua de Guayaquil: Resolución Histórica y Ejemplar de Aplicación de los Derechos Humanos, Ciudadanos, y de Defensa de los Usuarios y Consumidores." 7 octubre 2005.

⁹² Abg. Roberto Mosquera Tayne, Intendencia General de Policía del Guayas. "Resolución del expediente #1419/05." 29 noviembre 2005.

provide high quality services for the people of Guayaquil. The investigation results also call into question the wisdom of incorporating the private sector in the provision of a public service vital to the wellbeing of the people.

Prognosis For the Future

Interagua's Master Plan was written to fulfill the contractual requirement that Interagua present a comprehensive investment plan prior to the end of the first three years of the concession. ECAPAG approved the plan in August, 2006, without appropriately consulting consumers regarding the projects and investments proposed. ECAPAG's lack of involvement is troubling to most Guayaquileños, who acutely feel the effects of Interagua's decisions in their daily lives. Close analysis of the document reveals numerous problems, including inexcusable omissions of thorough technical investigation and obvious evasions of the company's responsibilities, a fact with ominous consequences for consumers.

A brief selection of the apparent problems with the Master Plan are found below:

- The sanitary sewage system will not manage to meet the needs of the consumers or the contractual requirements at any point during the concession.
- The slow expansion of sewerage coverage will leave some areas without service, even as they receive improved water services, putting the stability of their lands at risk.
- The treatment system for waste waters will not be changed. This is to say that in 2030 Guayaquil's waste waters will continue to be discharged to the rivers and estuaries without secondary treatment. In many cases they will not receive any treatment at all.
- The rainwater drainage system will not be expanded, leaving residents to suffer the consequences of the rainy climate in a city without infrastructure adequate for managing the problem.
- Lack of specific calendars/programs indicating the schedule for completing construction projects.

It may be generally stated that although the research for the Master Plan includes projects that would benefit poor consumers in the city, when Interagua chooses which projects to pursue those which primarily benefit the poorest consumers are never considered sufficiently profitable to be selected. But, the most troubling characteristic of the Master Plan is the absence of absolute dates for the chosen plans. Neither ECAPAG nor the consumers can demand the completion of plans projected in a highly generalized time frame, and they thereby lose once again legal force behind pleas for specific projects necessary for their wellbeing.

Proposals

The people of Guayaquil currently confront a debate crucial to their future: what type of change or strategy will be necessary to improve the basic services, providing equitable, accessible, continuous, and high quality services to all people of Guayaquil? Interagua, a subsidiary of Bechtel, has repeatedly provided very poor quality services and disappointed consumers with false promises. Additionally, the inaction of the municipal government in the face of these problems has tried everyone's patience. Above all, this first stage of the concession contract has demonstrated that the operational strategies of Interagua and its regulatory body, ECAPAG, simply do not satisfy consumers' needs. It must be acknowledged that before Interagua signed the concession contract the provision of basic services by municipal companies was historically managed through political manipulation and substantial financial inefficiencies.

The current circumstances in Guayaquil complicate the issue. Legally, the concession cannot be revoked without extraordinary breaches of contract by Interagua, and a total revocation would be a process dependent upon extraordinary popular demand. According to

the contract, the city of Guayaquil is under the legal obligation to receive water and sanitation services from Interagua over the course of the thirty years of concession. Additionally, the history of public utility services in Guayaquil has shown that the municipal government simply was not able to adequately respond to the basic needs of its population. However, the current experience demonstrates that privatization is not a magic remedy either, and that it makes it possible to deprive those who cannot afford to pay for services, in violation of their human and constitutional rights. It is necessary to encourage and deepen a debate among the people of Guayaquil regarding the possible solutions to the current problems in the provision of basic services. The answer will not be simple nor obvious, but it is clear that improvement will require civil participation.

The Citizen's Public Services Observatory has worked for approximately one year, protesting for the rights of every Guayaquileño to high quality water and sanitation services. Through experiences in the field, the organization has prepared itself to play an active role in the debate over the privatization of water in Guayaquil. While the issue is under consideration, their work has demonstrated the absolute need for substantial changes to the concession contract and Interagua's Master Plan in order to assure quality services are accessible for all. For this purpose, the Observatory has developed a series of proposals for improving the quality of the services. Ultimately, each of these proposals demands the re-incorporation of social responsibility in the provision of water and sanitation services. In order to accomplish this ambitious goal, the Observatory proposes structural and legal changes to the relationships between Interagua, the regulatory company ECAPAG, the city of Guayaquil, the national government and the organizations that advocate for the needs of all sectors of society.

In order to present a selection from the Observatory's proposals, inspired by a year of intense and focused work in water and sanitation issues and by the information gathered in this study, the following ideas are listed below:

Revisions to the Terms of Provision of the Services:

- 1.- Technical, financial, administrative, and social revision of the Contract of Concession of Potable Water and Sewage Systems of Guayaquil in order to contractually guarantee the civil rights of consumers.
- 2.- Formation of a TECHNICAL AND SOCIAL COMMISSION FOR THE REVISION AND NEGOTIATION OF THE MASTER PLAN FOR POTABLE WATER AND SEWAGE SYSTEMS presented by INTERAGUA for the next 25 years. This must be a collective and transparent process undertaken with civic participation.

Revision of the Roles of the Involved Parties:

- 3.- That the Very Illustrious City of Guayaquil, in keeping with its attributions and legal and social responsibilities consistent with Art. 15 of the Ley de Régimen Municipal (national code for Municipal government), assume the functions of control and regulation that ECAPAG currently has in relation to potable water and sewage system services in Guayaquil, in such a way that the rights of consumers are guaranteed.
- 4.- The State must financially support the following activities:
 - a.- Control and civil monitoring of the private company
 - b.- Technical, independent, and civil monitoring of water quality

- c.- Technical studies and research of the environmental effects of contamination of the Guayas and Daule Rivers and the estuaries that surround Guayaquil as well as projects to protect these resources from further contamination

Concrete Changes to Currently Provided Services:

- 5.- Installation of water meters in zones where they do not currently exist. Consumption will be billed on the basis of average consumption as in the sectors of Suburbio, Guasmo, etc.
- 6.- Sanction and removal of the respective license and environmental permission of all industries that currently release their untreated wastes to sanitary and pluvial sewage systems and to the rivers and estuaries.
- 7.- Piloting of a public-community project of management and administration of potable water and basic sanitation services in the northern part of Guayaquil.

Conclusiones

Guayaquil is a city plagued by complications of the provision of potable water and sanitation services. Over the course of decades of rapid urban growth, informal settlements and “invasions,” have dictated the city’s map rather than forcing it to respond to defined plans for urban development. At the same time, the region’s rainy climate together and its low, swampy lands add to the hardships experienced by citizens who lack water and sanitation services. All of these factors have substantially contributed to the city government and Interagua’s inability to provide adequate public services.

Recent history in Guayaquil has shown that public utility companies are often managed with personal political interests in mind. Urban planning studies and strategies for improving the condition of public services have been left to one side, and decade after decade the improvements of infrastructure have fallen further behind the city’s necessities. Due to the inability of the city government to make the necessary changes, an international solution was sought. Foreign consultants and loan agencies advertised the privatization of public utilities, and they made the strategy a requisite to receive much needed loans for the maintenance of public utility companies. The signing of the concession contract with Interagua, a subsidiary company of Bechtel, was the result of the city government's desire to avoid its responsibilities, pass along the blame for the poor condition of the water and sanitation services, as well as acquire necessary capital for basic services. These reasons were all justifications for giving away the administration of water and sanitation services to a multinational company that did not agree to guarantee the rights of Guayaquil’s consumers.

The first five years of the concession stand out for their complexity. Interagua has constructed new pipelines and connections and has worked to reduce unaccounted for water. However, its methods have endangered public health and substantially contributed to the destruction of the surrounding environment. In some cases the water it provided was not fit for human consumption once it reached the consumers. Additionally, Interagua allowed water outages for neglectful and illegal durations of time, without adequately preparing consumers for these interruptions in service. The Master Plan proposed by Interagua at the end of 2005 includes a variety of constructive plans for the provision of services. But, by not taking into account consumers' needs, Interagua has failed in many aspects of the planning. Meanwhile, the regulatory body, ECAPAG, has not been able to fulfill its responsibilities or have any sway on Interagua's decisions. The people of Guayaquil recognize the difficulties inherent to the provision of water services in their city, and they do not expect these services to change

overnight. But, consumers are also aware that no regulatory body exists that will guarantee their access to optimum quality services.

The Constitution of Ecuador states that every citizen has the right to access to basic services of optimum quality. Interagua has the responsibility to provide potable water, sanitary sewage and drainage systems to all Guayaquileños. Yet the company has been unable or unwilling to do so, violating the rights of the people who are legally guaranteed access to quality services. The residents of Guayaquil must act on their right to organize and collectively protest violations of their rights to force their elected government to work to represent their interests. By working together residents can change the way basic services such as water and sanitation are provided so that they benefit all people regardless of their economic status. The manner in which potable water and sanitation services are provided in Guayaquil must change drastically to meet the needs of all the people of Guayaquil.

Absorbed by this analysis of Guayaquil's case, we must not forget that the struggle for high quality basic services, provided by either the public or private sectors, is a struggle experienced in cities around the world, and particularly in cities in Latin America. The international financial institutions play with local political forces and true local needs in order to create an extremely complex situation for the citizens of any city. Authorities throughout the region must inform themselves of the circumstances and characteristics unique to each city in order to most effectively participate in the debate as to how adequate and sustainable services can be provided to all members of society, without taking into account their ability to pay.

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