

**How Can the Law Help Reduce
Group-Based Inequalities?**

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and pathways to compliance:
the transformative role of the Peruvian
Human Rights Ombudsman**

Thomas Pegram

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Centre for Research on Inequality, Human Security and Ethnicity, CRISE
Oxford Department of International Development,
Queen Elizabeth House
University of Oxford, 3 Mansfield Road, OX1 3TB
Tel: +44 1865 281810; Fax: +44 1865 281801

www.crise.ox.ac.uk

Weak institutions, rights claims and pathways to compliance: the transformative role of the Peruvian Human Rights Ombudsman

Thomas Pegram
University of Oxford
thomas.pegram@nuffield.ox.ac.uk

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Abstract

This paper examines the contribution of the Peruvian human rights ombudsman in upholding an important component of an inclusive democratic political regime – a stable and enforceable rights framework. The paper argues that the ombudsman may play a significant role toward advancing transformative change through the articulation and facilitation of rights claims in an institutional terrain informed by the politically contested nature of formal rules. The analysis goes beyond formal legal channels of redress to also consider innovative social accountability levers of influence, including non-judicial remedies, policy and legislative initiatives, media advocacy, and conflict mediation. The paper suggests the ombudsman is well placed to advance rights claims through legal, institutional and social pathways, with a particular focus on the question of compliance – understood both as a matter of enforcement and management.

Weak institutions, rights claims and pathways to compliance: the transformative role of the Peruvian Human Rights Ombudsman

The compelling challenge in ‘societies marked not only by pervasive poverty but also, and even more decisively for our theme, by deep inequalities, is how to ensure that the weak and poor are at least decently treated by [state] agents,’
Guillermo O’Donnell¹

1. Introduction

An important element of democracy in deeply divided countries such as Peru is its design as an inclusive system of government. This paper addresses the contribution of the Peruvian national human rights institution (NHRI), the human rights ombudsman or defensoría del pueblo, toward upholding an important component of an inclusive democratic political regime – a stable and enforceable rights framework. Recent scholarship has emphasized the social transformation potential of courts in acting as channels of social redress for marginalized sectors of society (Gargarella et al. 2006). Gargarella (2006, 2) defines ‘social transformation’ as ‘the altering of structured inequalities and power relations in society that reduce the weight of morally irrelevant circumstances, such as socio-economic status/class, gender, race, religion or social orientation.’ With a function to uphold the tenets of liberal democracy and rights protection, this paper argues that the defensoría may play a significant role toward advancing transformative change through the articulation and facilitation of rights claims in an often adverse political and institutional terrain.

Such an outlet is particularly relevant in new democracies such as Peru where ongoing human rights violations,² severe and manifold inequalities, combined with a weak state apparatus unable or unwilling to address the demands of the polity, are a potent recipe for social conflict (Stewart 2008). In contrast to other countries in the region,³ and despite repeated attempts at judicial reform (CERIAJUS 2004), Peru displays weak rule of law and multiple structural, social and institutional barriers to justice (Giugale et al. 2006). In a context where legal mobilization is severely curtailed and even discouraged,⁴ what alternative avenues of redress exist to challenge perceived injustices? The urgency of this inquiry is heightened by a growing level of social unrest in Peru and the fragility of its democratic regime.⁵ Unlike most state institutions in Peru, since its inception in 1996 the defensoría has remained widely trusted by the public. This paper argues that the institution, in its distinctive position as a horizontal accountability agency, represents a valued – if insufficient – institutional resource for otherwise weak rights claimants in the absence of an accessible or responsive judicial and political institutional framework (O’Donnell 1999).

Importantly, the institution is capable of directly receiving complaints and facilitating legal mobilization by otherwise weak rights claimants, as well as activating institutional and social mobilization strategies in coordination with civil society actors. The analysis therefore goes

beyond formal legal channels of redress to incorporate innovative ‘social accountability’ levers of influence, including non-judicial remedies, policy and legislative initiatives, media advocacy, and conflict mediation (Peruzzotti and Smulovitz 2006). These strategies do not necessarily entail legal sanction, but may nevertheless have ‘material consequences’ – including, eventually, compelling the legal system to act. The search for creative pathways to compliance by rights advocates, in tandem but separate to legal parameters, largely reflects the politically contested nature of formal rules in many new democracies in Latin America such as Peru, the resulting instability and variable enforcement of rights affecting the behavior and expectations of actors (Levitsky and Murillo 2009). Given the contingent nature of legal compliance and judicial administration in the Peruvian context, this paper emphasizes the strategic capability of the defensoría to amplify the voices of marginalized actors and, in turn, enhance the responsiveness of the state apparatus to these voices.⁶

The defensoría has a mandate over the full gamut of rights and has begun in recent years to articulate a position on social, economic, and, increasingly, environmental rights claims. As will be explored, the institution can be highly effective in traversing different rights groups, identifying a group-based dimension to civil and political violations, and tying particular issues to broader patterns of rights violations, such as when the defensoría blames social conflict on the economic deprivation, environmental degradation and land confiscation suffered by indigenous communities. Furthermore, the institution’s prominence in conflict mediation over disputes often sparked by unresolved socio-economic inequalities, as well as its prominence in national policy debates, most visibly as the guardian of the Truth and Reconciliation Commission’s (TRC) legacy, also points to an evolving (and possibly novel) local constitutive role, beyond a conventional regulative function.⁷ With this constitutive function in mind, attention is paid to the ability of the defensoría to intervene in matters of public policy and their impact on the rights of traditionally vulnerable groups in Peruvian society, particularly the indigenous population and native or rural communities, but also others including children, women, the elderly, and persons living with HIV/AIDs.

The paper begins by providing an overview of the origins and structural features of the defensoría office as well as its institutional trajectory since its creation in 1996, with particular emphasis on evaluating questions of institutional access, responsiveness and legitimacy within Peruvian society. The challenge of constructing an institutional rights profile in the highly centralized Peruvian political context is addressed, with reference to political and institutional challenges, as well as to relational leadership norms. The second part of the paper asks whether and how the institution serves to protect, monitor and promote human rights. It assesses the trajectory of the institution’s rights agenda and considers the impact of internal agency and external conditions on the formulation of a rights platform following transition in 2000 and under the stewardship of three distinctive defensores. Part three focuses on the viability of legal, institutional and social pathways through which the institution has advanced rights claims, with a particular focus on compliance – understood both as a matter of enforcement and management of normative pressure. This discussion further evaluates the impact of the defensoría in encouraging a rights-discourse, not only by advancing rights claims through legal channels but, and often with higher political returns, intervening in national public policy debates. Finally, the paper reflects briefly on the challenges of engaging with the most vulnerable groups within

Peruvian society and the distinctive role of the institution as a mediator in situations of social conflict.

2. The defensoría del pueblo – human rights ombudsman

Paradoxically, emerging from a process of institutional deconstruction and the aftermath of widespread human rights violations and quasi-civil war throughout the 1980s, the defensoría nevertheless performed a valuable democratic role under the authoritarian government of Alberto Fujimori (1990-2000). Not only did it become a viable institutional mechanism for defending citizen rights, it eventually assumed an influential supervisory role in the troubled elections of 2000 (Pegram 2008). From its creation in 1996 to the fall of the Fujimori government in November 2000, the defensoría practically became the sole democratic agent of accountability within the state and was recognized as such by civil society and international observers (Youngers 2006). Following the democratic transition of 2001, the defensoría has continued to assert its presence on the public stage in a partially restored democratic context under the administrations of Valentín Paniagua (2000-2001), Alejandro Toledo (2001-2006) and the incumbent President Alan Garcia. Despite a radically altered institutional context, the defensoría remains a key human rights actor in Peru – maintaining a high level of public confidence while also adapting to new ‘structures of opportunity’ and a more expansive rights agenda. The focus of this paper is focused on the post-transition trajectory of the defensoría without discounting the importance of the initial, but highly idiosyncratic, experience of the institution under authoritarian government.

The defensoría is elected to office by a two-thirds majority for a term of five years, may be re-elected once and enjoys the same immunity as a member of Congress. As with other offices in the region, the legislature has attempted to interfere with the institution through the election process. However, the defensoría has been surprisingly effective at maintaining its autonomy – arguably, at times, at the cost of political influence. Following Santistevan’s departure and ill-advised bid for the Presidency in the context of 2001’s democratic transition, the ombudsman under Santistevan’s successor Walter Alban struggled to assert its presence on the public stage. This can be attributed in large part to Alban’s interim status, subjected to repeated rebuffs to his attempts to be appointed ombudsman by Congress. In September 2005, after four years of congressional intransigence, the Peruvian Congress finally achieved the cross-party consensus necessary to appoint Beatriz Merino Lucero, a former President of Congress, as the new Defensora. Under Merino, the institution has undergone something of a revival and – despite the fears of many – avoided partisan politicization to provide a robust human rights referent point in public discourse, tackling an increasing array of structural rights violations.

The ability over time of the defensoría to effectively navigate official interests within the state as well as build a plural support base within (a primarily urban) civil society has been crucial to developing its profile as an independent and forceful human rights interlocutor. Beyond external conditions, the importance of political leadership in terms of institutional preservation, strategic positioning, and the definition of a rights agenda vis-à-vis other actors should not be under-stated in the Peruvian context. Each defensor – all lawyers – has brought distinctive qualities to the position and a particular conception of what is the function of the institution. For Santistevan, a former UN diplomat in Central America, he saw the challenge as being to generate institutional

credibility, redress civil and political violations and, above all, maintain autonomy. With no political debts to pay, he proved highly capable of navigating Fujimori's labyrinthine regime, assisted by functionaries with impeccable rights credentials within civil society.⁸ One of these recruits was Alban, originally of Peru's grass-roots human rights movement. Interim defensor for five years, Alban nevertheless oversaw an extensive horizontalization of the institution in the new democratic context – most notably, in the decentralization of its operations through the creation of defensoría offices (DOs) outside Lima and continuity among high-level functionaries. As one observer comments, “Alban had the virtue of understanding his role.”⁹

Merino, in comparison to her predecessors, is a political insider. Entering parliament for the center-right coalition, FREDEMO, in 1992, a former President of Congress and more recently a World Bank bureaucrat, she initially inspired little confidence among human rights advocates. Nevertheless, she has surprised many of her detractors with her stabilizing influence, high profile and robust rights advocacy position, in particular on structural violations around TRC recommendations, health, discrimination and the environment. Arguably swayed, not only by personal conviction, but also the caliber of personnel within the institution and the ability of pre-existing institutional structures to exert influence, Merino “appears to feel great responsibility when it comes to issues of poverty and social exclusion.”¹⁰ As will be further developed in the following section, the rights agenda of the institution displays both change and continuity, especially with regard to protecting the most vulnerable. The neglect by Merino of legal prerogatives before the Constitutional Tribunal and an ambiguous stance on certain core civil rights – especially police conduct in situations of violent confrontation – are sources of tension for some observers.

2.1. Access, responsiveness and legitimacy

Questions of institutional access, responsiveness and legitimacy take on a particular significance in the Peruvian context. Issues such as the persistent asymmetry between institutions and leaders, the often-antagonistic relationship between state and citizen, an ambiguous attachment to democratic practices, and a profound lack of rights in Peruvian society all resonate strongly in the institutional sphere. The following discussion relies on what reasonably reliable empirical data is available that may act as a proxy to evaluate the defensoría within these three dimensions.

In terms of case data, the institution received 574,550 cases from the Peruvian public between 1999 and 2007. Table 1.1 shows the total caseload increasing incrementally throughout this period, experiencing a rapid acceleration in 2005. At a basic level, the data points to the willingness of Peruvians to approach the institution with their grievances. The steady growth from 12.7 complaints per 10,000 inhabitants in 1999 to 39.9 in 2007 suggests enhanced access and awareness of the defensoría, comparing favorably to the Public Prosecutors Service (4 cases), Superior Attorney's Office (34 cases) and the judiciary (415 cases) – especially, when resource disparities across these institutions is taken into account.¹¹

Accessibility has been facilitated by the decentralization of operations throughout the country, initially in the form of mobile units in the 1990s, followed by the permanent installation from five offices in 1999 to 28 in 2003. Although, many of these offices remain in urban centers, the defensoría has gained recognition as one of few Peruvian institutions to successfully

decentralize. Organizational structure may also provide an indication of the institution's responsiveness to citizen demands and expectations. Initial special programs for human rights, public administration, women, prison reform, and people with disabilities have in recent years expanded to encompass environmental rights, the protection of populations affected by violence, decentralization and good governance, and social conflict, among others. However, of the scarce data that exists on the demographics of claimants, there remain clear challenges in engaging with the most vulnerable groups in society, such as women and children. 72% of claimants in 1998 were male, between the ages of 36 and 65, and either freelance workers or pensioners (Defensoría del Pueblo 1998, 91).¹² In 2005, of a sample of 19,591 cases received from designated 'priority vulnerable groups,' 36.6% were received from elderly citizens and 34.2% from women. Only 4.8% were categorized as having been received from indigenous communities and 3.5% from children (DP 2005, 371). Furthermore, while Table 1.1 shows a degree of correlation between decentralization of operations and percentage of cases received from outside Lima, this trend is reversed in 2006 and 2007. As one senior official admits, "we have not yet resolved the matter of how to be the defensoría of the most vulnerable."¹³

Table 1.1 Cases received by the defensoría del pueblo (1999-2007)

| Year | Total cases | Complaints (%) | Petitions (%) | Consultations (%) | Lima % of total | Per 10,000 inhabitants | DOs |
|-------------|--------------------|-----------------------|----------------------|--------------------------|------------------------|-------------------------------|------------|
| 1999 | 32,543 | 28.0 | 8.8 | 63.2 | 38.0 | 12.7 | 5 |
| 2000 | 40,073 | 33.8 | 9.7 | 56.5 | 38.7 | 15.6 | 9 |
| 2001 | 50,520 | 36.9 | 11.2 | 51.9 | 38.2 | 19.4 | 10 |
| 2002 | 52,180 | 37.4 | 13.6 | 49.0 | 23.4 | 19.8 | 23 |
| 2003 | 68,913 | 26.7 | 20.9 | 52.4 | 13.4 | 25.9 | 28 |
| 2004 | 70,907 | 33.9 | 20.4 | 45.8 | 7.0 | 26.3 | 28 |
| 2005 | 62,419 | 38.6 | 18.9 | 42.5 | 12.6 | 22.9 | 28 |
| 2006 | 85,658 | 33.0 | 13.9 | 53.1 | 32.9 | 31.1 | 28 |
| 2007 | 111,337 | 29.6 | 9.0 | 61.4 | 29.1 | 39.9 | 28 |

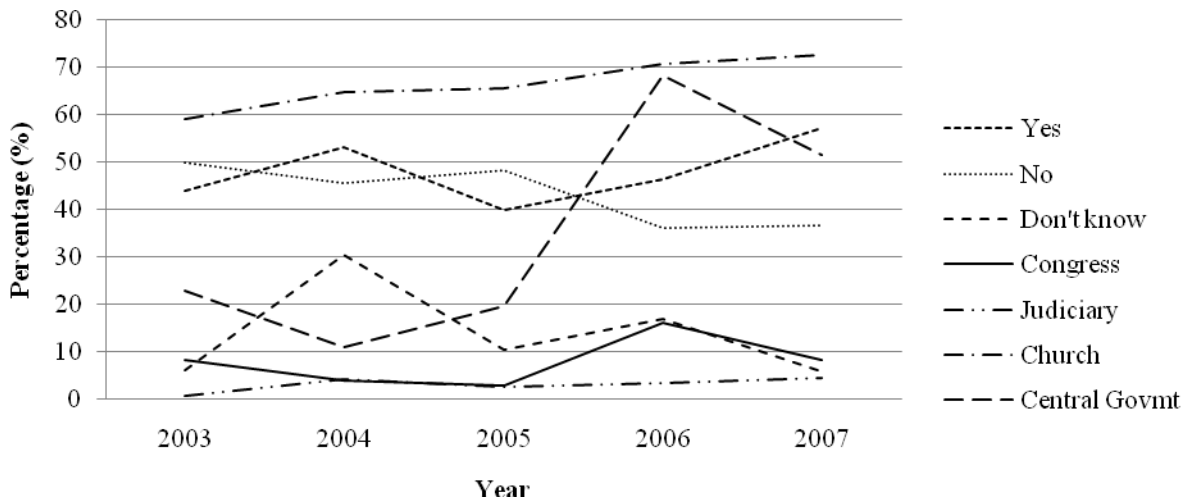
Source: DP 1999-2007, Lima: Defensoría del Pueblo. Population data collected from Economic Commission for Latin America and the Caribbean (CEPAL).

In 2004, the defensoría carried out an internal evaluation which identified social exclusion as a key and as yet unfulfilled priority for the institution.¹⁴ Case analysis revealed that it was often public servants, not vulnerable groups, who were making use of the institution. Martin Tanaka believes the institution lacks a methodology to assist the most vulnerable communities, asserting that "in fact, they have difficulty understanding what they require."¹⁵ This evaluation is acknowledged by some within the institution. Despite the work of decentralized offices, radio advocacy and other initiatives, socio-economic groups D and E are far more complicated to engage. The lack of penetration in rural zones is often put down to geography. A lack of knowledge of the institution is compounded, according to civil society actors, by a common, if often misguided, perception outside Lima that the defensoría is a very conservative institution, serving the provincial elite and hiring only *gente blanca* (white people).¹⁶ Suffice to say the complex insertion of the defensoría at the local level has been far from homogeneous and is a theme we return to in Section 4.3. There is very little robust empirical data on perceptions of the

institution outside Lima (the below graph refers only to Lima and metropolitan areas). However, an unpublished qualitative survey conducted by Belgian Technical Assistance in 2004 in Trujillo, Cusco and Ayacucho reveals respondents are highly critical of the defensoría for its lack of penetration beyond urban centers but also strongly support an institution that ‘listens to the people and treats all equally.’¹⁷

Awareness of the institution is one thing, knowledge of its function another. In a survey conducted in 1998, 72% of respondents believed the defensoría had the power to sanction public officials. The institution appears to have tackled this misconception with some success in the intervening years, with a recent survey recording 65.2% having ‘some idea’ or ‘knowing well’ the function of the defensoría.¹⁸ However, Table 1.1 appears to offer conflicting evidence of this claim with a steady reduction in consultations (cases received that are outside the jurisdiction of the institution) until 2005 followed by a sharp rise in 2007.¹⁹ The reversal of trends in Table 1.1 coincides with the election of Merino as Defensora in 2005. Arguably, her public profile and, crucially, robust popularity has encouraged many more Peruvians to access the institution. Merino’s public approval rating of 55.7% in November 2008 far exceeds any other public figure in Peru, with President Alan Garcia languishing at 23.1%.²⁰ Furthermore, media exposure and national campaigns have generated many more cases, especially in Lima.

Graph 1.1 Public confidence in the defensoría (yes, no, and don’t know) and other state and non-state institutions (2003-2007)



Source: Grupo de Opinión Pública de la Universidad de Lima, Estudio 387, Barómetro Social: IV Encuesta Anual Sobre Confianza en las Instituciones, Lima Metropolitana y Callao, 27-28 October 2007. Responses to the question: ‘¿Confía o no Confía en la Defensoría del Pueblo?’

The public authority of the institution is borne out in Graph 1.1, with public confidence in the defensoría largely correlating with Merino’s personal approval ratings (although, disapproval ratings are markedly higher). The stability and levels of confidence in the institution stand in stark contrast to other state institutions, with congress and the judiciary vying for bottom place. Notably, institutional support for the defensoría is relatively constant during this period, irrespective of the election of a new titular head to the institution in 2005. Compare this to the volatility of confidence in central government, closely tracking the handover of power from the

ineffectual President Toledo to an initially resurgent APRA administration in 2006. The data presented here further suggests that awareness of the defensoría has increased, with the number of those unaware of the institution falling from 30.4% in 2004 to 5.9% in 2007. The Church has historically enjoyed the highest levels of public legitimacy in Peru.

3. Fulfilling a rights mandate: to protect, monitor and promote

Alongside independence, comprehensive and far-reaching powers of investigation are an essential touchstone to the ability of the institution to fulfil a mandate to protect, monitor and promote human rights. The Peruvian office can initiate investigations proactively, or respond to admitted complaints. Public entities, with few exceptions,²¹ are legally obliged to cooperate with the investigation – though the defensoría has no powers of enforcement. Potent non-judicial actions used by the institution to advance rights claims include the issuing of an annual report as well as frequent resolutions, reports and recommendations. Although lacking in binding authority, these documents are intended to apply pressure on those institutions or actors implicated in the violations of citizens' rights, containing a high level of academic and legal analysis. Although the defensoría may lack coercive faculties, it does enjoy certain legal prerogatives, particularly regarding the protection of human rights. The institution can take cases of unconstitutionality, *habeas corpus*, *amparo*, *habeas data* actions and collective actions before the Constitutional Tribunal. It can also advance amicus curiae briefs before the courts and, upon exhaustion of domestic remedy, the Inter-American Court of Human Rights (IACHR). The institution can also draft and submit legislative projects.

The defensoría has institutionalized a position as an independent and persuasive rights voice within the Peruvian state apparatus. It has with increasing success begun scaling up individual rights grievances to address structural violations and facilitate their redress through legal, institutional and social channels. The institution's agenda has been guided by pragmatic considerations of maximizing its impact with finite resources, as well as recognizing the potency of subverting a traditional dialectic of clientelistic subjects as 'complainants' to one that recognizes the citizen as a 'victim' and rights claimant entitled to redress through official channels. While the Fujimori government may have initially pigeonholed the institution 'as only pronouncing in legal terms,' this was not entirely true. The defensoría applied itself to emulating the political function that such offices have assumed throughout Latin America, namely, turning rights claims into issues. Using its mandate in the broadest sense, it utilized a formula common to the institution – that of making politically potent links between separate human rights issues which officials often prefer to approach separately. The evolution of a rights agenda within the institution reflects shifts in the institutional context as new opportunity structures present themselves.

Given the threat posed by the Fujimori government toward civil and political rights, as Francisco Soberon, the Secretary of the Coordinadora Nacional de los Derechos Humanos (CNDH) explains, "for the defensoría, as with ourselves, the priorities were very clear, from a legal and political perspective the right to life had to take priority."²² During this period, the focus was on the civil and political realm, with a focus on the military justice system, compulsory military service, torture, judicial reform and freedom of the press, but also on more peripheral concerns that, in some cases, became high profile following their exposure.²³ These included Voluntary

Anti-contraceptive Surgery' (AQV) and arbitrary police detention, as well as other issues which remained largely unreported, such as conflict reparation for *rondas campesinas* (self-defense committees), and public interest legal action on a range of matters.²⁴ In the absence of an independent judiciary, the institution during this period assumed the role of guardian of the constitution. However, as will be explored in the following section, redress for civil and political violations also contained a group-based dimension. Above all, the Ad-Hoc Commission of the Innocents resonated strongly among an Andean population disproportionately affected by civil war and the arbitrary acts of the state. The defensoría's work within the electoral sphere also further highlighted the multiple obstacles confronted by Andean communities in exercising that most basic of political rights, due to internal displacement, lack of identity documentation, military supervision, among other factors.²⁵

In the radically altered institutional conditions of post-transition, the rights agenda of the defensoría initially displayed considerable continuity, producing two follow-up reports to AQV, continuing with considerable success to highlight military justice reform, the undocumented, further release of innocents, and the repealing of anti-terrorism legislation. Under the Paniagua transition government where many members of the human rights community were drafted into government,²⁶ the institution assumed a principal advisory function on questions of 're-institutionalization of the country,' involving issues as diverse as electoral reform, decentralization, transparency, access to information, and judicial reform. Of particular significance was institutional support for the creation of the TRC in 2001, its auxiliary function – providing it with data on the disappeared – and becoming the formal guardian of the TRC following its deactivation in 2003. In a context of rising social protest and spurred on by events in Arequipa in 2002 and Tambogrande in 2003 (as detailed below), the defensoría began monitoring social conflicts in 2003 but did not initially elaborate a methodology of intervention. Due to Alban's interim status and non-political profile, throughout his tenure the public profile of the institution diminished. However, this was compounded by a fractious internal transition from a core civil and political focus to a more integrated vision of rights advocacy. Senior personnel appeared to be uncertain and, to a degree, unwilling to engage in the political advocacy entailed by intervention in more contentious rights arenas. Following an internal review in 2004, the institution did begin to orient itself toward applying a rights optic to issues of public policy, conducting influential investigations into pensions, health, and the right to water. The internal structure of the institution further reflected the nascent systematization of a new rights approach during this period, the most significant of its innovations being a specialized environmental area within the office of public services.

In her inaugural address in 2005, Merino dedicated herself to being "the voice of the voiceless" and emphasized social rights, public services and the TRC as personal priorities.²⁷ Under her leadership, the defensoría has continued to respond to urgent petitions concerning civil and political violations, including allegations of police brutality, torture, arbitrary detention and electoral supervision.²⁸ Notably, the institution does not use the term 'systematic violation' of rights in respect to egregious violations such as torture – although such a practice is suspected.²⁹ However, Merino's priorities are structurally-oriented, possibly reflecting her background in the World Bank, a transition away from the legal role of constitutional guardian envisaged by Santistevan and Alban to one of facilitating rights claims through political discourse. As such, the institution has dedicated itself to introducing a rights-based discourse in public policy

debates, emphasizing mobilization through institutional and, to a lesser extent, social channels, outside the courts, and working more in tandem with state institutions and officials where possible. For many, a rights focus on issues of poverty, social exclusion and discrimination is long overdue and Merino's introduction of the term racism in official discourse has been saluted.³⁰ However, concern is also expressed at the perceived muted stance of the institution toward certain egregious violations, such as police killings during social protests, which have sharply increased under the Garcia administration.³¹

The institution has turned the spotlight on a myriad of issues, including road safety, municipal government, public services, education, and indigenous and native communities. Many of these areas are cross-cutting. For instance, the defensoría has pursued a national campaign against corruption through the prism of the education system. Similarly, the issue of transport and road safety amplified a wider concern on discrimination, citizen security and public services. The organic structure of the institution has also evolved rapidly in recent years with the creation of various new specialized programs, a Social Conflict Unit in 2006, a Public Policy Unit created in 2007, and an Anti-Corruption Unit in 2008. This expansion has been facilitated by a dramatic increase of 33.5% in budget from \$11 to \$15 million between 2005 and 2007 (DP 2008, 25). Some observers caution that the institution may be over-extending itself, and is at risk of politicization, with institutional priorities being guided by opinion polls rather than by strategic planning. Similarly, others argue that if there was more social pressure, the defensoría would be more aggressively pursuing the TRC recommendations rather than social conflict. Reflective of the scope of attention, other cross-cutting policy terrain, such as drug-trafficking, which has a normative span across corruption, fundamental rights and the environment, has received attention. However, an initiative coordinated by the Program of Environment and led by the local office of Pucallpa was quickly shut down following death threats against defensoría personnel.³² As the next section details, human rights advocacy in Peru remains a fundamentally contingent endeavor.

4. Pathways to compliance

Compliance in the Peruvian context is not straight-forward. In situations where formal rules are widely contested, routinely violated and frequently changed, compliance is contingent as much on political and social pressure being brought to bear as on legal enforcement. Lacking formal coercive faculties, compliance with many of the rights claims advanced by the defensoría may be less a matter of enforcement through formal sanctions than a matter of management involving the ability to alter the behavior of state agencies and agents through persuasive argumentation, informal mediation toward a solution, and the generation of social momentum, possibly public censure, around the rights claim in question. According to defensoría statistics, despite the overall political context, the institution did achieve a reasonable degree of compliance from 1996 to 2001, with 52% of total recommendations issued over the period under examination attended to by recipient state institutions (DP 1996-2001).³³ Following transition, the institution has made several attempts to better capture the level of cooperation and, importantly, compliance with defensoría investigations and recommendations, with limited success. Time series data from 2002 to 2007, reveals that 59.7% of all complaints received were concluded and substantiated with the cooperation of the institution in question. In terms of actual compliance with recommendations, the defensoría has devised a new measurement device termed the

‘defensómetro’ which gauges both the level of cooperation and the impact of the intervention on the rights grievance in question along a scale of 1 to 20. Table 1.2 presents the results for 2006 on levels of cooperation, those institutions found between 0 and 11 are consider deficient, 11 and 15 insufficient, and more than 15 adequate.

Table 1.2 Level of cooperation by institutions at the national level (2006)

| Institution | Score |
|--|--------------|
| National Pensions Office (ONP) | 8.49 |
| Judiciary | 9.77 |
| Ministry of Agriculture | 11.17 |
| Metropolitan Municipality of Lima | 11.77 |
| Peruvian Armed Forces | 11.84 |
| Ministry of the Interior | 12.68 |
| National Elections Jury (JNE) | 12.97 |
| Education Ministry – Regional Offices | 13.39 |
| National Police of Peru (PNP) | 13.69 |
| Social Health Security (ESSALUD) | 13.73 |
| Ministry of Health | 14.59 |
| Public Prosecutors Service (PPS) | 14.83 |
| National Registry of Identification (RENIEC) | 14.96 |
| National Penitentiary Institute (INPE) | 16.45 |
| Private water provider (SEDAPAL) | 16.62 |

Source: DP 2006, 265.

This exercise has been criticized from within the institution for a lack of clarity over variables and, crucially, a residual emphasis on the level of cooperation rather than compliance with recommendations. The creation of an effective monitoring tool remains a pending task and, tellingly, the defensómetro was not used in the 2007 annual report but has re-emerged in revised form as an interactive tool on the institutional website. However, despite its flaws, this exercise serves the purpose of highlighting the myriad difficulties of fulfilling a rights mandate in the Peruvian context where even basic tasks such as gaining access to information present serious challenges. It is worth noting that exercises such as these may carry risks for an institution that models itself on a results-driven image of efficiency. Inadequate or deficient cooperation on the part of the majority of institutions reflects negatively on the state, but also on the persuasive authority of the defensoría. The breadth of institutions presented in the table indicates the range of rights claims being handled by the defensoría and the complexity of tailoring each intervention to the bureaucratic idiosyncrasies of the entity in question. Unsurprisingly, it is the worst performers, such as the ONP, judiciary and Education Ministry, which present some of the most intractable structural and normative obstacles to realizing group-based rights claims. Conversely, the table also points to more fruitful intra-institutional relationships and potential structures of opportunity such as in the cases of SEDAPAL, RENIEC, the PPS and the Ministry of Health. As the following two sections outline, the defensoría has advanced rights claims through both formal and informal channels, often in tandem with one another, with variable, but instructive, results.

4.1. Judicial pathways to compliance

The courts and in particular the Constitutional Tribunal (CT) is a key legal alliance for the defensoría in articulating group-based rights claims, with the institution enjoying a range of emergency and normative prerogatives before the CT. The autonomy of the judiciary was severely compromised under the Fujimori government and few measures have yet been undertaken to address a historically-subjugated institution despite a comprehensive reform package languishing in the legislature since 2003 (Dargent 2006). Despite its lack of formal powers to initiate criminal proceedings, the defensoría does have a mandate over the administration of justice and has dedicated itself to monitoring the many obstacles to accessing formal justice. It has tended to rely on publicly exhorting the courts to act or, in rare cases, launching *amicus curiae* briefs before the courts on behalf of vulnerable groups, such as in the case of alleged corporate manslaughter,³⁴ and children subjected to sexual abuse and subsequently discriminated against by public officials.³⁵ The trial of former President Fujimori for human rights violations, while important in its own right, does not reflect the dysfunctional, sometimes corrupt and almost always highly inefficient nature of the judicial sector. Despite the positive role of certain individual judges in the field of human rights, the judiciary is widely perceived as the weakest of Peru's burgeoning democratic institutions and is deeply mistrusted.³⁶ Its hostility to external reform initiatives extends to internal relations, with requests by the CT to the judiciary branch for a policy response to the question of administrative reform left unanswered.³⁷ Of most concern is a deep institutional ambivalence, even willful ignorance, of human rights. For instance, in many cases of torture, presiding judges have handed down lesser sentences than the minimum stipulated by law without explaining their decisions (DP 2007, 52).

Box 1.1. Unlawful detention under anti-terrorism legislation

On 18 December 2006 eight campesinos were detained in Ayacucho on terrorism charges following the deadly ambush of a police patrol. The detainees were transferred to Lima on 2 January 2007, where they were formally charged with the crime of belonging to a terrorist organization (*Sendero Luminoso*). Following the Third District Court of Lima's decision that the case was not admissible, the campesinos were returned to Ayacucho and placed in the custody of the local police 'Division of Terrorism' stationed in the town at the order of a local court in Ayna-San Francisco. Having been informed of the case through its local office, the defensoría began investigating the legality of their prolonged detention. A formal request and analysis of the detention order issued by the Department against Terrorism (DIRCOTE) showed that the accused had been exonerated by DIRCOTE's own investigations. The defensoría also highlighted a lack of due process in their return transfer from Lima to Ayacucho. On 10 January 2007, the institution presented a demand of habeas corpus before the Constitutional Court of Huamanga to nullify the detention order. The court declared the order null on 13 January and the campesinos were immediately released. This case had national repercussions. Growing public concern over the lack of due process, led to an embarrassing u-turn by the Executive, with Garcia eventually calling for their release and in effect contradicting earlier statements made by the Defense Minister, Allan Wagner, and Prime Minister Jorge del Castillo condemning the detained individuals.

This ignorance of human rights is even more pronounced in remote rural areas. In the words of one functionary of the defensoría, “When you talk of powers of *amparo* and *habeas corpus* to local court personnel you might as well be describing different types of *chicha*.”³⁸ That said, the institution has on occasion advanced important rights claims through the local court system. The case illustrated in box 1.1 became a symbol of the persistent violation of political and civil rights suffered by the Andean communities.

The physical absence of the judicial apparatus is particularly acute in rural areas where the typical peasant must travel an average of 73 miles to reach a courthouse in order to appear at a hearing (Prillaman 2000, 24). Such barriers to access are highly detrimental to vulnerable groups such as women, children and the elderly. Access to women, for instance, is often further undermined by discriminatory stereotyping and the sexist application of the law. Rural women, in particular, have been failed by the system. Typically having less education, less knowledge of their rights, and scant economic resources, the defensoría has documented that few (of the many) victims of domestic violence seek assistance through the courts (DP 2006, 226). Although legal aid is available, primarily for alimony proceedings and those on subsistence incomes, judges are not accustomed to granting legal aid (Armas 2002, 20), and of the eleven Legal Assistance Centers (ALEGRA) created nationwide since 2004, they remain under-resourced, geographically limited in scope, and confronted by a range of limitations common to the legal sector. In Huancavelica, a town in the central sierras, where 44.3% of the local population speaks Quechua as their first language, the majority of local magistrates and court personnel have no language training or translation facilities (DP 2006, 223).

Of particular note is the relationship between the defensoría and the CT as normatively complementary guardians of the Constitution. However, unlike other CTs in the region, notably Colombia and Costa Rica, the Peruvian Tribunal has made little inroads into jurisprudence outside a core civil and political domain focused on individual violations.³⁹ Furthermore, concerns have been raised as to the CTs independence from the Executive. The abrupt resignation of the President of the CT in July 2008 was widely regarded as a response to external interference (Huerta 2009). Opinion varies within the defensoría as to whether effective interaction in the protection of rights should be considered the result of a “key strategic alliance” or simply two institutions fulfilling their function along parallel but complementary tracks. Intermittent coordination with a revived CT has led to occasional progressive legal actions, for example, on the denial of treatment for persons with HIV/AIDs and a recent action of unconstitutionality against Legislative Decree 1015 on the right to cultural identity.⁴⁰ Of the 149 demands of unconstitutionality placed before the TC from 1996 until 2004, 13.42% of those were presented by the defensoría.⁴¹ The previous defensor, Alban, argues that “we need to intensify the use of [legal] tools that allow the DP to intervene.”⁴² However, the present incumbent, Beatriz Merino, a former President of Congress, has been reluctant to confront the legislature through the courts, resulting in a marked drop in legal actions.⁴³ Beyond strategic rationale, the defensoría also confronts structural obstacles with 221 complaints received in 2006 concerning excessive delays in processes before the TC, pointedly noting the fundamental urgency of many of these claims (DP 2007, 226).

4.2. Institutional pathways to compliance

The courts present a key legal alliance for the defensoría in the implementation of rights norms. However, despite isolated gains, in practice, this relationship is tested by the dysfunctional state of the judiciary and its reticence to engage in normative rights claims beyond the civil and political domain. Furthermore, under the stewardship of Merino, the defensoría has instituted a focus on public policy and modes of influence outside legal channels. In addressing structural violations of rights, the institution is well positioned to scale up individual grievances into the policy domain. Conceptually, this raises the question of compliance with human rights norms understood as coercive enforcement through sanctions or, alternatively, compliance as management through normative pressure, training, and enmeshment within the state apparatus, with a view to altering behavior over time and, ideally, underlying preferences and values. Such a role emphasizes the function of the institution not only to protect, but also to monitor and promote compliance with rights, especially regarding the treatment of vulnerable groups by public officials. This entrance onto the national public policy stage has met with resistance not only from within the state, with claims that the defensoría has exceeded its original mandate, but also from individuals in civil society who question whether this activity is appropriate given ongoing systematic violations of civil and political rights by state agents.

Working through horizontal channels is nothing new. Under Fujimori, the degeneration of horizontal institutions led to the defensoría assuming an almost executive function. For example, the institution drafted and advanced legislative project No. 26655 creating the Ad Hoc Commission of the Innocents through Congress, following informal deliberations with Fujimori.⁴⁴ Between 1996 and 2001, public pronouncements and special reports were the tools most commonly used by the defensoría to maintain a presence in the public domain and to exert some compelling influence on state authorities. These special reports – 79 issued over the period in question – were targeted toward strategic campaign issues and attracted both strong media attention and the collaboration of civil society and international agencies. The reports resulted in eventual changes to anti-terrorism legislation, AQV, and military justice in the civil and political realms and highlighted issues of administrative inefficiency and adequate public services.⁴⁵ However, relations between the defensoría and other state institutions were almost uniformly hostile, relations of convenience informed by the client status of the respective institution with the executive. This adverse terrain was reflected internally within the defensoría which publicly shunned a political profile.⁴⁶ Building on this legacy, since 2001 the institution has emphasized special reports and recommendations as potent tools with which to transcend individual claims, going on to feed into public policy debates.⁴⁷ However, reflecting the radical shift in context, and Merino's background, senior functionaries are much less fearful of political contamination, asserting that “the defensoría forms part of the politics of this country. For this reason, we have to take great care and sustain its voice.”⁴⁸

Under Merino the principal task of the defensoría has shifted toward the monitoring of legislation. A key difficulty in this area is quantifying the work or impact of the institution, due in part to the dispersed nature of norm creation in Congress as well as informal preventive action which may result in speculative projects being shelved. Despite reservations, proponents of a more legal-sector approach accept that this is a legitimate, if secondary, task: “We all know that flawed law could always be worse.”⁴⁹ Under the Paniagua administration, the defensoría was

instrumental in advancing the TRC initiative in 2001 and the Transparency and Access to Public Information law (no. 27806) passed in 2002. The defensoría's tying of the issue of transparency and lack of formal accountability provisions to endemic corruption and the phenomenon of increasingly violent social conflict resonated strongly within Peruvian society. However, given executive dominance in Peruvian politics, the indifference of Toledo and hostility of Garcia toward the work of the defensoría has meant in practice coordination with official bodies such as the National Council of Human Rights and the legislative committee for Justice and Human Rights has been largely ceremonial. Garcia has become increasingly intolerant of an institution relatively free from executive control and also capable, up to a point, of checking executive discretion.⁵⁰ Merino has, on occasion, exercised a decisive moral authority over rights-discourse in the public sphere, resulting on a number of occasions in embarrassing about-turns on government policy that contravened human rights standards.⁵¹ The defensoría has also challenged Congress to revisit their granting of wide-ranging legislative powers to the executive. This has led to numerous executive decrees which jeopardize a range of social and economic rights including the right to protest, police immunity, and land rights.⁵²

However, while Garcia has never invited Merino to the Presidential Palace, this intolerance is not necessarily reflected among government ministers. The institution has advanced rights claims on various occasions through alliances with top-level government officials, in particular the Presidential Council of Ministers (PCM) under the direction of Jorge Del Castillo. The influence of the defensoría is discernible in its ability to identify and alter behavior *ex post*, but also in its potential to alter norms of conduct and even exert 'a demonstration effect' on other agencies. For example, the Unit for Social Conflict created by the defensoría in 2006 was swiftly emulated by the creation of a Unit of Conflict Analysis and Prevention within the PCM. The release of an extraordinary report on socio-environmental conflict by the defensoría in 2007 recommending the creation of an independent environmental authority, combined with heightened media and social pressure around the issue, galvanized the government into creating the Ministry of the Environment in 2008.⁵³ A report issued by the institution on the question of citizen security pressured the Ministry of the Interior to pass law no. 27933 in 2008, creating a multi-sector National Council on Citizen Security.⁵⁴ Such policy intervention has also led to resistance. In reference to the increasing profile of the defensoría in education, Nicolas Lynch, a former Education Minister under Toledo, insists "such interventions undermines the rule of law."⁵⁵ On the one hand, such actions may give the defensoría access to a larger group of actors within the public sphere. On the other, the institution must also guard against undue politicization. Furthermore, such policy actions do not necessarily signify compliance on the ground. Transparency reform, in particular, has been shallow, a deficit that according to the defensoría often inflames local tensions.

Examination of the health sector is also instructive in this regard. The defensoría's campaign, alongside civil society, against forced sterilization of women in Andean and indigenous communities in 1997 cemented its profile in the area of women's' rights. Introduced by Fujimori in September 1995, AQV was aggressively implemented by Health Ministry personnel from spring 1996. Furthermore, this was conducted with considerable international support and funding, the project briefly becoming the largest recipient of USAID family planning funds in the Western Hemisphere.⁵⁶ Rumors of abuse began to circulate among local grassroots NGOs and the church. National NGOs, such as IDL, APRODEH and the CNDH acted as vital

interlocutors between women's rights NGOs, such as Flora Tristan and Manuela Ramos, and the defensoría. With claims arriving at the institution, an official investigation was announced on 27 December 1997 (DP 1998, 294). The report, published one month later, documented in detail nine cases of sterilization that contravened the victims' human rights and official government guidelines.⁵⁷ The exposure and subsequent public and international censure surrounding this abusive intervention of the state led to a dramatic reduction, though not eradication, in AQV procedures, falling from 120,086 in 1997 to 27,996 in 1998 and was of serious embarrassment to Fujmori.⁵⁸ Under the leadership of Rocio Villanueva, the Defensora for Women's Rights until 2006, the defensoría maintained a strong monitoring presence in the area of women's reproductive rights and family planning, releasing two follow-up reports on AQV, documenting continuing abuses as well influencing the reform of Health Ministry (MINSA) operational norms.⁵⁹ Despite compliance on individual cases of abuse, as civil society observers' note, 'the actual implementation of this new norm has been haphazard.'⁶⁰ Intervention by the defensoría on individual cases of health rights violations is often successful. However, as one functionary concedes, "we are not necessarily generating a change in the system. This is the challenge, to actually change the conduct of the institution."⁶¹

Box 1.2. The legacy of the Truth and Reconciliation Commission

Justice for the approximately 70,000 victims of conflict following the release of the TRC final report in 2003 has been slow in coming. Of the 58 cases referred to the PPS for prosecution by the TRC and *defensoría* in 2003, 21 remain at investigation stage, 24 have gone to trial, 10 have received sentences, and three have been archived.⁶² By November 2008, 16 sentences were issued by the Peruvian judiciary, including nine cases supervised by the Inter-American Court of Human Rights (IACHR), resulting in eight convictions and eight acquittals.⁶³ Notwithstanding such challenges in the legal sphere, the coordination between the defensoría and the PPS in the exhumation of common graves in Putis and Cabitos has proceeded despite resistance from the Ministry of Defense and military.⁶⁴ This has been driven by the human rights community and Superior Prosecutor Victor Cubas who has been receptive toward addressing the human rights legacy of the conflict.⁶⁵ This activity combined with repopulation programs in severely affected native communities such as Ayacucho and Huancavelica, as well as in indigenous Amazon communities such as the Ashaninkas, leads one civil society observer to conclude, "the defensoría's balance sheet remains positive."

Furthermore, the defensoría, in close collaboration with the National Register of Identification (RENIEC), galvanized a national campaign throughout 2005 to address the estimated 1,071,420 adults who still lack identity documentation in Peru. In April 2008, Congressman Washington Zeballos Gámez introduced a bi-partisan legislative project No. 2240 to address the problem of non-existent or often inaccurate identity documentation among victims of the violence. Informal processes of consultations between Congressional aides and defensoría personnel are increasingly common and this project followed the release of a special report by the institution on the subject.⁶⁶ RENIEC has emulated the defensoría model, decentralizing throughout the territory and proactively fulfilling its function – a factor in explaining public confidence ratings of 70% in 2006 and 2007.⁶⁷ The work of the TRC, tolerated by the administration of Toledo, has been publicly attacked by the Garcia government.⁶⁸ It is interesting to note that the human rights community is not necessarily a natural associate for Merino, given her background. However,

many members of civil society were surprised at the robustness of her words during a commemoration event of the TRC report in 2007. Despite powerful opposition, the defensoría, alongside civil society actors such as IDL and ARODEH, has continued to lobby for implementation. Progress has been made, most notably in the area of victim reparations and in the creation of a Program of Collective Reparations in 2007 which has so far channeled \$27,904,820 to affected communities.⁶⁹ Despite these important steps, the defensoría has arguably not realized the potential of the TRC legacy. Merino does not appear convinced that the issue of the TRC can generate social momentum or resonate sufficiently outside a core liberal human rights constituency. Advocates for the TRC, such as Carlos De Gregori, argue that this is mistaken, especially when one considers that “in the case of the victims of violence many of them are the most poor and excluded in Peruvian society. Furthermore, these groups often guard their silence in fear of repercussions for their links to *Sendero Luminoso*.”⁷⁰

4.3. Social pathways to compliance

In conceptual terms, Smulovitz and Peruzzotti (2000, 3) define social accountability mechanisms as ‘actions carried out by actors with differing degrees of organization who recognize themselves as legitimate claimants of rights.’ They also identify a potentially complementary interaction between horizontal institutions, such as the defensoría, and social accountability actors when they coordinate actions that may lack mandatory effects but can still have ‘material consequences’ such as reputation costs. The defensoría has cultivated a strong support base in society. To withstand the most repressive years of the Fujimori regime, relationships with diverse actors were developed to create what Santistevan describes as the institution’s “four shields.”⁷¹ These principle allies are identified as civil society (chiefly the human rights community and civic and consumer associations), the church, the media, and international donors. High profile national campaigns, discussed above, publicized through the still-independent printed press have stood out as important achievements and quickly cemented the alliance between the institution and an organized, primarily urban, human rights community. As one observer puts it, “if NGOs were brokers, then the defensoría was a broker with muscle.”⁷²

Access to information is a core component in addressing power asymmetries within Peruvian society and the media is a powerful tool in this regard. The co-option or purchase of almost all terrestrial television channels and the tabloid press by Fujimori has been well documented (Conaghan 2005, 140-162). The return to democracy in 2000 did open up important space in the public sphere for watchdog media. But it should be noted that the majority of media outlets in Peru remain in the hands of a small group of private interests.⁷³ Under Fujimori, the defensoría developed a publicity strategy that relied on the media as an essential conduit to a wider constituency and exposure. However, access was largely dictated by the independence of the media outlet and, among captured outlets, the political criteria dictated by their paymasters. Under democratic conditions, the defensoría has exploited a more accessible media environment to project its institutional profile. Under Merino, assisted by a highly-resourced Communications and Institutional Image Office, the institution has achieved greater media exposure – breaking into national television and radio. During the Fujimori period, visibility for the defensoría was largely restricted to investigations and the exposure of wrongdoing. The contemporary media has on occasion provided a platform for the institution’s message on public

policy reform, the non-exclusivity of human rights, as well as channeling rights information to citizens and encouraging individual mobilization.⁷⁴ Despite a relatively low profile on national broadcast media, the defensoría has succeeded in introducing rights information into the public domain, especially relating to indigenous communities. However, the institution confronts a number of structural and commercial challenges. For instance, almost without exception media outlets are highly supportive of Garcia's liberal economic agenda and its dubious stance on a host of economic, social and cultural rights.⁷⁵ Furthermore, outside Lima, the majority of people listen to local radio stations rather than national networks such as RPP and CPN (Novarro 2008).

Santistevan frequently referred to the role of the defensoría as a bridge between the state and civil society and during his tenure much emphasis was placed on coordinated actions with prominent human rights NGOs such as the CNDH and Transparencia.⁷⁶ In turn, NGOs such as FEDEPAZ recognized the defensoría as a valuable ally in formulating legal reform projects and placing them on the national agenda.⁷⁷ Joint mobilization through horizontal and social pathways was achieved on a host of rights initiatives, possibly with most impact in the case of the Ad Hoc Commission, as described in Box 1.3.

Box 1.3. The Ad Hoc Commission of the Innocents

Established in August 1996, the ad hoc entity was the culmination of years of pressure from the human rights community and seven failed legislative initiatives to address the issue of thousands of innocent Peruvians in jail on dubious terrorism charges. The credit for overcoming resistance in Congress and for the executive and human rights organizations to reach a consensual solution is largely attributed to Santistevan.⁷⁸

The Commission was far from ideal, empowered to recommend presidential pardons to prisoners deemed innocent, rather than absolve them of their crimes. But it did succeed in securing the freedom of 513 individuals by the time its mandate expired at the end of 1999.

The human rights community initially had serious misgivings, and for good reason, with the rule of law effectively subverted to the will of the president, and the fear that the Commission would legitimize the highly controversial amnesty laws passed a year earlier. However, the community also accepted the view that an imperfect solution was better than none at all.⁷⁹ For his part, Santistevan strongly argued for seizing the initiative. With the issue in the media spotlight, he believed concrete results could be achieved quickly:

The subject had been promoted by NGOs, and later taken up by the media. The exposure became so great that Fujimori himself became personally interested in the subject. It seemed to me that it was best to act and secure results quickly. It was a purely political calculation, from a legal point of view it left much to be desired.⁸⁰

The cumulative effect of this position, working in unison with the role played by societal actors in denouncing violations, did make an impact. For instance, it is widely believed that the creation and activity of the Ad Hoc Commission created a more propitious environment for the gradual but progressive dismantling of the security state inherited from the early 1990s.⁸¹

The relationship across these two domains was reinforced by the transfer of prominent human rights and progressive Church-aligned NGOs, including Alban, Samuel Abad and Rocio Villanueva, into the defensoría, as well as the institutional isolation produced by the political context. Under the tenure of Alban, a close relationship was maintained with NGOs such as Propuesta Ciudadana advancing work initiated by the defensoría on decentralization, participation and transparency reform for instance. However, following transition in 2001 the institution did confront a sometimes heated internal debate on how or whether to move from a core civil and political focus toward encompassing the more overtly political terrain of social rights. Such tensions were also played out within a Peruvian human rights community increasingly divided along ‘democratic liberal’ and more ‘politically militant’ lines.

Merino has introduced a new dynamic (and personnel) into the defensoría, intended to assert its institutional independence from the human rights community. For instance, unlike Santistevan and Alban, Merino is dubious of the value of signed agreements of cooperation with NGOs. Instead, she views NGOs as partner on discrete projects and one of many sources of information that inform internal analysis and priorities.⁸² In part, this stems from her liberal political formation as well as the highly politicized nature of human rights discourse under Garcia and her fear of contamination by radical groups with civil society. Human rights NGOs have faced severe hostility from government officials and politicians linked to the previous Garcia (1985-1990) and Fujimori administrations. Actions in 2008, such as the expulsion of all civil society observers from the National Human Rights Council,⁸³ a proposed congressional investigation into alleged terrorism crimes by human rights defenders,⁸⁴ and the passing of law no. 28925 in 2007 to regulate the financial activities of all NGOs operating in Peru, amount for many to an official campaign waged against the human rights community. The level of acrimony has greatly restricted the ability of the defensoría and the targeted group of human rights NGOs to jointly mobilize through social pathways. Despite claims that Merino has distanced herself from these NGOs as a concession to detractors,⁸⁵ the evidence suggests otherwise, with the defensoría the only state institution to publicly challenge these measures and Merino going head to head with the APRA President of Congress.⁸⁶

4.3.1. Social pathways to compliance at the margins

Outside of the organized human rights community based in Lima, civil society in the fluid margins between urban and rural Peru and more remote areas remains fragmented and often regionally isolated. Grassroots organization suffered considerably from the extended economic crisis of the 1980s and a quasi-civil war context that inflicted considerable damage on mobilizing strength. The defensoría has mustered social forces with limited success outside Lima. Coordination with NGOs with national reach such as APRODEH, IDL, CNDH and SER has been sporadic. The offices of these NGOs are often also based in urban centers and joint mobilization is complicated by the diversity of interests found within coordinating NGOs such as the CNDH. However, there is precedent for effective intervention in rural areas. In 1998 the defensoría alongside the NGOs SER, Transparencia and Consejo de Paz, developed a limited, but significant, supervisory role in the municipal elections, primarily in those areas subject to state of emergency provisions in the high Andes.⁸⁷ In one instance, this collective exposed evidence of voting irregularities led to the annulment of the election in the district of Vinchos,

Ayacucho. The defensoría further produced a number of reports on the barriers to voting confronted by the populations of these areas, and others focused on vulnerable groups such as native communities and the disabled. As the Director of SER recalls, “this focus opened the door to a host of related concerns, not just fraud, but also extravagant penalties, distances involved in the Amazon region, and the undocumented.”⁸⁸

Such early interventions signaled the intent of the defensoría to penetrate rural areas. However, articulating and facilitating rights claims through local social mobilization poses a series of challenges to the institution. One component is the perception of local defensoría offices by the local community. The appointment of local representatives that do not reflect the demographic of the zone, or are unable to effectively articulate the interests and values of the local community, will undermine the legitimacy of the office. Although many of the provincial offices have succeeded in gaining the confidence of local communities, as one observer comments, “the Directors in Ayacucho, Apurímac and Huancayo appear to be more from San Isidro [an exclusive neighborhood in Lima] than the local areas.”⁸⁹ The head of the Cusco office recognizes this problem of local legitimacy and argues for direct local election of defensores to ensure that the institution “remains close to the people.”⁹⁰ Despite a growing volume of investigations into local concerns such as access to water and disposal of residual waste in rural areas,⁹¹ a recurrent theme is that the personnel of the defensoría struggle to ascertain local needs or place them on the national agenda. In the words of one civil society organizer, “it is not that they are racist but rather there is a problem of bureaucratization within the defensoría. They come with good intentions but their social stratum is divorced from that of the community.”⁹² He further adds that the personnel in Piura (many of them trained at the local Opus Dei University) lack the appropriate training to deal with serious violations of rights such as torture. A compounding factor has been command and control from Lima to the local offices, with no national campaigns initiated at the provincial level, and often unclear protocol regarding urgent actions in particular.

Underlying the confusion often shown by citizens toward the institution at the local level is a profound lack of a rights culture in Peruvian society. This is exacerbated by a general scarcity of institutional resources, negative perceptions of the state and, in the case of human rights, the pre-existence of a range of agencies. The Catholic Church and other denominations have remained potent social forces in Lima and many areas of the country. The local configuration of agencies will inform the reception of the defensoría. For instance, in departments with conservative bishops aligned with Opus Dei, for instance, Juan Luis Cipriani in Ayacucho, but also in Arequipa, Huancavelica and Trujillo, mobilization around human rights has traditionally been weak or non-existent. In such contexts, the defensoría has often become an important human rights counterweight to conservative constituencies. In other locations where the church is more socially progressive and a range of local agencies already exist, such as in Cusco, Puno and Piura, the defensoría has had to negotiate its insertion within the local context. Crucial to this is the ability of the institution to forge alliances with local actors, a particularly successful strategy in Puno where almost all the office personnel were recruited directly from the locally respected Church organizations Comisión Episcopal de Acción Social (CEAS) and Vicarías de Solidaridad. However, even in Puno, with the appointment of an Opus Dei bishop in 2000, the office has had to seek alternative allies within the local community.

A restricted notion of accountability agency may require that individuals can only be considered ‘social accountability actors’ if their grievances are framed in a language of rights and legality and do not appeal, at least directly, to material interests (O’Donnell 2006, 342). This is particular to the Peruvian rural context where individuals may have little recourse to collective organization or, where local communal structures do exist, there is little, if any, awareness of human rights standards. In Lima, the institutional clientele are frequently not the most vulnerable, but rather are professionals such as lawyers, teachers, and policemen with access to various legal and institutional channels of redress and who often have a grasp of rights discourse. Eliana Revollar, current head of the Lima office and formerly of the Ayacucho and Huancayo offices, identifies the phenomenon of “varying levels of citizenship” across departments in Peru. The experience in Ayacucho of a pervasive culture of submission and clientelism toward public authority contrasts with that of Huancayo where local people were far more ready to make demands of public officials. Revollar attributes these differential levels of citizenship to contextual factors, primarily rooted in Ayacucho’s experience as the epicenter of recent mass violence and impunity, as opposed to Huancayo where the effects of civil war were less devastating.⁹³ Where local communal judicial structures exist, there is often little connection to the formal judicial sector. Most prominent is the case of the local self-defense committees (rondas campesinas) borne out of the civil war, which commonly administer their own justice systems (Gitlitz 1983). Where such structures exist, for instance in Cajamarca and Trujillo, the local defensoría office has organized workshops, alongside the Church, with committees to promote adherence with human rights norms.⁹⁴ At the national level, the institution has pushed for reparations for members of the committees killed during the civil war as well as formal legal recognition for these organizations.⁹⁵

Both the defensoría and national NGOs are searching not only for concrete issues but also mechanisms through which to build alliances and scale-up human rights mobilization at the local level. One arena which is receiving growing attention within the defensoría is regional and municipal-level government. The process of decentralization initiated in 2002 has led to the installment of regional government in the same year and municipal government in 2003.⁹⁶ There now exist 1,832 local governments at the provincial and district level and they have rapidly become a prominent source of complaints to the defensoría.⁹⁷ The institution has adopted a three-pronged strategy toward local government focused on expanding participation through norms contained within the legislation, monitoring the new Regional Coordination Councils (CCRs) consisting of both civil society and government representatives, and promoting implementation of transparency legislation. The defensoría has begun to mobilize on new participative budget and public accountability mechanisms, such as mandatory ‘public accountability audiences,’ contained within the legislation on local government. Already the institution confronts myriad obstacles, from the intransigence of local officials to hold audiences or release the minutes of meetings, to language barriers among quechua speakers, civil society representatives to represent their own rather than their community’s interests, and the degeneration of public audiences into highly politicized and often hostile exchanges.⁹⁸ Despite the challenges, these new strata of government represent important new structures of opportunity for local voice in a traditionally highly centralized political system.

Finally, escalating violent social conflict between myriad actors presents a highly complex and unstable rights terrain for the defensoría to navigate. According to the Unit of Social Conflict, as

of February 2009 there are 211 social conflicts in Peru, of which 150 are active and 61 latent.⁹⁹ The tragic events of Illave in 2004 have spurred the defensoría, with some reluctance, to articulate a position on social conflict.¹⁰⁰ Conflict in Peru is fuelled by socio-economic disparities and often a lack of transparency over resource allocation at the local level, a focal point being tensions between local communities and the transnational extractive industry. Conflict mediation is a politically hazardous arena in Peru. The defensoría has, as in the case of Tambogrande in 2003, failed to instill neutrality in its intervention and borne the political cost. However, increasingly, the institution is viewed as the only credible mediator within the Peruvian state. As attested to by various NGO representatives:

The defensoría always arrives. Even to places where the police will not enter. For instance, during the 2004 conflict in Puno the police requested that the defensoría enter the conflict zone first. In the case of Illave, the people recognized that the defensoría arrived and tried. All other institutions refused.¹⁰¹

This credibility extends to the executive, with Del Castillo repeatedly requesting the intervention of the defensoría in escalating conflict scenarios. Such intervention has, on occasion, been decisive, as in relation to the Achuar community in 2006 and, most recently the taking of police hostages in Moquegua.¹⁰² Danger resides not only in the potential for the institution to be painted as partisan but also, and possibly most troublingly, in its failed intervention serving as the pretext for conflict escalation by security forces, as occurred in the case of Combayo, Cajamarca in 2006.¹⁰³ The insistent demands of the polity, combined with the institutional deficits of an incipient democratic regime, especially in the interior of the country, places novel demands on the mandate of the defensoría that are likely to intensify. But as Merino has stated, in direct challenge to the 'law and order' discourse of the Garcia government, "we shouldn't fear mobilization as it means Peruvians are willing and able to realize their rights. It's the violence we must avoid."¹⁰⁴

5. Conclusion

The defensoría constitutes a distinctive and significant human rights referent point within the Peruvian state apparatus. Despite myriad challenges confronted by the institution, it has managed to not only maintain its autonomy but also to make an important contribution toward articulating and facilitating rights claims across an often entrenched divide between state and society. Originating under authoritarian conditions, the institution has proven itself capable of adapting to the shifting political and institutional contours presented by transition to democracy in 2001 and subsequent rotations of democratically elected government. In exercising a rights mandate, emphasis has been placed on the enmeshment of the defensoría within the pre-existing constellation of actors in the judicial, institutional and social domains. Under Fujimori and in response to its isolation within a degenerate state structure, the defensoría developed a strong alliance with actors outside the state. Under the stewardship of Merino, the institution has begun to expand both its normative reach across the gamut of human rights but also its coordination with a restored, though still fragile, democratic order.

As opposed to seeking to advance compliance with individual rights claims through legal channels, the institution has re-oriented its attention to scaling up individual claims to address

structural issues – often intervening directly in public policy debates. A discourse that views public policy through the optic of human rights is a natural extension of the core protection function of these institutions. However, such intervention may risk over-extension of institutional resources with a detrimental effect on impact. Furthermore, the institution is exposed to higher levels of political resistance which may, if not pre-empted, jeopardize the institution's autonomy in the long-run. On a conceptual level, this transition in institutional intervention reflects a fundamental understanding of rights contestation as essentially political and contingent upon the strategic interaction of agency and structure. This is true of rights debates everywhere, but particularly within the Peruvian context where human rights discourse is highly politicized and compliance is predicated on the ability and willingness of legal institutions to fulfill their function.

It is not uncommon to hear the sentiment that in Peru, if you fulfill your function, you achieve something extraordinary. This brings us to the question of compliance. Specifically, in a context where legal mobilization is severely curtailed and even discouraged, how can rights claimants achieve redress for perceived injustices? This paper, drawing on theories of political accountability, has demonstrated that the defensoría occupies a distinct position within the political system which allows it to creatively access – even combine – legal, institutional and social mechanisms or pathways toward compliance. The paper presents a picture of an institution that is actively identifying progressive actors within the state that can facilitate mobilization around rights claims. Similarly, the institution continues to work with diverse civil society actors to disseminate information on rights into the public sphere and investigate rights violations. Within this framework of transversal mobilization across domains, the challenge for the institution is to maintain sufficient autonomy and credibility with both state officials and civil society organizations.

On a final note, the institution's lack of coercive faculties and its inability to enforce compliance by sanctions are often conceived as the institution's Achilles heel. Clearly, the institution might gain some hard power were it to have legal faculties. However, the model of influence developed by the defensoría – within the broad tradition of ombudsmen and advisory commissions – is based not on coercion but rather consent, even persuasion, and the threat of indirect but material consequences if an institution chooses not to abide by the proposed recommendations. In a context where formal rules are neither stable nor uniformly enforced, authority based on a platform of social legitimacy, combined with the ability to generate momentum behind the rights claim in question may prove particularly potent. Indeed, the evidence suggests that the defensoría does achieve a surprising degree of compliance on cases of individual violations that come to light. The real challenge remains to not only achieve redress for individual transgressions but to alter the behavior, and even underlying values, of the state and its agents.

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- ¹ O'Donnell, Guillermo A. (1998). 'Horizontal Accountability in New Democracies,' *Journal of Democracy*, Vol. 9(3), p. 116.
- ² See 2008 Human Rights Report: Peru, U.S. Department of State, published: 02/25/09.
- ³ This is particularly true of Costa Rica and Uruguay. See Sieder et al. (2005).
- ⁴ As Paulo Drinot (2006, 21) writes, 'Peruvians, I would suggest, perceive organizations such as the judiciary or the political parties to be illegitimate because they are inefficient and corrupt, but also, and perhaps most importantly, because they are seen to be the expression of an institutional system that they have come to understand, and for good reason, as responsible for, and dependent on, their exclusion from full citizenship.'
- ⁵ The 2008 *Latinobarómetro* survey of Peru shows a worrying decline to 45 percent from 62 percent in 2001 of affirmative responses to the question 'democracy is preferable to any other type of democracy.'
- ⁶ 'Voice' requires, firstly, that citizens should be aware of their rights, the right-violation and the possibility for redress through the courts. Secondly, the citizen may face motivational and psychological barriers such as the possibility of alternative mobilization strategies and fear and mistrust of the judicial system. This definition follows Gløppen (2006, 46).
- ⁷ Regulative functions are those focused on state compliance with international and domestic legal obligations. Constitutive functions are those intended to transform the underlying preferences of state or social actors, for example through educational campaigns.
- ⁸ Including Samuel Abad, Jose Tavera, Gino Costa, Rocio Villanueva, and Vladimir Huaroc.
- ⁹ Ismael Muñoz, Professor of Economics at La Católica University. Interview by author in Lima 19-06-08.
- ¹⁰ Wilfredo Ardito, responsible for economic, social and cultural rights in the NGO APRODEH. Interview by author in Lima 10-06-08.
- ¹¹ Calculations based on 2003 data from Consorcio Justicia Viva, <http://www.justiciaviva.org.pe/indicadores/> (accessed 26/02/09). The 2006 budget for the *defensoría* was 10.98% of the overall judicial budget (\$10.8 million to \$98.9 million).
- ¹² Defensoría del Pueblo Annual Report, cited henceforth as 'DP'.
- ¹³ Rolando Luque, former personal advisor to the Defensor del Pueblo. Interview by author in Lima 15-07-05.
- ¹⁴ Walter Alban, ex-Defensor 2000-2005. Interview by author in Lima 23-06-08.
- ¹⁵ Martin Tanaka, political scientist at Institute for Peruvian Studies (IEP). Interview by author in Lima 29-08-05.
- ¹⁶ Ardito, 10-06-08.
- ¹⁷ *Informe Final Investigación Cualitativa: Percepción sobre derechos y la labor de la Defensoría del Pueblo, IMASEN – Investigación sociológica y de mercados*, Cooperación Técnica Belga, 2004.
- ¹⁸ Question: *Y respecto al Defensor del Pueblo, ¿diría Ud. que conoce bien, que tiene alguna idea o que, por el contrario, no conoce las funciones que desempeña el Defensor del Pueblo?* Centro de Investigaciones Sociológicas, Barómetro de Noviembre, Nationwide and sample of 2,448, Estudio 2,778, November 2008
- ¹⁹ A complaint refers to the violation of a fundamental right or illegal acts committed by an entity (of the public administration or public service provider) and/or public servants in the carrying out of their legal duties. A petition refers to any claim presented requiring the intervention of the *defensoría* in order to attend to and/or solve a situation where constitutional rights are affected but no violation of legal duties or misconduct has been committed.
- ²⁰ CPI, Estudio de Opinión Pública a Nivel Peru Urbano, sample of 1,550, 3.4% +/- margin of error, 23-28 November 2008.
- ²¹ This legal obligation of cooperation is limited in relation to (a) judicial secrecy (including military courts); (b) national security, defense and international relations.
- ²² Francisco Soberon, Executive Secretary of the NGO CNDH. Interview by author in Lima 16-08-05.
- ²³ See the special reports produced by the *defensoría*. Available at www.ombudsman.gob.pe.
- ²⁴ Ibid.
- ²⁵ See Defensoría del Pueblo, 1998. *La omisión al sufragio: realidad del trapezio andino*. Informe Defensorial No.16. Lima: Defensoría del Pueblo; Defensoría del Pueblo.
- ²⁶ Prominent human rights advocates such as Pedro Franke, Fernando Tuesta, De La Jara, Susana Villaran, and others were incorporated into Paniagua's ministerial cabinet.
- ²⁷ 'Eligen a Merino Nueva Defensora del Pueblo,' *Perú 21*, 30-09-05.
- ²⁸ Defensoría del Pueblo, 2006. *El difícil camino a la reconciliación: Justicia y reparación para las víctimas de la violencia*, Informe No. 112, Lima: Defensoría del Pueblo.
- ²⁹ Eduardo Vega, Defensor for Human Rights and Disability. Interview by author in Lima 30-06-08.
- ³⁰ Ardito, 10-06-08.

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- ³¹ In the five years of Toledo's government, 15 individuals died at the hands of the police. 18 individuals died in the first two years of the Garcia government. See APRODEH (2008).
- ³² Carlos Alza, former Defensor for Public Services and the Environment. Senior Advisor to the Defensora Merino. Interview by author in Lima 17-06-08.
- ³³ Data for 1998–1999 is not available.
- ³⁴ Amicus curiae briefs relating to the fires at the Nightclub Utopia in 2001 and Mesa Redonda in 2002. See press releases N° 071/CII/DP/2009 and 011/CII/DP/2009
- ³⁵ See DP 2006, 185.
- ³⁶ In the 2008 Latinobarómetro survey, with only 15% of respondents believing there is 'equality before the law' – the lowest level in the region.
- ³⁷ Sentencia 4-CC-TC del 10 de noviembre del 2004.
- ³⁸ Fernando Castañeda Portocarrero, Defensor for Constitutional Affairs. Interview by author in Geneva, Switzerland 27-03-09.
- ³⁹ See Alicia Yamin and Oscar Perra-Vera (2009). 'How do courts set health policy? The case of the Colombian Constitutional Court', *PLoS Medicine*, Vol. 6: 2.
- ⁴⁰ Exp. No. 24256-2002, Quinto Juzgado Especializado en lo Civil de Lima
- ⁴¹ Defensoría del Pueblo, 2004. *Ocho años de procesos constitucionales e el Perú: Los aportes de la Defensoría del Pueblo 1996-2004*, No. 24. Lima: Defensoría del Pueblo.
- ⁴² Alban 23-06-08.
- ⁴³ See demanda de inconstitucionalidad contra artículo de ley No. 28996, EXP N° 00023-2008 PI/TC, 22-09-08.
- ⁴⁴ Samuel Abad, Deputy Defensor (1996-2006). Interview by author in Lima 14-07-05.
- ⁴⁵ See the special reports produced by the defensoría. Available at www.ombudsman.gob.pe.
- ⁴⁶ "I am convinced that the task of representing the citizen before the state has to be, by definition, apolitical, completely apolitical." Jorge Santistevan in interview, Cuestión de Estado, 1997. *Instituto de Dialogo y Propuestas*. No.27, Abril 1997, 18-19.
- ⁴⁷ See the special reports produced by the defensoría. Available at www.ombudsman.gob.pe.
- ⁴⁸ Susana Silva Hasembank, Defensora for Public Administration. Interview by author in Lima 16-06-08.
- ⁴⁹ Cesar Landa, President of the Constitutional Tribunal (2006-2008). Interview by author in Lima 20-06-08.
- ⁵⁰ See 'La defensora y el atacante,' *La República*, 11-11-07.
- ⁵¹ The defensoría publicly denounced the government's failed attempt in 2007 to re-instate the death penalty for child sex offenders jeopardizing Peru's membership of the IACHR. At the end of November 2007, the administration proposed to publish the names of all ex-felons convicted on terrorism charges. Merino, alongside other public figures such as Eduardo Pérez Rocha ex-General of the National Police of Peru, strongly criticized this initiative as counter-productive.
- ⁵² See Defensoría del Pueblo, 2008. *Análisis de los Decretos Legislativos promulgados al amparo de las facultades otorgadas por la Ley N° 29009*, Informe No. 129. Lima: Defensoría del Pueblo.
- ⁵³ Defensoría del Pueblo, 2007. *Informe Extraordinario: Los Conflictos Socioambientales por actividades extractivas en el Perú*. Lima: Defensoría del Pueblo.
- ⁵⁴ Defensoría del Pueblo, 2008. *¿Ciudadanos desprotegidos? Estrategias para fortalecer el Sistema Nacional de Seguridad Ciudadana*. Lima: Defensoría del Pueblo.
- ⁵⁵ Nicolas Lynch, Academic and former Minister of Education under Toledo. Interview by author in Lima 10-06-08.
- ⁵⁶ Hearing of the US Congressional Committee on International Relations, February 25, 1998.
- ⁵⁷ Defensoría del Pueblo, 1998. *Informe sobre la aplicación de la anticoncepción quirúrgica voluntaria I*. Lima: Defensoría del Pueblo.
- ⁵⁸ Figures from Ministry of Health. Cited Defensoría del Pueblo, 2002. *La aplicación de la anticoncepción quirúrgica y los derechos reproductivos III*. Informe No.69. Lima: Defensoría del Pueblo, p.136.
- ⁵⁹ Physicians for Human Rights, 2007, *Deadly Delays: Maternal Mortality in Peru*, Washington D.C.: Physicians for Human Rights, p. 118.
- ⁶⁰ Ibid.
- ⁶¹ Rosalia Uzategui, Case commissioner at Lima office. Interview by author in Lima 21-06-08.
- ⁶² Defensoría del Pueblo, 2008. *A cinco años de los procesos de reparación y justicia en el Perú. Balance y desafíos de una tarea pendiente*. Lima: Defensoría del Pueblo, p. 124.
- ⁶³ Ibid., p. 149.
- ⁶⁴ 'Oficiales del ejército y la marina son citados por la matanza de Putis,' *La República*, 25 February 2009.

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- ⁶⁵ Vega 30-06-08.
- ⁶⁶ Silva 16-06-08. See Defensoría del Pueblo, 2008. *Devolverles su identidad es devolverles sus derechos. Supervisión a los registros siniestrados a consecuencia de la violencia política*. Informe No. 130. Lima: Defensoría del Pueblo.
- ⁶⁷ Apoyo Special Survey, *El Comercio*, 17 September 2007.
- ⁶⁸ 'Luis Giampietri afirma que la CVR no aportó nada a la pacificación del país,' *El Comercio*, 24 August 2008.
- ⁶⁹ Defensoría del Pueblo (2008). *A cinco años de los procesos de reparación y justicia en el Perú. Balance y desafíos de una tarea pendiente*, Lima: Defensoría del Pueblo, p. 53.
- ⁷⁰ Carlos De Gregori, Academic and Director of IEP. Interview by author in Lima 30-06-08.
- ⁷¹ Jorge Santistevan, ex-Defensor 1996-2000. Personal communication with author, 22 February 2006.
- ⁷² Javier Torres, Director of Servicios Educativos Rurales (SER). Interview by author in Lima 19-06-08.
- ⁷³ A large but volatile printed press of about 27 dailies, including tabloids, is concentrated in Lima, due primarily to distribution problems and lower literacy rates in rural areas. See Schmidt (2000).
- ⁷⁴ Television interview with Beatriz Merino, *Pulso*, broadcast 10.30 PET, 29-06-08.
- ⁷⁵ Alan Garcia, 'El síndrome del perro del hortelano,' *El Comercio*, 28-10-07.
- ⁷⁶ Jorge Santistevan, 1999. 'Defensor que no critica, que renuncie.' Interview in Ideele, *Revista del Instituto de Defensa Legal*, No.119, 22.
- ⁷⁷ Ana Leyva, Environmental Officer for NGO FEDEPAZ. Interview by author in Lima 23-08-05.
- ⁷⁸ Gino Costa, 1998. *Dos Anos de la Comisión Ad-Hoc: Resultados y Perspectivas*. Debate Defensorial: Revista de la Defensoría del Pueblo, No.1, Lima: Defensoría del Pueblo, 127-142.
- ⁷⁹ See Coletta Youngers (2006).
- ⁸⁰ Santistevan 22-02-06.
- ⁸¹ See Youngers 2006.
- ⁸² Silva 16-06-08.
- ⁸³ 'Ejecutivo no permitirá observadores en el Consejo Nacional de DDHH,' *La República*, 28-04-08.
- ⁸⁴ 'Investigarían a ONGs incómodas,' *La República*, 30-04-08.
- ⁸⁵ The absence of a high-level official from the defensoría at the inauguration of the new Executive Secretary of the CNDH, Ronald Gamarra, in May 2008 was noted by observers in civil society.
- ⁸⁶ 'Ley contra ONGs enfrenta a Beatriz Merino con Mercedes Cabanillas,' *La República*, 07-11-06.
- ⁸⁷ In the 1998 Municipal elections the Defensoría fielded 25 people to supervise in the cities of Huamanga, Huancavelica, Huancayo, Andahuaylas, and nearby districts.
- ⁸⁸ Torres 19-06-08.
- ⁸⁹ Ardito, 10-06-08.
- ⁹⁰ Silvio Campana, Defensor for Cusco office. Interview by author in Cusco 10-07-08.
- ⁹¹ See Defensoría del Pueblo, 2007. *El Derecho al Agua en Zonas Rurales: El caso de las municipalidades distritales*. Informe No. 124. Lima: Defensoría del Pueblo.
- ⁹² Gorge Farfan, Works for the Instituto de Defensa Legal and often in the Piura region. Interview by author in Lima 26-08-05.
- ⁹³ Eliana Revollar, Defensora for the Lima office, previously based at the Ayacucho and Huancayo offices. Interview by author in Lima 01-07-08.
- ⁹⁴ Maria Castañeda, commissioner at the Cajamarca office (1999-2001). Interview by author in Liverpool, UK 03-02-06.
- ⁹⁵ See Defensoría del Pueblo, 2002, *Consulta nacional: Hacia una ley de rondas*, Lima: Defensoría del Pueblo; Defensoría del Pueblo, 2000, *La indemnización a los miembros de los comités de autodefensa y rondas campesinas víctimas del terrorismo*, No. 54, Lima: Defensoría del Pueblo
- ⁹⁶ Ley de Bases de la Descentralización (Ley N° 27783), 20 de julio del 2002; Ley Orgánica de Gobiernos Regionales (Ley N° 27867), 18 de Noviembre del 2002; and Ley Orgánica de Municipalidades (Ley N° 27972), 26 de Mayo del 2003.
- ⁹⁷ Defensoría del Pueblo, 2008, *¿Uso o abuso de la autonomía municipal? El desafío del desarrollo local*, No. 133, Lima: Defensoría del Pueblo, p. 16.
- ⁹⁸ Eliana Alvites, Defensora for Good Government. Interview by author in Lima 13-06-08.
- ⁹⁹ Defensoría del Pueblo (2009), *59° reporte de conflictos sociales*, Lima: Defensoría del Pueblo.
- ¹⁰⁰ In April 2004, the local mayor of Illave, a small district of Puno was lynched by the local populace for alleged financial irregularities. This was one of 19 lynching incidents in Peru in 2004. However, the graphic nature of the

confrontation generated national and international headlines. Local defensoría personnel were, alongside the local church, a solitary and ultimately impotent state presence during these events. The local police refused to intervene.

¹⁰¹ Torres 19-06-08.

¹⁰² ‘Defensora Merino defiende a nativos Achuar y aclara al premier Del Castillo,’ *La República*, 20-10-06. Also, ‘Manifestantes liberan a un grupo de policías heridos para que reciban asistencia médica,’ *El Comercio*, 17-06-08.

¹⁰³ Assertion made by senior functionary within the Defensoría. See ‘PNP disparó contra campesino en enfrentamiento de Combayo,’ *La República*, 20-08-06.

¹⁰⁴ Television interview with Beatriz Merino, *Pulso*, broadcast 10.30 PET, 29-06-08.

Bibliography

Armas, Henry, 2002. ‘The Social Outreach of the Law,’ Institute of Development Studies, (University of Sussex).

CERIAJUS, 2004. *Plan de Reforma de la Administración de Justicia de la Ceriajus: El Acuerdo por la Justicia que debemos respetar*. Lima: Pontifica Universidad Católica del Perú.

Conaghan, Catherine, 2005. *Fujimori’s Peru: Deception in the Public Sphere*. Pittsburgh: University of Pittsburgh Press.

Dargent, Eduardo, 2006. ‘Judicial Reform in Peru: 1980 -2005,’ In John Crabtree (ed.), *Making Institutions Work in Peru*, London: ISA.

Drinot, Paulo 2006. ‘Institutional Development in Peru in Historical Perspective,’ In John Crabtree (ed.), *Making Institutions Work in Peru*, London: ISA.

Levitsky, Steven and Mara Murillo, 2009. ‘Variation in Institutional Strength.’ *Annual Review of Political Science*, Vol. 12 (forthcoming).

O’Donnell, Guillermo, 1999. ‘Horizontal Accountability in New Democracies.’ In: Andreas Schedler et al. (eds.). *The Self-Restraining State: Power and Accountability in New Democracies*. Boulder: Lynne Rienner, 29-52.

O’Donnell, Guillermo, 2006. ‘Notes on Various Accountabilities and Their Interrelations.’ In: Enrique Peruzzotti and Catalina Smulovitz (eds.). *Enforcing the Rule of Law: Societal Accountability in the New Latin American Democracies*. Pittsburgh: University of Pittsburgh Press, 334-343.

Pegram, Thomas, 2008. ‘Accountability in Hostile Times: The Case of the Peruvian Human Rights Ombudsman 1996-2001,’ *Journal of Latin American Studies*, 40: 51-82.

Prillaman, William, 2000. *The Judiciary and Democratic Decay in Latin America*. Praeger Press.

Perruzzotti, Enrique and Catalina Smulovitz, 2000. ‘Societal and Horizontal Controls: Two Cases of a Fruitful Relationship.’ Conference Paper for Institutions, Accountability and Democratic Governance in Latin America, 8-9 May 2000. Notre Dame: Kellogg Institute University of Notre Dame

Peruzzotti, Enrique and Catalina Smulovitz (eds.). *Enforcing the Rule of Law: Societal Accountability in the New Latin American Democracies*. Pittsburgh: University of Pittsburgh Press, 334-343.

Schmidt, Corinne, 2000. *Press, Power and Politics in Peru*, International Freedom Forum.

Sieder, Rachel et al., 2005. *The Judicialization of Politics in Latin America*, London: Palgrave Macmillan.

Stewart, Frances, 2008. *Horizontal Inequalities and Conflict*. Basingstoke: Palgrave Macmillan.

Youngers, Coletta 2006. ‘Promoting Human Rights: NGOs and the State in Peru,’ In John Crabtree (ed.), *Making Institutions Work in Peru*, London: ISA.