

6 Long-term vision

Long-term vision is an important component of a good enforcement and inspections policy. This chapter presents an overview of OEFA's long-term strategy, its vision and mission, and addresses the use of indicators by the agency. Moreover, the section includes an evaluation of the elements that guide the functioning of OEFA and proposes changes or areas for improvement with the intention to further develop the institutional mechanisms and objectives that OEFA follows.

Governments should adopt policies on regulatory enforcement and inspections, and establish institutional mechanisms with clear objectives and a long-term strategy (OECD, 2014^[1]), (OECD, 2018^[2]).

Some of the requirements to achieve this are an official vision, strategy and/or legal framework, that sets the goals, objectives and key principles, and that provides a shield from short-term, conflicting priorities.

Mechanisms and practices, such as regulatory impact assessment, exist to avoid or limit the occurrence of “Risk-Regulation Reflex”. The former are situations and decisions whereby, following an incident, state authorities urgently adopt new regulations, inspections and enforcement measures, without proper consideration of the extent of the risk, the adequacy of the proposed solutions and their costs. A good, risk-based inspections and enforcement system needs to be protected from such “reflex” decisions.

The long-term vision shall have practical effects, inform key reforms, legislation and decisions and should be embedded by an institutional framework that limits the possibility of short-term policy swings.

Official vision and strategy

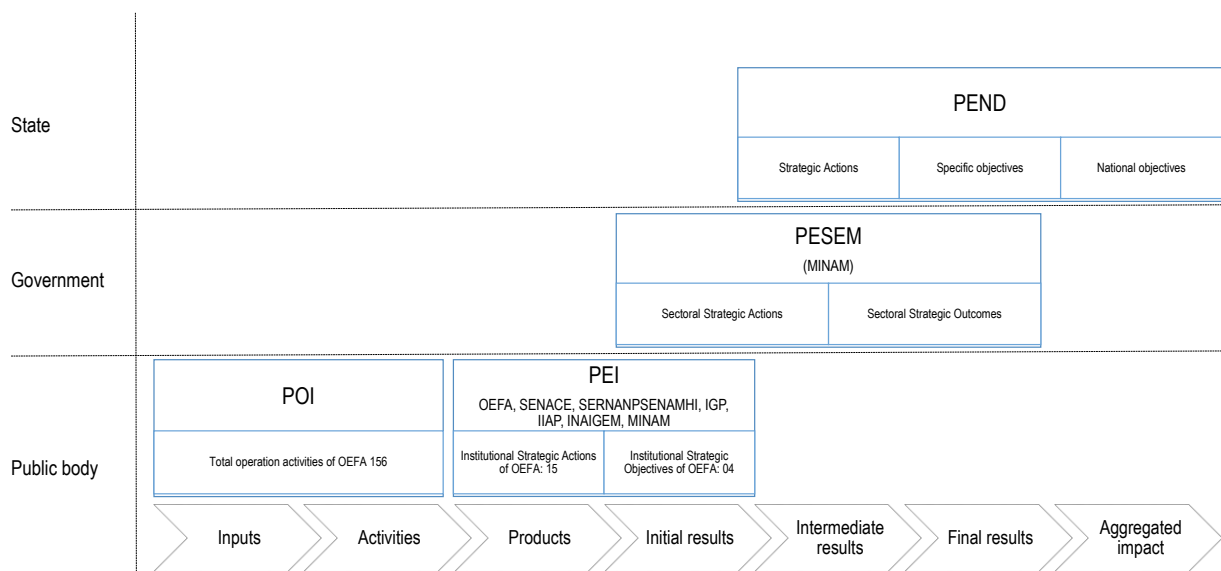
OEFA and the MINAM share their vision of Peru as “a modern country that harvests sustainably their natural resources, constantly endeavouring to conserve the environment, by reconciling economic development with environmental sustainability for the benefit of their citizens” (OEFA, n.d.^[3]), (Ministerio del Ambiente, n.d.^[4]).

OEFA’s strategy for regulatory inspections and enforcement for the 2019-2022 period is spelled out in its current Institutional Strategic Plan (PEI). The PEI and the Institutional Operational Plan (POI) (OEFA, 2018^[5]) are set in line with the National Environmental Action Plan for 2011 – 2021 (PLANAA)¹ and the Multiannual Strategic Plan for the Environment for 2017 – 2021 (PSEM),² both prepared and approved by MINAM. The PEI clearly sets the institutional policy, mission, strategic objectives and actions of OEFA for the relevant period.

The first element of the institutional policy is to ‘contribute to the improvement of the quality of the environment and the health of the people through the promotion of compliance with environmental requirements by the articulated and effective action of the SINEFA and according with a preventative approach to risks, by implementing the appropriate promotion or deterrence strategy, with reasonable and proportional criteria’.

Strategic indicators designed against the abovementioned institutional objectives are also included. The latter are defined as: 1) strengthening OEFA’s performance; 2) enhancing compliance with regulatory requirements among regulated subjects; 3) modernising OEFA’s institutional management; and 4) reducing OEFA’s vulnerability with regard to risk of disaster. Such objectives and indicators do not include fundamental elements such as performance in term of protection of the environment and the health of the people, or resources devoted to preventive and reactive actions.

It must be noted, however, that the Guidebook for Institutional Planning prepared by the Nacional Centre of Strategic Planning (*Centro Nacional de Planeamiento Estratégico* – CEPLAN) states the scope of objectives and indicators that are to be developed by each type and level of public authority (the PSEM) (CEPLAN, 2019^[6]). In particular, the Strategic Plan of National Development (*Plan Estratégico de Desarrollo Nacional* – PEDN), applicable to the legislative and judiciary branches and to other government entities, defines objectives in terms of “intermediate and final results”, as well as “aggregated impact”. The PSEM, developed by, and applicable to, the different ministries, is to set objectives in terms of ‘initial, intermediate and final results’. Finally, public bodies – such as OEFA – shall establish in their PEI (and POI) objectives that relate, at most, to ‘initial results’ within the results chain (see Figure 6.1).

Figure 6.1. Design of objectives within the “results chain”

Notes: Given that, institutional strategic objectives (OEI) relate to an initial result. OEIs and their indicators must be at the same stage of the result chain. Given that, institutional strategic Activities (AEI) relate to products, the relevant indicator shall also reflect to a product. AEIs and their indicators must be at the same stage of the results chain.

Source: CEPLAN (2019^[6]), *Guía para el Planeamiento Institucional*, CEPLAN, Lima, <https://www.ceplan.gob.pe/wp-content/uploads/2018/11/Gu%C3%ADa-para-el-planeamiento-institucional-26marzo2019w.pdf> (accessed 15 October 2019).

Further mechanisms to avoid regulatory “reflex” and short-term policy swings

The adopted long-term strategy and objectives, indicators, planning of inspections, amongst others, are mechanisms and tools that should help avoid “an overreaction by government to a risk or (public safety) incident by imposing more regulation and more oversight than necessary to control the risk at an acceptable level” (named “Risk-Regulation Reflex”, RRR), (Government of Netherlands, 2015^[7]).

The management system for complaints is another instrument that could be further refined – which helps determine, following an assessment, if an immediate reaction is needed, or not. According to PLANEFA Guidelines, EFAs are obliged to report annually on all inspection-related activities carried out over the course of the calendar year, including “the performance of special or unplanned inspections in the event of environmental complaints, environmental emergencies or other circumstances that may so require” (Art. 10.1).

OEFA’s institutional set-up includes a Directorate for Policies and Strategies in Environmental Enforcement in charge of regulatory assessment and providing feedback for the preparation of new regulations. Also, OEFA regularly carries out consultations with stakeholders when preparing regulations, and RIA methodology is now being applied for new regulations

An additional concern is the mandatory use of “special” inspections following another authority’s request. The overall number of reactive ‘special’ inspections suggests that overreactions in OEFA are still present. While OEFA has adopted a Regulation on the Reporting of Emergencies,³ the procedure with regard to the relevant assessment of the event amongst others, is unknown.

OEFA has recently undergone an internal institutional reshaping aimed at better reflecting the new vision and mission of the agency. The Directorate for Policies and Strategies in Environmental Enforcement (which is also in charge of regulatory assessment and of providing feedback in the preparation of new

regulations) should be responsible for ensuring that the functioning of the agency is consistent with OEFA's objectives. The institutional set-up could be further improved to reflect the central and transversal aspect of: 1) risk-analysis and assessment and 2) compliance promotion in inspection and enforcement, by setting up two transversal directorates in charge of these. Furthermore, structure, processes, and resources of OEFA in general can be further improved to enhance performance⁴. It means it would be advisable to conduct a review of staffing vs.: a) the number of establishments to supervise; b) the level of risks; and c) a gradual restructuring/reassignment of resources amongst others.

Assessment

The official vision and mission of OEFA set the fundamental regulatory goal of protecting the environment through the promotion of compliance according to a preventative approach to risks. However, key aspects of the fundamental goal and of the approach to achieve it run the risk of being undermined by several limiting factors. These factors include: the formalistic nature of regulation in Peru, the still early stage of development of methods and tools, and the structure that is still yet to be reformed further.

Recommendations

- In addition to the assessment of complaints against a pre-defined list of criteria, equivalent methodologies must be applied to intervention requests from other authorities and for emergencies, if not available.
- The Directorate for Policies and Strategies in Environmental Enforcement (which is also in charge of regulatory assessment and of providing feedback in the preparation of new regulations) should be responsible for ensuring that the functioning of the agency is consistent with OEFA's objectives. The institutional set-up could be further improved to reflect the crucial and horizontal aspect of 1) risk-analysis and assessment as well as 2) compliance promotion in inspection and enforcement, by setting up two transversal directorates in charge of these.
- OEFA is still a relatively young institution, and the move to more risk-based, compliance-focused approaches is recent. Longer-term sustainability and continuation of improvements will have to be ensured.

References

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Notes

¹ Approved by Supreme Decree No. 014-2011-MINAM, available at: <http://www.minam.gob.pe/disposiciones/decreto-supremo-n-014-2011-minam/>.

² Approved by Ministerial Resolution No. 385-2016-MINAM, available at: <http://www.minam.gob.pe/disposiciones/resolucion-ministerial-n-385-2016-minam-2/>.

³ Approved by Resolution of Boards of Directors No. 018-2013-OEFA/CD.

⁴ E.g. different inspection directorates correspond to previously distinct functions that were merged into OEFA.



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