

7 Co-ordination and consolidation

This chapter covers the institutional mandates and structures in place to foster co-ordination among enforcement and environmental agencies in Peru. Co-ordination is a key element to avoid duplication of functions and increase efficiency in the delivery of regulation. The section presents OEFA's role and attributions as an enforcement and co-ordinating agency. It provides recommendations in line with the OECD's best practice principles to improve information sharing and promote the consolidation of inspection functions.

Inspection functions should be co-ordinated and, where needed, consolidated: less duplication and fewer overlaps will ensure a better use of public resources, minimise the burden on regulated subjects, and maximise effectiveness (OECD, 2014^[1]), (OECD, 2018^[2]).

Institutional mandates, structures, and co-ordination, should be taken into account at the regulatory drafting stage and in the Impact Assessment process. Avoiding the proliferation of different inspecting institutions, ensuring clarity and coherence, preventing the emergence of areas of conflicting competence are all essential, including during the drafting of new regulations.

Duplication of functions is to be avoided and mandates and responsibilities should be clear among institutions, and government levels. Unicity of functions—one institution responsible for an entire regulatory area, or at least for a regulatory area in a given sector—is preferable whenever possible. When several institutions are involved or cover related fields, there should be clarity as to who is responsible for particular regulations and establishments, especially between different geographic levels. This prevents establishments from being subject to repeated and potentially conflicting inspections, and public resources are not wasted on uncoordinated and duplicating activities.

Different inspection and enforcement structures should share information and records, participate in joint alert systems, and co-ordinate “on the ground”, particularly in related regulatory areas. Good inspections and enforcement practices include joint alert systems, systematic sharing of information and records on establishments under supervision, and co-ordination of inspections to the extent possible (by sharing plans or performing joint inspections, amongst others,). Different inspection structures can collaborate to increase their efficiency and their ability to assess risks by agreeing to act as “eyes and ears” for each other.

Finally, allocation of resources and strategic planning should take into account all structures active in a given regulatory area. Allocation of resources between inspection and enforcement should be done based on evidence, and in a way proportional to risk. When doing so, it is essential to consider all the different institutions, structures, and levels that may be involved, not just one particular agency.

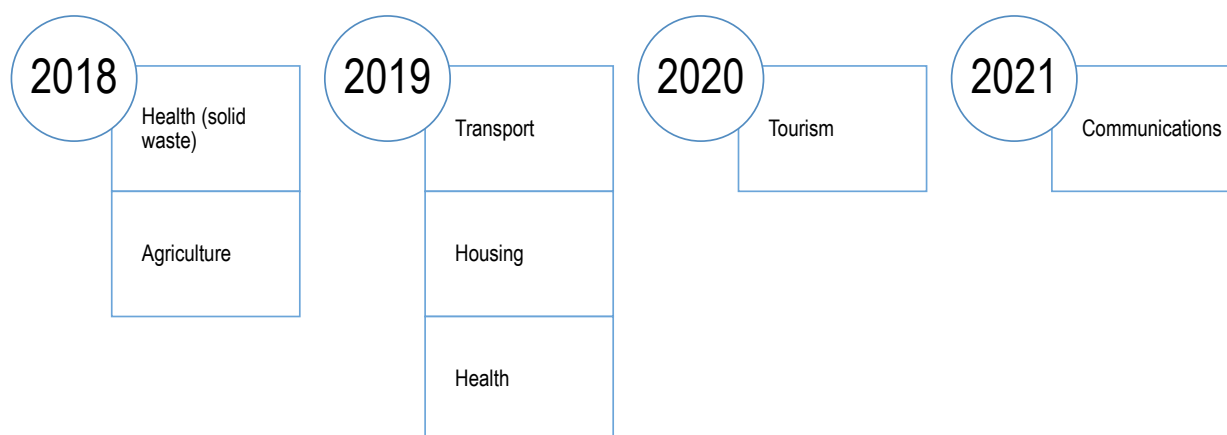
A common regime for Environmental Supervision to ensure “harmonisation” and “homogeneity”

The Common Regime of Environmental Supervision in force since 2013 was introduced to address previously existing fragmentation and lack of co-ordination, to achieve greater clarity of mandates of functions, and to increase co-ordination in the environmental protection sphere. One of the objectives of the Common Regime of Environmental Oversight is to establish the guidelines, principles and common foundations of environmental inspections and enforcement in the country, as well as the general provisions that must be obeyed by all EFAs within the SINEFA. This aims at ensuring coherence, co-ordination and effectiveness of inspections. Also, according to Art. 3, all EFAs shall co-ordinate the performance of their responsibilities by joining forces and avoiding overlaps, duplications and gaps in the performance of their activities.

In line with these principles, the direct responsibilities of OEFA have expanded over different sectors (Figure 7.1).¹

Enlarging the scope of OEFA’s direct responsibilities can help gradually improve the coherence of the system across all economic sectors, as well as more homogeneous approach to regulatory delivery, standardised processes, tools and methods in the environmental regulatory field.

Figure 7.1. Overview of competences transfer process from relevant Ministries to OEFA



Source: OEFA (n.d.^[3]), *Organismo de Evaluación y Fiscalización Ambiental*, <https://www.gob.pe/minam/oefa> (accessed 14 October 2019).

OEFA is responsible for directing and overseeing the Common Regime of Environmental Supervision and reports to the Ministry of the Environment, which sets the long-term strategic objectives, as well as high-level policy directions and regulatory goals to be followed by all EFAs (including OEFA). These are stated in particular in the National Policy on Environment and the PLANAA.

However, significant challenges remain in terms of integration of the environmental supervision field, which requires further efforts to eliminate remaining fragmentation. This fragmentation is particularly visible through the existence of a variety of national and local EFAs, which OEFA has the challenging mandate to co-ordinate. Divergence of approaches and methods is still manifest in many EFAs. In addition, OEFA has started delegating some competences to OEFA's regional offices, for example in the mining sector. Such decentralisation process can help address local needs and priorities better and allow the offices the opportunity to identify emerging risks. However, it may also entail a number of challenges that OEFA will have to take up in terms of ensuring consistency and coherence of approach and methods, and adequate allocation of resources between regions.

Efforts have been made by the Government of Peru to gradually build a coherent environmental regulatory system (the SINEFA) with the intention of improving efficiency and effectiveness. However, in practice, co-ordination issues still remain post-reform. In particular, conflicts of competence or competence gaps have resulted in conflicts, and even disputes, between different public authorities, as reported by concerned parties during the technical missions. Furthermore, some confusion regarding informal or illegal activities, for instance in the mining sector,² is another source of problems post-reform.

The consolidation appears to be contested as some EFAs appear unsure of their participation in a partnership with OEFA, and others regretting 'shotgun' arrangements. In addition, relationships with regional and municipal level regulators do not appear to be very strong, a problem also observed in other regulatory areas in Peru (OECD, 2016^[4]).

Clarification of mandates and responsibilities to achieve co-ordination

Availability of tools to clarify responsibilities

In order to bring clarity over responsibilities and mandates within the SINEFA system—to regulated entities, the public, and to the numerous EFAs—OEFA has developed different tools. This work includes, first, the preparation of Competence Handbooks on Environmental Supervision, at the national level (OEFA, 2018^[5]), the regional level (OEFA, 2015^[6]), and the local level (OEFA, 2016^[7]).

The Consultation Service of Competencies in Environmental Inspections (*Servicio de Consulta de Competencias en Fiscalización Ambiental*, SECONFIA) makes it now possible to search online which authority is competent for a given inspection object or situation, at all state levels (OEFA, n.d.^[18]). Developing this tool was a considerable undertaking, which is an indicator of the complexity of the current regime. The instrument covers all the types of competences and of authority levels. SECONFIA allows to get a result (i.e. the exact competent authority, including address and telephone number, and the relevant legal basis). Research on SECONFIA is based on the following elements:

- the type of environmental issue (issues with garbage or solid waste; issues related to water pollution; issues related to non-compliance of requirements approved by means of IGAs; amongst others)
- the reason underneath the issue (e.g. inappropriate management, for issues with garbage or solid waste at the municipal level)
- the economic sector (agricultural, internal trade, electricity, amongst others)
- the type of activity (irrigation, production of agricultural products, amongst others)
- the type of area (e.g. rural area); and (6) the location (region, province or district)

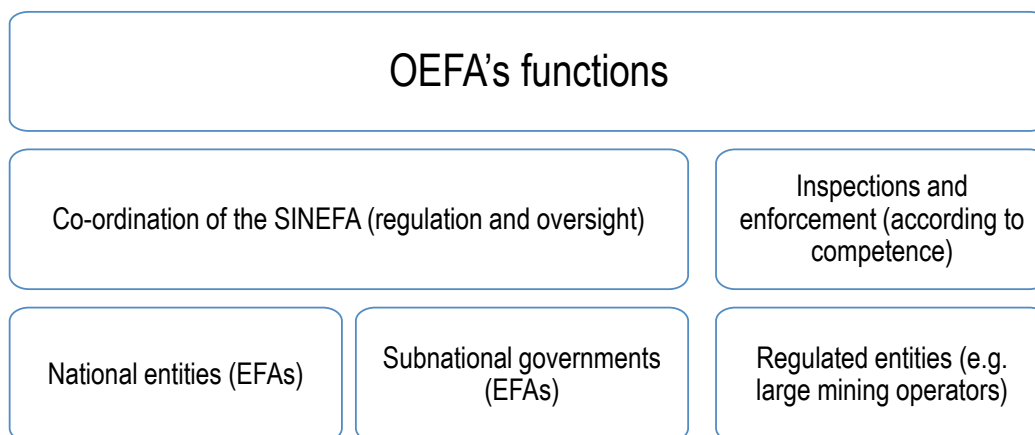
Online searches with use of SECONFIA show that in many cases the competent authorities are more than one (up to three), or that no competent authority could be found.

This suggests that further streamlining and consolidation of environmental supervision is needed, including consolidation of functions into fewer structures with a broader mandate.

OEFA's role in the co-ordination process

As already mentioned³, in addition to its role in directly performing regulatory inspections and enforcement of certain sectors and sub-sectors, OEFA is the governing body of the SINEFA (see Figure 7.2).

Figure 7.2. Functions of OEFA (excluding “regulatory feedback”)



Source: OEFA (n.d.^[3]), *Organismo de Evaluación y Fiscalización Ambiental*, <https://www.gob.pe/minam/oeфа> (accessed 14 October 2019).

As such, OEFA has a regulatory function and it oversees the activities of other EFAs. Oversight duties include checking if the EFAs carry out inspections and enforcement according to the relevant instruments and methodologies, evaluating their performance, checking inspection planning amongst other activities. The PLANEFA is the main tool that allows OEFA to a) ensure homogeneity in a number of practices, b) help EFAs manage and carry out their activities based on pre-established rules, and c) assess how they perform them. Each EFA has to submit their PLANEFA for the next calendar year (OEFA, n.d.^[9]).

Despite this role, OEFA does not have the authority to compel EFAs to respect their obligations, to impose measures on them or to force them to change approach or tools. If needed, OEFA can notify the Comptroller General of the Republic in cases where it considers that EFAs have breached their duties, giving rise to an administrative liability. In view of this, the actual role of OEFA is rather of monitoring whether EFAs are carrying out their activities in line with applicable regulations and OEFA's guidance regulation, to issue recommendations, and to provide information on how to improve.

In practice, OEFA and its regional delegations train EFAs, especially local ones, on how to develop the PLANEFA and verify if it is correctly prepared and executed. The EFAs receive recommendations on how to improve the content and/or the implementation of the PLANEFA, how to define the priority issue to plan next year's inspections, what documents and tools should be used, amongst others. The exercise is subject to formalistic procedures, with a severe administrative burden – a large amount of documents, paperwork and legal formalism. OEFA checks identification documents of the personnel, the organisation chart, and the profile of the inspectors, the planning of the budget, and the record of all complaints for each EFA. It remains to assess the extent to which the process can be simplified, without endangering the achievement of the underlying policy objective.

Currently, OEFA is developing the SUPEREFA project, which seeks to solve part of the issue presented in the previous paragraph. The system would enable EFAs to compile online all the necessary information and OEFA would perform its oversight function remotely. This should allow OEFA to focus more on methods and processes aimed at introducing a risk-based approach in other EFAs rather than focusing on formal elements. This would imply a move towards more suitable management of complaints, assessment of risks, prioritisation of issues that deserve inspections and enforcement, and collection of data on establishments.

One of the issues reported by OEFA is the high turnover of staff in EFAs, especially after changes in administrations following elections. This situation hampers the provision of more in-depth training or support in the preparation of the PLANEFA because contact people and teams keep changing. This also hinders effective co-ordination. Regional delegations of OEFA reported that in many cases they had train from the beginning the person in charge of the PLANEFA because of changes on personnel within the EFA.

Finally, local EFAs expressed interest in having more joint/training inspections organised with OEFA to improve their practice, as well as to be able to use materials such as measurement devices from the regional delegations of OEFA.

Sharing of information and joint activities with other authorities

Efforts have been undertaken to gradually improve information sharing within the SINEFA. Practices such as the mandatory publication of the PLANEFAs by each EFA and the provision of free access to technical and objective information resulting from sampling, analysis and monitoring (Art. 13.A. of SINEFA Law) are a step in the right direction. EFAs have access to OEFA's information available on the Organisation's Interactive portal for environmental enforcement (PIFA), the Registries of administrative acts (RAA) and of environmental offenders (RINA), as well as to public reports prepared by the institution—which are also available to the public (OEFA, n.d.^[10]).

Recent inter-institutional agreements with other national EFAs or with authorities in charge of closely-related regulatory areas are good signals of the willingness of OEFA to strengthen co-ordination. The most salient agreements are:

- Agreements signed with the National Superintendence of Labour Inspection (SUNAFIL) (OEFA, 2019^[11]) and with the National Water Authority (ANA) (OEFA, 2019^[12]), which enable the performance of joint inspections and/or to act as “eyes and ears” for the other, among other activities.⁴
- A Protocol for the performance of joint inspections and the performance of inspections for the other authority in emergency cases between OEFA and SUNAFIL as well as a template for inspections report. This Protocol also establishes the procedure in case of emergencies, by email, SMS, or telephone.
- Inter-institutional Cooperation Agreement signed by OEFA and SENACE on the use of ICT tools. For instance, the Integrated System of Administrative Management (*Sistema Integrado de Gestión Administrativa*, SIGA) is a tool aimed at automatising administrative procedures and, in particular, at sharing electronic documents digitally signed (OEFA, 2017^[13]).

Other activities have been carried out in an attempt to strengthen co-ordination with other EFAs. An example are the joint trainings delivered together with the Directorate General of Environmental Health and Food Safety (Digesa) on the disposal and handling of hospital waste from January 2019.

Such examples are encouraging, since co-ordination is yet to be improved and appears to be based on personal relationships between senior managers and executives. This means in other terms that the “systemic” aspect of the SINEFA still requires important efforts to be fully developed. According to some ministries met during the technical mission, as a policy, OEFA does not provide open access to information in its possession to other public institutions.

Apart from the information mentioned above (available in particular on PIFA, RAA and RINA), considered as public information and freely available to the public, EFAs cannot access OEFA’s other ICT tools and databases, in particular those with information on inspections. The reason for this is the prohibition to publicly disclose information related to ongoing investigations performed in the exercise of the power to impose penalties by the public administration (Art. 15.g of Law No. 27806 on Transparency and Access to Public Information⁵). However, the question can be raised as whether this applies to automatically sharing, or providing access to, information when it comes to other authorities. Requests for information are made on a case-by-case basis, and often through a very formal process, which is provided for in the Law on Transparency and Access to Public Information.

There is no evidence of joint alerts systems for environmental emergencies, apart from the procedure mentioned by email, SMS or telephone. Better and more systematic information sharing with authorities in related regulatory areas is needed. Sharing of information on regulated entities between public authorities is at its early stages and progressively becoming an institutionalised practice through the use of information and communications technology (see Chapter 9 on Information integration).

Assessment

Despite the establishment of the Common Regime of Environmental Supervision seeking to achieve greater co-ordination and consolidation, the overall distribution of mandates and tasks within the SINEFA still presents some confusion, conflicts or gaps of competence.

Despite positive steps made towards information sharing, further improvements are still needed in this domain. Consolidation and co-ordination with other EFAs should include more systematic information sharing (i.e. through existing database and ICT tools), joint alert systems, and ‘on the ground’ co-ordination and co-operation. The SINEFA has improved considerably from the previous situation, but important efforts are still required to fully develop it into an articulated system.

Recommendations

- Implement better and more systematic information sharing with other EFAs, and possibly with other closely-related regulatory inspection and enforcement agencies, in particular by:
 - Continue the efforts to sign agreements for information sharing with other institutions
 - Implement “real” (whenever possible, automated) joint alert systems
 - Consider allowing other users access the IT tool on inspections (INAPS) – by interpreting the prohibition to disclose information of inspections as “public disclosure” only. Information sharing upon request already exists and is carried out, but in a very burdensome way.
- Continue efforts related to finding inter-institutional agreements on joint inspections and inspections on behalf of another authority.
- The Government of Peru may want to consider further consolidation or strengthened co-ordination within the environmental regulatory function. This could involve reconsidering all competences – including scope of competencies – of EFAs against real risks to ascertain which ones should be excluded (for instance, very low-risk activities). The SINEFA system is the result from an attempt to improve the coherence and co-ordination among the relevant actors that were already part of the environmental regulatory landscape, without questioning the competences of an inherited system.
- Consider going further with the consolidation of the environmental supervision functions in a single authority (OEFA), and/or significantly strengthening the powers of OEFA over other EFAs—while also ensuring that all EFAs (including OEFA) use the same information systems. This could be a longer-term objective towards which the above points would contribute.

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Notes

¹ See preamble of this Review.

² Competences are split with subnational governments. For instance, OEFA supervises big mining operations, while local EFAs supervise small and ‘artisanal mining activities. This means that in practice, several authorities are in charge of inspection and enforcement in a concession area (granted to a firm).

- OEFA is responsible for inspections and enforcement on the large-scale mining activities carried out by the firm.
- If there are small miners exploiting specific areas of the concession (regardless of whether the concessionaire has signed an agreement with them, or not), these fall under the competence local EFAs.
- Informal activities can fall under the competence of OEFA or local EFAs, depending on the size of the operations.
- There is no clear understanding about who is in charge of supervising illegal mining.

³ See Preamble, section 2 of this Review.

⁴ Single Consolidated Text of the Law on General Administrative Procedure (Art. 239.1) allows inspection authorities to coordinate so as to perform joint inspections and carry out inspection activities for other competent authorities.

⁵ See: https://www.peru.gob.pe/normas/docs/LEY_27806.pdf.



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