

Executive summary

For regulations to meet their policy objectives – for instance the protection of the environment – government and agencies must have in place a carefully designed enforcement strategy, including inspections, and should implement this strategy in an effective manner.

The report evaluates the policies and legal framework for the Environmental Evaluation and Enforcement Agency of Peru (OEFA), as well as its practices and resources employed in enforcement and inspections activities. Based on this evaluation, it offers policy options for improving performance. The benchmark for comparative analysis is the *OECD Regulatory Enforcement and Inspections Toolkit*. This Toolkit offers government officials, regulators, stakeholders and experts a simple tool for assessing the inspection and enforcement system in a given jurisdiction, institution or structure.

Some of the main assessment and recommendations include:

Regulatory enforcement and inspections should be based on evidence and measurement: deciding what to inspect and how should be grounded in data and evidence, and results should be evaluated regularly.

Both OEFA's mandate and mission include goals of reducing risk and pursuing public interest; thus, efforts are being made to select requirements based on risk. Furthermore, in a continuous effort to move away from formalism (compliance with formal requirements), processes and tools are being developed to fully implement an enforcement policy based on data and evidence. However, priorities in terms of protecting the public welfare are largely concentrated in areas of 'social-environment conflict'. Other environmental issues in areas where no population is directly affected, or where the citizens are less well organised, may be neglected.

- The increase in the collection, use and analysis of data, and ensuring that quantitative assessment of harms and risks is taken into account in both *ex ante* and *ex post* regulatory processes can strengthen the evidence-based nature of regulatory enforcement and inspections activities in OEFA.
- The performance of preventive environmental assessment should be used more frequently, whenever possible in sites or in establishments located in social-environmental conflict areas.
- As data collection and analysis improve, it is crucial to make sure that they are used to inform the enforcement and inspections' policy in the environmental sector. Other elements such as socio-environmental conflicts and complaints would thus play a reduced role in priority-setting and planning activities.

Enforcement needs to be risk-based and proportionate: the frequency of inspections and the resources employed should be proportional to the level of risk, and enforcement actions should seek to reduce the actual risk posed by regulatory infractions.

Applicable legislation and internal OEFA regulations and guidelines allow for risk focus and proportionality. Risk is defined according to good practice.

OEFA has developed a series of tools (e.g. methodology for imposing sanctions based on existing risks, prioritisation criteria for planning of inspections) to promote a common approach to risk proportionality and focus. However, some of the criteria employed (socio-environmental conflicts, complaints and requests from other authorities) should be reviewed to ensure that the elements to be considered pertain to hard evidence, rather than perception.

- There is a need to rely more on fact-based and empirical prioritisation criteria as data are collected.
- Planning of inspections should always be based on risks, using hard, measurable evidence and taking into account the vulnerability of the location and the management of risks by the operator.

Governance structures and human resources policies for regulatory enforcement should support transparency, professionalism, and results-oriented management.

The governance structures and strategic decision-making processes of OEFA support transparency and accountability. However, OEFA could benefit from systematically including representatives of different stakeholder groups (private sector, civil society, amongst others,) in the governance of the agency, particularly when it comes to discussing strategic priorities and transformations.

- Systematically engaging stakeholders in the governance of OEFA would be an important step in building trust among the different actors, ensuring that their needs and views are heard and considered. It would also increase the overall transparency and independence from political influence of the institution and the environmental enforcement system more broadly. Options that might be considered include setting up an advisory body, strengthening the participation of stakeholders in the preparation of regulatory instruments and in asking for feedback on public reports.

Information integration: Information and communication technologies should be used to maximise the focus on risks, promote co-ordination and information sharing and ensure an optimal use of resources

OEFA has made significant progress in the development, introduction and use of ICT tools. As additional competences are transferred to OEFA, efforts have been made to collect data on regulated subjects, primarily through taking a census of the different establishments covered. However, risk data need to be further completed.

- OEFA would benefit in particular from fully digitising data and information to improve risk analysis, planning and automation. Following this, they may consider introducing automated planning of inspections, as the range of establishments covered in the system and relevant risk data are progressively expanding.

Institutions in charge of inspection and enforcement, and the regulatory enforcement and inspection system as a whole, should operate at the levels of performance expected from them

OEFA has set a number of indicators for assessing the efficiency and effectiveness of the agency, as well as stakeholder satisfaction. However, most available measurements are of outputs, as most outcome indicators were only set recently, and have not yet been measured.

- There is a need for OEFA to differentiate and better classify the reported indicators, and to clearly communicate to the public when and where these can be found. OEFA may also want to consider informing the public and stakeholders about the different types of indicators and why and in which document they are set out (e.g. by displaying this information clearly on their website, by means of a section within the annual report amongst others).
- It is indispensable to strengthen the focus on indicators of actual results (effectiveness). A clear difference should be made between indicators of volume of activities and outputs and indicators of effectiveness.



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