9-30-2016

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Questions Swirl After Peru’s Congress Chooses New Ombudsman

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Category/Department: Peru
Published: 2016-09-30

After failing for more than five years to designate a national ombudsman (defensor del pueblo), Peru’s Congress agreed earlier this month to assign the post to attorney Walter Gutiérrez Camacho. The decision is clouded, however, by conflict-of-interest concerns and by recent fraud accusations against Gutiérrez.

The unicameral legislature made the decision Sept. 6, putting Gutiérrez in charge of the Defensoría del Pueblo, the ombudsman’s office, for the next five years. As established by the Constitution, the Defensoría is an autonomous body tasked with ensuring good governance in favor of citizens and in defense of their fundamental rights. Gutiérrez will replace attorney Eduardo Vega, who had served as the institution’s interim head since 2011.

The selection process was managed by a special congressional committee made up of the spokespeople for the six legislative blocs and the members of the Mesa Directiva (the congressional leadership board), currently headed by Luz Salgado of the Fuerza Popular (FP). The FP is led by Keiko Fujimori, the runner up in this year’s presidential election (Notisur, May 27, 2016, and July 1, 2016). Fujimori is the daughter of jailed former President Alberto Fujimori (1990-2000), whose policies and political ideology, known as Fujimorismo, continue to hold significant sway in Peru.

The committee chose three candidates for the ombudsman position: Gutiérrez, a former dean of the Colegio de Abogados (a professional lawyers association) in Lima, the capital; constitutional attorney Samuel Abad, who worked in the Defensoría for 11 years; and Enrique Mendoza, a former president of the Jurado Nacional de Elecciones (National Board of Elections) and the Corte Suprema de Justicia (Supreme Court of Justice). Gutiérrez was nominated by the FP and the Partido Aprista Peruano (APRA) parties. Abad’s name was put forth by the leftist Frente Amplio.

Interestingly, the committee chose not to include Vega, the interim Defensoría head, on the short list of candidates. The reason, it explained, is that in May, when the previous legislature tried to vote for a new ombudsman, neither of the candidates in contention then—Vega and Gastón Soto, a former president of the Consejo Nacional de la Magistratura (National Council of Magistrates)—obtained the required minimum of 87 votes. The May vote was the last in a series of failed attempts since 2011 to choose an ombudsman. In each case, the various congressional blocs were unable to reach a consensus.

Vega’s exclusion drew complaints from some observers, including Walter Albán, who held the ombudsman post himself between 2000 and 2005. “Given that he is someone who has demonstrated, with his background and leadership of the institution, the aptitude to handle the position, it’s baffling that he was excluded,” Albán told LaMula.pe.

Albán, currently the executive director of Proética, the Peruvian chapter of Transparency International, said the ideal would have been to allow an open and public selection process. “I think that would be the best way to give the people confidence in the chosen [ombudsman],” Albán
argued. “It would also clear up any concerns people have about how these matters are handled within the Congress.”

Instead, the decision was made to invite specific individuals to be candidates. On Sept. 5, the three contenders were called on to make their respective cases in an open hearing in Congress. Only Abad and Mendoza appeared. Gutiérrez wrote on Twitter that his absence was due to a commitment outside of Lima. He also said he’d only found out about the public hearing the night before.

“It’s important and key to maintain institutional independence. Its recommendations should be motivated, accurate, and just, because it’s an institution that serves society,” Abad said during his presentation. Mendoza, for his part, spoke about ensuring the “fundamental rights of each person or, collectively, of everyone.”

**Reasons for concern**

Despite his absence, Gutiérrez ended up winning the job with 97 votes in favor—from the FP, APRA, Acción Popular, and part of the governing Peruanos por el Kambio (PPK) blocs—versus 27 against. The opposition votes came from the Frente Amplio and Alianza Para el Progreso. Five PPK lawmakers abstained.

Gutiérrez spoke publicly shortly afterwards, stressing that in addition to defending fundamental rights, he also plans to tackle the issue of government efficiency—something that has been neglected, he said, by past leaders of the Defensoría. “It’s important because the people want a government that is efficient. They want public services, be it health care, education, or transportation, that are efficient and meet determined standards,” he said.

In response to allegations that he is closely affiliated with APRA and could struggle, therefore, to be politically impartial, Gutiérrez, in an interview with Radio Programas del Perú, guaranteed that he would operate with complete independence.

Lawmaker Marisa Glave, spokesperson for Frente Amplio, said her bloc would ask the president of the Congress to require that Gutiérrez speak to the full legislature about his plans for the Defensoría. She also promised that Frente Amplio would remain vigilant and call out any attacks it detects against fundamental rights.

Gutiérrez’s political leanings aren’t the only cause for concern. Three days after the congressional vote to select him, the weekly Hildebrandt en sus trece revealed that Gutiérrez is involved in a legal case over a murky real estate deal. Three years ago, Gutiérrez bought a large home that had been put up as collateral by its previous owner against an outstanding debt. Gutiérrez is accused of neglecting his payment obligations vis-à-vis the convoluted deal.

“Provided these claims are substantiated and documented, then yes, it affects the institution,” Albán told the Lima daily Diario UNO. “The ombudsman can’t have any questions surrounding him. I hope Dr. Gutiérrez can clear this up. He needs to be given the time to do so, but the ombudsman, as a figure, has to give the people reason to feel confident. He has to have a solid and personal trajectory that is free of the kinds of questions raised in the publication.”

Gutiérrez initially denied being involved in legal proceedings but later acknowledged that he did purchase a disputed property. He said he hadn’t completed all the necessary payments because the parties involved have yet to agree on the amount of interest owed.
**Bowing to pressure?**

President Pedro Pablo Kuczynski (Notisur, April 22, 2016, and July 1, 2016) encouraged PPK lawmakers to support whatever candidate managed to get the most votes. Still, five party members chose to abstain. One of those, Guido Lombardi, later criticized the fact that the new ombudsman was elected with PPK votes, calling it a concession to earn favor with the Fujimoristas, who have a majority (73 of the 130 seats) in Congress. Kuczynski dismissed the claim. He also called Gutiérrez “a recognized and respected attorney.”

“It was fundamental that this Congress elect a national ombudsman,” he told reporters. “If we took an obstructionist position by voting against the majority candidate, we would have guaranteed that we’d go another five years without a national ombudsman.”

The PPK and FP were also accused of deal making following the appointment of Víctor Shiguiyama, who is closely tied to Fujimorismo, as head of the Superintendencia Nacional de Aduanas y de Administración Tributaria (National Superintendent of Customs and Tax Administration, SUNAT). Shiguiyama was an adviser to Keiko Fujimori during her 2011 presidential campaign and helped design her platform.

Humberto Morales, a lawmaker with Frente Amplio, told Diario UNO that the government is allowing itself to be pressured into giving the FP key positions of power that ought to be occupied instead by independent professionals. He said that while Shiguiyama may have a top-notch resume, the close relationship he has had with Fujimorismo—to the point where he prepared Keiko Fujimori’s speeches—ought to disqualify him from heading an institution as important as the SUNAT.

Morales said the situation is reminiscent of the 1990s, when SUNAT was used to pursue enemies of the Alberto Fujimori regime. The PPK should be aware, he added, that appointments of this kind put regular citizens at risk. Many observers share Morales’ concerns and worry that by ceding to pressure from the FP, the PPK put the Defensoría in the hands of someone who lacks experiences as a defender of human rights and civil liberties, and the SUNAT under the leadership of someone who doesn’t know enough about tax issues.

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