



social accountability NOTES

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Advocacy by the Office of the Ombudsman: Enabling Water Reforms Based on Citizens' Feedback in Peru

This case examines how the Defensoría del Pueblo (National Ombudsman) in Peru amplified the voice of the community by establishing mechanisms for receiving and responding to citizens' complaints about water delivery. The new system allowed the Ombudsman to use input from the public to improve national public policy and regulations, and in so doing, helped to bridge the disparate interests of service users, water suppliers, and the national regulator.

This type of public inclusion also raised awareness of important aspects of service delivery. Specifically, the Office of the Ombudsman helped water users understand that although the public has the right to access safe and clean potable water, it must also pay the costs of service delivery. In the process, the Ombudsman had to correct the common assumption that water is a free and infinite resource by increasing public awareness of the expenses associated with building and maintaining the infrastructure necessary for water delivery.

Peru has tried to make water services sustainable through reforms, but several factors have blocked the way. Perhaps the most challenging was convincing the public to pay higher prices for water. To make things more difficult, the provision of water services in Peru—and rate setting in particular—had long been politicized. Political actors controlled critical decisions—including rate setting—and as a result, decisions often reflected political priorities instead of the needs of the public. The water boards, along with officials from the decentralized water companies, were responsible for not only managing and operating the utilities, but

Box 1. Good Practices Checklist

Effective advocacy for water reforms includes:

- Establishing mechanisms that empower users to identify problems related to service delivery, water quality, and other key issues.
- Facilitating dialogue among main stakeholders.
- Disseminating information to the general public and elected officials about the costs of water sector infrastructure and service delivery.
- Depoliticizing water reforms and mitigating the effects of unpopular rate increases by improving service delivery.
- Building the capacity of policy and regulatory reformers.

also for overseeing billing and collections, levying penalties for nonpayment, and connecting and disconnecting users. Despite widespread need for infrastructural improvements and increased coverage throughout the water sector, water officials were often reluctant to implement potentially unpopular measures—such as enforcing rate increases required by the regulator, or disconnecting nonpaying users—for fear of political backlash. The governance situation of water delivery services was therefore untenable and jeopardized the financial sustainability of the decentralized water companies.

Peru's Water Sector Before the Ombudsman: Problems and Inefficiencies

The constitution that Peru adopted in 1979 established that local public service delivery is the responsibility of municipal competencies. The Municipalities Organic Law of 1981 intro-

duced further regulation of service delivery. Before 1990, urban water management was under the authority of the National Potable Water and Sewerage Service (*Servicio Nacional de Agua Potable y Alcantarillado*), a centralized public government agency under what was then the Ministry of Housing and Construction. The promulgation of Peru's new constitution in 1993 did not substantially change municipal responsibilities for water service delivery.

During the 1990s, public services in Peru, such as telecommunications and electricity, were privatized. Yet urban water and sanitation services remained in the hands of municipal public corporations, with the exception of the Lima-based water and sanitation utility SEDAPAL, which remained a state-owned company managed by the national government. In 1994, the Sanitation Services General Law was implemented, creating a water and sanitation regulator: the National Superintendency for Water and Sanitation Services (SUNASS, *Superintendencia Nacional de Servicios de Saneamiento*). The regulator was established to facilitate the privatization of water and sanitation services following the model of Peru's previous utility privatizations. SUNASS did not originally focus on improving the water utilities' services, but rather on justifying privatization by identifying inefficiencies. Opposition to privatization was too strong, however, and for years the regulator did nothing to improve water services.

With privatization put on hold, a group of 50 municipal sanitation service providers, or EPSs (*Empresas Prestadoras de Servicios de Saneamiento*), that were registered with SUNASS continued to supply water and sanitation services. The EPSs were responsible for monitoring and meeting SUNASS's coverage and service quality standards and for approving rate increases proposed by the general shareholders, who were principally provincial and district mayors. The link between the EPSs and the municipalities (whose leaders sat on the EPSs' corporate boards and elected their board members) was critical to the utilities' decision making. Decisions were therefore often based on political considerations rather than technical ones, which impaired the companies' development and viability. In addition, the revenues from users continue to provide the main source of income for the EPSs. User rates, however, were typically less than the

costs incurred by the EPS to provide services since company boards, which are selected by elected officials, often refused to approve rate increases requested by the utilities' management. In some cases, the boards decided not to enforce rate increases approved by SUNASS. The decisions of political actors not to enforce needed rate increases for fear of losing popular support have made water services unsustainable throughout the country.

As the ideological debate over water sector privatization raged, Peru's water utilities displayed huge inefficiencies. While privatization was an option, it was clear that this would be a lengthy process that would initially occur only in selected parts of the country. Consequently, the importance of improving the sector as a whole was broadly recognized, particularly for those EPSs that would not be privatized immediately.

The Ombudsman As Facilitator

A Decentralized Ombudsman. The Office of the Ombudsman was established in 1996 as an independent body to which citizens could direct their concerns about and criticisms of government action. The office has a constitutional mandate to investigate citizens' complaints, monitor the impact of state action on citizens' rights, and advise the national government on how to rectify problems. The Ombudsman is also empowered to disseminate information to the public regarding how the government is addressing public concerns.

In the water sector, the Office of the Ombudsman has had several primary objectives: to improve policies and regulations for the water and sanitation sector, to enhance the utilities' sustainability, to expand the utilities' coverage, to improve water quality, and to enforce fair and sustainable rate schedules.

The Office of the Ombudsman coordinates its activities with a network of 38 satellite offices. The network comprises 28 regional offices distributed throughout Peru's 24 regions and nine service modules in small towns. The Ombudsman relies on seven deputy ombudsmen, who support information gathering and research for investigations. This high level of coordination has yielded critical information that informs conclusions and recommendations published in the Ombudsman's reports. The reports have in turn led to regulatory

changes and public policy reforms.

The Office of the Ombudsman enjoys significant credibility throughout Peru. Peru's Fourth National Anticorruption Survey, a report prepared by a Peruvian business association (*Opinión y Mercado*, Confiep) and a nongovernmental organization (*Proética*), conducted interviews of a broad sample of Peruvian citizens. Quantitative data compiled from survey results indicated that the public trusted the Office of the Ombudsman to fight corruption more effectively than other state institutions, including the national police, the national government, and even religious associations. Furthermore, opinion polls indicate that a majority of the Peruvian public trusts the Ombudsman as the defender of citizens' rights.

Launching an Investigation. The Ombudsman encourages citizens to contact any of the regional offices or service modules to register concerns or file a complaint against a government utility or agency. Representatives of the Ombudsman in each region review the circumstances surrounding complaints by conducting a contextual analysis and performing background research on the legal and regulatory aspects of the perceived problem. The Office then determines if the utility or agency has breached its obligations in any way—such as through delayed or absent service delivery, arbitrary or unauthorized charges, or requests for kickbacks by a local service provider—and whether that breach has violated citizens' rights.

If the Office of the Ombudsman finds a concern or complaint credible, it then submits verbal or written recommendations to the government utility or agency implicated. Each government utility and agency is obliged to cooperate with the Ombudsman by submitting to information inquiries, evaluating any recommendations set out by the Office of the Ombudsman, and announcing whether or not those recommendations will be implemented (and if not, why not). Once the implicated government utility or agency responds to the recommendations, the Ombudsman closes the case. If the recommendations are not acted upon, the Office of the Ombudsman may help the citizen who filed the complaint to appeal the decision using alternative dispute resolution techniques and continued dialogue. If these approaches are unsuccessful, the complainant retains the right

to pursue the issue in the court system. The Office of the Ombudsman closes approximately 75 percent of cases without resorting to legal recourse.

Complaints Concerning Water and Sanitation Services. Between 1996 and 1998—the first two years of the Ombudsman's operation—approximately 10 percent of the complaints and requests for investigation received by the office related to problems with public services, including water and sanitation. Particularly common were requests for improvements in service quality, enforcement of fair rate schedules, and requests for expanded coverage. In 1999, citizens lodged 159 complaints against water and sanitation in Lima alone, and that figure rose to 302 complaints just one year later. In 2007, citizens across the nation filed more than two thousand complaints with the Office of the Ombudsman concerning water and sanitation service. The complaints were lodged against service providers such as SEDAPAL, the 50 other private sanitation service providers, and SUNASS. The complaints concerned rights violations, such as discrimination in access to water and sanitation services, arbitrary charges and other forms of incorrect billing, incorrect metering, and poor quality of customer care.

Rights-Based Investigation. During the same period, the Office of the Ombudsman was developing a strategic roadmap to advocate and defend so-called second-generation rights—social and economic rights, such as the rights to health, education, security, and water. This effort led to the Ombudsman's decision in 2003 to launch an investigation of water and sanitation services throughout Peru, based on the idea that rights violations accounted for many of the obstacles to effective water and sanitation management. The investigation was initially undertaken by the deputy ombudsman for public utilities and the environment. The deputy's office sampled eight regions (Lima, Arequipa, La Libertad, Piura, Cusco, Ayacucho, Loreto, and Junín) in which 63.3 percent of Peru's urban population (approximately 11 million people) reside. Those citizens are served by nine water utilities comprised of eight municipal companies and SEDAPAL in Lima. The goal was to compile a report that would provide a series of recom-

mendations to reform the legal and regulatory environment for water and sanitation services throughout Peru.

The Ombudsman's Findings: Challenges to Effective Water and Sanitation Service Delivery in Peru

Lack of Independence of Decision Makers. The Ombudsman quickly discovered a high degree of overlap of leadership across sectors: local leaders from various municipalities also served on the corporate boards of the 50 private sanitation services providers. This arrangement prioritized political expediency over public interest in decision making for the water and sanitation utilities. The Ombudsman determined that undue influence by sitting members of local and central government had diminished the capacity of the utility to respond to community concerns and effectively deliver services. For example, the EPSs relied on rates paid by users, many of whom were charged incorrectly because service providers failed to adhere to the rate structure mandated by SUNASS.

Financial Challenges. The Ombudsman found that financial shortfalls were preventing water and sanitation service providers from expanding coverage and improving water quality. Approximately 45 percent of water and sanitation services throughout Peru were either not being billed because of illegal connections or not being paid because of widespread delinquency by users (payments were an average of six months late across the country). As a result, coverage did not increase between 1998 and 2003 (it remained 83.6 percent for water and 75.3 percent for sanitation). Since service providers failed to adhere to rate structures determined by the regulator, their income was less than their outlay for services; most were operating at a substantial deficit.

Tension Over Privatization of Water Services.

Despite widespread problems with state-run water and sanitation services, there was intense public concern about efforts by the Government of Peru to privatize these utilities. In the 1990s, the Peruvian government established PROINVERSION, a government-run private investment promotion board to facilitate the privatization of state-run industries. Between 2003 and 2005

Germany's KfW Cooperation Development Bank and the Japan Bank for International Cooperation (JBIC) worked with the Peruvian government to smooth the transition by calling for tenders to franchise water and sanitation services in the cities of Tumbes and Piura. Three additional cities (Huancayo, Trujillo and Pucallpa) were added to this push for privatized utilities, until eventually the water and sanitation services in Tumbes were franchised amid intense political debate. The privatization of drinking water and sanitation services was a source of significant public anxiety. Privatization was opposed by several civil society organizations, including the Utilities' Workers Union, as well as by several public officials within these five cities.

Good Practices Implemented by the Ombudsman to Promote Good Governance in the Water Sector

In July 2005, the Office of the Ombudsman published "Citizens without Water: Analysis of a Rights Violation" (report no. 94). The report included 19 recommendations for the Peruvian government, in particular to the Peruvian congress; the Ministry of Housing, Infrastructure, and Sanitation; the Ministry of Health; regional, provincial, and local governments; SUNASS; and the various water and sanitation service providers. The Ombudsman presented the report on behalf of the citizens, calling on government authorities to implement the recommendations.

To gather data and evidence for the report, the Office of the Ombudsman set in motion a number of measures, several of which took on a life of their own and remained active after publication of the report. Those measures included:

- **Decentralized Complaints System for Public Service Users.** Since 2004, a team from the office of the deputy ombudsman for public utilities and the environment has provided technical assistance to officials in the Ombudsman's regional offices to properly hear citizens' complaints. The Office of the Ombudsman uses the collected complaints in its annual report. The decentralized complaint system has empowered users to contribute to improved governance.
- **Public Dialogue.** The Ombudsman advised that candid dialogue should be permanently

institutionalized, enabling stakeholders with widely divergent interests to air their concerns. Robust participatory dialogue among service providers, the regulator, water users, and local and national government officials is integral to improving governance, accountability, and responsiveness. It also allows service providers and government officials to share information regarding rate schedules, the utilities' financial situation, and the need for government investment. Service providers should be encouraged to stimulate public discussion, share analyses with the public through horizontal information exchanges, and comment on government action—or lack thereof. Public scrutiny and analysis from diverse viewpoints will optimize the implementation and sustainability of governance improvements.

- **Training Plans for Citizens.** To prepare Peru's people for the report to come, the Office of the Ombudsman established a training program to clarify its rights-based approach to water delivery. It is imperative that the public understands that although all citizens of Peru have a right to water access, they must bear the costs of water services. The training further explains that the financial constraints of the EPSs have prevented investments in better service delivery, resulting in low-quality water services. In particular, the training emphasizes the way the existing rate structure prevents water utilities from improving services. The training programs have disseminated critical information regarding Peru's water sector to the public and encouraged citizens to participate in public hearings and submit their complaints to the Ombudsman.
- **Cooperative Diagnostics to Precipitate Action.** In response to feedback from the public, the Office of the Ombudsman organized meetings with officials from various sectors to cooperatively identify critical areas for action. The officials included general directors from the ministries responsible for health, housing, sanitation, and the economy; vice-ministers for health and construction and sanitation; the mayors of the eight regions sampled for the investigation; and members

of congress and other representatives from political parties. At the meetings, the Office of the Ombudsman shared the findings of its investigation and its recommendations for public policy reforms.

- **Disseminating Information through the Media.** Print, broadcast, and digital media are important channels for the dissemination of information to the public. A well-informed public that understands pressing issues in the water sector is more likely to become involved in the decision making processes that affect it. To increase public awareness of its actions, the Office of the Ombudsman prepared a broad strategy to enable local and national media outlets to cover the publication of its report.

The Ombudsman's report emphasized that the country's water sector needed improvement, while recognizing that public money must fund improvements. As a result of the Ombudsman's outreach efforts, the report's recommendations received wide coverage from newspapers, periodicals, specialized journals, commercial and community radio, television, and online commentators for four consecutive months. To facilitate media coverage, the Ombudsman prepared executive summaries of the report for newspapers; specialized summaries with relevant material for periodicals focusing on a particular subject; and workshops run by experts within the Office of the Ombudsman and covering relevant parts of the report in detail for broadcast, television, and digital media.

- **Raising Awareness through Debate.** The report recommended rate increases to allow utilities to pay for improvements. The Office of the Ombudsman decided that water users in Peru with incomes over a given threshold should pay more for their utility services. This proved to be an unpopular measure, but open discussion in a public forum assured the public of the need for rate increases. To promote public understanding of Peru's precarious water situation, water management and sanitation experts phrased explanations in accessible language and avoided technical jargon. The discus-

sions changed many participants' minds by informing them of the vulnerabilities of their fellow citizens who had little or no access to potable water and sanitation. The Ombudsman proposed to maintain and improve the "social tariff" to assure the poor of continued access to water services.

- **Building the Capacity of the Office of the Ombudsman.** The Office of the Ombudsman recognized the importance of monitoring and evaluation and personnel training. The Ombudsman therefore designed a course to train decentralized staff on issues and challenges in the water and sanitation sector. Monitoring and evaluation techniques were also improved to better track the progress of government and service provider reforms towards successful implementation of recommendations in the Ombudsman's report. To reinforce capacity development, all staff members of the Office of the Ombudsman are required to participate in annual plans conferences and workshops that focus on reform and effective monitoring and evaluation of public services.

Key Results

The Ombudsman's investigations and subsequent publication and dissemination of the July 2005 report yielded practical benefits in the water and sanitation sectors. The Ministry of Sanitation and SUNASS pledged to adopt 18 of its 19 recommendations. By 2008, the two bodies had completely or substantially implemented 14 of them, including efforts to improve water and sanitation services, scale up civic engagement in utilities operations, foster community-driven water and sanitation management, and improve policies and regulations.

- **Increasingly Empowered Water Users.** Between 2006 and 2007, water users filed more than two thousand complaints about water and sanitation service nationwide, as well as 535 requests for mediation in cases involving connection to the water system, emergency assistance, and others queries that required legal counsel. Clearly, the Ombudsman's offices have made it easier for citizens throughout Peru to lodge their complaints. The improved complaint system

has increased citizens' awareness of Peru's rights-based approach to safe and clean water and empowered them to act on their own behalf.

- **Improving Utilities' Handling of Customer Complaints.** In 2006, SUNASS promulgated two resolutions reforming customer complaint protocols.¹ Water and sanitation service providers are now obliged to address complaints about operations (such as broken pipelines, floods, and blocked sewage) and business issues (such as construction matters, permits for service connection, and geographic availability of services). It also established guidelines for a Sanitation Service Users' Complaint Resolution Administrative Tribunal. This was intended to standardize SUNASS's criteria for resolving conflicts between water users and water and sanitation service providers.
- **Widespread Policy Reforms to Improve Water and Sanitation Services.** Throughout Peru, the government and other organizations introduced policy reforms that improved service delivery in the water and sanitation sectors. The Ministry of Economy and Finance substantially improved regulations that imposed duplicate restrictions on water and sanitation utilities. It also amended the rules governing utility users' complaints and customer service. SUNASS improved systems to monitor water quality throughout the country and instituted staggered rate restructuring for 12 utilities—including water and sanitation—over five years to offset the impact on service users. Finally, in an effort to increase public access to potable water and improve national health outcomes, Congress promulgated legislation that permits "informal" occupants of houses, land, and other property to connect to local water grids.
- **New Composition of the Boards of Water Firms.** The Ombudsman recommended that the water utilities alter the composition of their boards of directors. Specifi-

1. Resolution no. 028-2006-CD-SUNASS and Resolution no. 006-2006-SUNASS-CD.

cally, the office advised that representatives from the central government, the regional government, and civil society organizations should become more involved so as to improve the transparency of the utilities' decision-making processes. The government soon enacted the Law for Improving Water and Sanitation Services Management (*Ley para Optimizar la Gestión de los Servicios de Saneamiento*),² which established a new board configuration: up to two of the five board members may be members of the municipality and must be elected by the shareholders of the utility company. As for the other three, one must represent the regional government, and two must be from civic organizations such as the chamber of commerce, area industries, universities, or nongovernmental organizations. To add stability to the board's decision-making processes, the law also changed the mandatory duration of the board term from one year to three years.

- **Rate Restructuring.** In its July 2005 report, the Office of the Ombudsman recommended that the utilities restructure the rates for water services to more accurately reflect the true cost of providing potable water. The old rate structure added to the growing national deficit, and municipalities lacked the resources to improve the coverage and quality of service of water utilities. The Ministry of Housing, Infrastructure and Sanitation, which is responsible for water policy, approved a number of changes in the rate-setting processes. New policies and regulations governing the management of Peru's water utilities came into effect in 2006, and as a result SUNASS has approved new rate structures for 24 utilities with staggered rate increases in the first, third, and fifth year. Rate increases for an EPS are subject to the EPS meeting stated management goals. If the steering council of an EPS fails to increase rates, the water utility can appeal to the regulator to enforce the increase after a technical review. The changes were designed to make EPSs more effective, efficient, and financially and technical viable.

- **A National Modernization Strategy for Making the Sector Sustainable.** In 2005, SUNASS devised a business plan to increase the efficiency of Peru's decentralized water utilities. The plan lays out goals for Peru's water resource management and service delivery—including rate structures conducive to sustainable management—for the next 35 years, subject to review every five years. The same plan proposes reforms for water subsidies. Prior to 2005, only 24 of Peru's 50 water utilities had established a rate structure. New regulations, however, require that all utilities in the country have a business plan. If a utility fails to develop a business plan, then SUNASS has the authority to implement one, as it has done for several water utilities since the regulations were enacted. The new regulations have energized the utilities—to such a great extent, in fact, that another case study exploring SUNASS's success might be appropriate. Since 2003 SUNASS has played a key role in changing the regulatory climate to allow for these reforms, at the urging of the Ombudsman.

- **Civic Engagement in Water and Sanitation Utilities Oversight.** Water and sanitation service providers have implemented more robust feedback mechanisms to allow the public to express concerns and provide suggestions for improving services. As of 2007, six municipalities across Peru had adopted an innovative water and sanitation management model in which community members participate in community supervision boards (*comités de vigilancia*) that make critical decisions regarding service-delivery technology, local service quality, and tariff levels. With technical assistance from the World Bank's Water and Sanitation Program, the Ministry of Housing's Small Town Pilot Project supported the new model.

As of 2009, twelve water and sanitation service providers in the eight regions under review by the Office of the Ombudsman have improved access to and quality of potable water and sewerage services, and have instituted micrometering, rate restructuring, and more effective bill collection.

2. Law N° 28870.

- **Continuing Attention to Water and Sanitation Issues in Peru.** The Ombudsman’s report focused attention on sustainable water and sanitation management in Peru. Nongovernmental organizations, international development agencies, domestic political organizations, and others have asked the Office of the Ombudsman to present the report (and others³) to them. At the presentations, the Ombudsman emphasizes the need for continued attention to water and sanitation issues as a way to combat poverty. The administration of President Alan García also used the Ombudsman’s report to formally recognize the country’s second-generation right to water and to inaugurate an ambitious investment plan for Peru’s water and sanitation sector. The “Water for All” program (*Agua para todos*) seeks to provide water connections to all Peruvians, including the poorest segments of society, beginning with more than one million citizens in Lima. While the program has yet to meet its goals, its existence alone demonstrates increased awareness of the critical importance of water and sanitation issues by Peru’s public sector and citizenry.

Challenges

- **Changing the Mission of the Regulator.** The regulatory framework that SUNASS maintained until 2005 demonstrated that public water companies were not functioning properly but failed to outline strategies for improving the situation. Changing the institutional behavior of the regulator was a lengthy process, but SUNASS is now a collaborator in water reform efforts in Peru.
- **Civil Society Rights Activists Opposed Water Tariffs.** Civil society activists in Peru opposed all tariffs for water services beginning in the 1990s. This may have been a result of a widespread lack of awareness of the cost of providing water services. Since access to water was described as a right, activists demanded that the government provide water for free. The motto of their campaign was “defending

3. Another report—Ombudsman’s Report No. 124, “The Right to Water in Rural Areas: The Case of District Municipalities”—was published more recently.

a human right which, as any human right, should not have cost for people.” The Ombudsman held protracted dialogues with representatives of the activists to convince them—and by extension the public—of the necessity of public funding for public services, including water. The activists eventually recognized the importance of paying for water services, and they are now considered allies of the Ombudsman.

- **The Water Privatization Debate Rages.**

The Office of the Ombudsman also joined the popular debate on the privatization of the water utility. The Ombudsman used the debate as a platform for proposing reforms and disseminating research that demonstrated the critical vulnerability of citizens who had low-quality water—or worse, none at all. Notwithstanding the Ombudsman’s efforts, the debate reflects the conflicting priorities and ideologies of various segments of society. It appears that this debate will continue for some time.

Conclusion

The Office of the Ombudsman contributed to building the coalition responsible for reforming Peru’s water sector.

Throughout the reform process, the Office of the Ombudsman has emphasized the necessity of cooperation in providing sustainable water and sanitation services across Peru. Reform has not yet been completely successful, and implementation of some aspects of the reforms remains a challenge. The progress, however, is visible. The Ombudsman has encouraged the Peruvian public to inform themselves about the issues surrounding the water sector. At the same time, it has given various segments of society the opportunity to have their views heard and advocated. New mechanisms for hearing complaints and handling requests for investigations from users have given the public a new channel for involvement in the water-management process. These innovations have assisted the Ombudsman in identifying the critical instances of government mismanagement that hinder public service delivery.