



OECD Public Governance Reviews

OECD Integrity Review of Peru

**ENHANCING PUBLIC SECTOR INTEGRITY
FOR INCLUSIVE GROWTH**



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Foreword

Many of the challenges hampering the sustainability and resilience of Peru's socio-economic progress stem from the historic and structural weaknesses of its public governance system. A sound governance system that delivers inclusive policies and effective public services and mitigates risks of corruption is indispensable if Peru is to sustain the significant results it has achieved in reducing poverty and inequality and improving well-being.

This peer review – which is part of the OECD Peru Country Programme – provides strategic guidance on how to enhance the public integrity system based on a comparative analysis of its structures, instruments and processes.

The review is a comprehensive assessment of Peru's public integrity system, examining the broad range of issues and implementation challenges the country is experiencing, both at national and subnational levels. The review analyses the institutional settings of Peru's integrity system, with a specific focus on priority areas such as internal control and risk management, the promotion of public ethics and conflict-of-interest management, whistleblower protection, lobbying, political finance, as well as the disciplinary regime and the role of the criminal justice system in combating corruption.

The peer review acknowledges the steps Peru has taken to strengthen its integrity system. For example, the High-level Commission against Corruption (CAN), created in 2010, recognises the need to involve actors from the public and private sectors and civil society in promoting an inclusive and co-ordinated integrity and anti-corruption policy across all levels. The Commission also promotes and supports the establishment of Regional Anti-corruption Commissions (CRAs) in all 25 regions to develop regional anti-corruption plans and respond to context-specific challenges.

The review also addresses existing gaps and reflects on how the country could build a coherent and comprehensive public integrity system, cultivate a culture of integrity across government, and enable effective accountability in line with the 2017 OECD Recommendation on Public Integrity.

At the system level, for example, the CAN currently does not include all key actors, and thus may not be able to effectively ensure co-ordination and policy coherence, steer the development of the National Anti-corruption Plans and monitor their implementation. The peer review recommends steps to strengthen Regional Integrity Systems by establishing effective co-ordination mechanism between central and regional levels, as well as between regions.

Peru's framework for promoting a culture of integrity in the public administration is fragmented, and therefore has a limited impact on changing the actual behaviour of public officials. Peru would benefit from developing a single policy framework for promoting public sector integrity and managing conflict-of-interest situations. Also, there is a need

to clarify the respective roles and responsibilities of the actors involved in these policies, and to ensure that they co-ordinate effectively.

While Peru’s internal control system has a generally sound normative framework, actual implementation could be improved. Ways to do so include better integrating internal control into public management, making a clearer distinction between internal control and external audit, and introducing a dedicated corruption risk management policy.

To avoid “policy capture”, where private interests exert undue influence on the design of laws and policies, Peru needs to strengthen regulations on lobbying and political finance and ensure their effective implementation. Finally, both disciplinary and criminal justice systems could be reinforced to reduce impunity.

Peru has a unique opportunity to further advance its fight against corruption by moving away from a case-driven and reactive approach towards deeper structural changes. Realising this ambitious agenda does not hinge upon a single entity; rather it requires a co-ordinated effort across the public sector that also involves the private sector and society as a whole. By implementing the review’s recommendations, Peru would lay a strong foundation for sustainable and inclusive development.

Acknowledgements

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The OECD expresses its gratitude to the Peruvian Government, particularly the High-level Commission against Corruption (Comisión de Alto Nivel Anticorrupción), Attorney General’s Office (Ministerio Público), the Judiciary (Poder Judicial), Ministry of Justice and Human Rights (Ministerio de Justicia y Derechos Humanos), Anti-Corruption Prosecutor’s Office (Procuraduría Anticorrupción), Comptroller General (Contraloría General de la República), Financial Intelligence Unit (Unidad de Inteligencia Financiera), Public Administration Office (Secretaría de Gestión Pública), Executive Director of the Supervisory Body of Public Contracting (Organismo Supervisor de las Contrataciones del Estado), National Civil Service Authority (Autoridad Nacional de Servicio Civil), Ombudsman Office (Defensoría del Pueblo), National Jury of Elections (Jurado Nacional de Elecciones), National Office for Electoral Processes (ONPE), Executive Secretary of the National Agreement (Acuerdo Nacional), the Regional Governments of Piura and Ayacucho (Gobierno Regional de Piura y Ayacucho), Executive Director of the Peruvian Press Council (Consejo de la Prensa Peruana), National Council for Public Ethics (Consejo Nacional para la Ética Pública, Proética), Business associations: National Society of Industries (Sociedad Nacional de Industrias), Chamber of Commerce of Lima (Camera de Comercio de Lima), National Confederation of Private Business (Confederación Nacional de Instituciones Empresariales Privadas).

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Acronyms and abbreviations

ACRC	Korean Anti-Corruption and Civil Rights Commission
AGO	<i>Ministerio Público</i> Attorney General's Office
ANTAI	<i>Autoridad Nacional de Transparencia y Acceso a la Información</i> Authority for Transparency and Access to Information
ASF	<i>Auditoría Superior de la Federación</i> Ministry of Public Administration
CAA	Consumer Affairs Agency Japan
CAN	<i>Comisión de Alto Nivel Anticorrupción</i> High-level Commission against Corruption
CAP	<i>Cuadro de Asignación de Personal</i> Table of Assignment of Personnel
CAS	<i>Contratos Administrativos de Servicios</i> Short-term service contracts
CCL	<i>Cámara de Comercio de Lima</i> Lima Chamber of Commerce
CEPLAN	<i>Centro Nacional de Planeamiento estratégico</i> National Centre for Strategic Planning
CGR	<i>Contraloría General de la República</i> Office of the Comptroller General
CGU	<i>Unidad de Coordinación General</i> General Co-ordination Unit
CHU	Central Harmonisation Unit
CNM	<i>Consejo Nacional de la Magistratura</i> National Council of the Magistracy
CONFIEP	<i>Conferencia Nacional de Instituciones Empresariales Privadas</i> National Conference of Private Business Institutions
CONTRALAFIT	<i>Comisión Ejecutiva Multisectorial de lucha contra el lavado de activos y el Financiamiento del Terrorismo</i> Multisectorial Executive Commission on countering the financing of terrorism and money-laundering.
COSO	Committee of Sponsoring Organisations of the Treadway Commission
CPI	Corruption Perception Index
CPP	<i>Código Procesal Penal</i> Criminal Procedure Code
CRA	<i>Comisiones Regionales Anticorrupción</i> Regional Anti-corruption Commissions
DIRCOCOR	<i>Dirección contra la Corrupción de la Policía Nacional</i> Anti-Corruption Bureau
DPA	Department for Public Administration (Italy)

ENAP	<i>Escuela Nacional de Administración Pública</i> National School of Public Administration
FMC	Financial and Managerial Control
FONAFE	<i>Fondo Nacional de Financiamiento de la Actividad Empresarial del Estado</i> National Fund for State Enterprise Activity
GIIA	Government Internal Audit Agency
GIZ	<i>Deutsche Gesellschaft für Internationale Zusammenarbeit</i> German International Co-operation Agency
GSFP	<i>Gerencia de Supervisión de Fondos Partidarios</i> Office for the Supervision of Party Funds
HRM	Human Resources Management
ICT	Information and Communication Technology
IIA	Institute of Internal Auditors
INTOSAI	International Organisation of Supreme Audit Organisations
IPPF	International Professional Practices Framework
JNE	<i>Jurado Nacional de Elecciones</i> National Jury of Elections
KPI	Key Performance Indicators
LAC	Latin American and Caribbean
LLP	<i>Ley de Partidos Políticos</i> Law on Political Parties
MEF	<i>Ministerio de Economía y Finanzas</i> Ministry of Economy and Finance
MENA	Middle East and North Africa
MINJUS	Ministry of Justice
NMC	<i>Comisión Nacional de Moralización Colombia</i> Colombia National Moralisation Commission
OCI	<i>Órgano de Control Institucional</i> Institutional Control Office
OCMA	<i>Oficina de Control de la Magistratura</i> Control Office of Judiciary
ONPE	<i>Oficina Nacional de Procesos Electorales</i> National Office of Electoral Processes
ORCL	Office of the Registrar of Consultant Lobbyists of the United Kingdom
OSC	United States Office of Special Counsel
OSCE	<i>Organismo Supervisor de las Contrataciones del Estado</i> Executive Director of the Supervisory Body of Public Contracting
OTE	<i>Organismo Técnico Especializado</i> Specialised Technical Organ
PACI	World Economic Forum Partnering Against Corruption Initiative
PAS	<i>Procedimiento Administrativo Sancionador</i> Administrative Sanctioning Procedure
PCM	<i>Presidencia del Consejo de Ministros</i> Presidency of the Council of Ministers
PEDN	<i>Plan Estratégico de Desarrollo Nacional</i> National Strategic Development Plan
PIC	Public Internal Control
QAIP	Quality Assurance and Improvement Programme

RMC	<i>Cómision Regionales de Moralización Colombia</i> Colombia Regional Moralisation Commission
RIS	<i>Reglamento Interno de los Servidores Civiles</i> Internal Regulation of Civil Servants
RNSDD	<i>Registro Nacional de Sanciones de Destitución y Despido</i> National Registry of Sanctions and Dismissals
SAI	Supreme Audit Institution
SCI	<i>Sistema de Control Interno</i> Internal Control System
SERVIR	<i>Autoridad Nacional del Servicio Civil</i> National Civil Service Authority
SGP	<i>Secretaría de Gestión Pública</i> Public Administration Office
SIDJ	<i>Sistema de Registro de Declaraciones Juradas en Línea</i> Online Asset Declaration System
SINAD	<i>Sistema Nacional de Atención a Denuncias</i> National Processing Complaints System
SINAPLAN	<i>Sistema Nacional de Planeamiento Estratégico</i> National Strategic Planning System
SNC	<i>Sistema Nacional de Control</i> National Control System
SNF	<i>Sistema Nacional de Fiscalización</i> National Auditing System
SOAS	<i>Sociedades de Auditoria</i> Audit Firms
SUNARP	<i>Superintendencia Nacional de Registros Públicos</i> National Superintendence of Public Registries
TAE	<i>Tribunal Administrativo Especial</i> Special Administrative Court
UIF-Perú	<i>Unidad de Inteligencia Financiera del Perú</i> Financial Intelligence Unit
UIT	<i>Unidad Impositiva Tributaria</i> Peruvian Tax accounting Unit
UNCAC	United Nations Convention against Corruption
VFM	Value-for-Money
WGI	World Governance Indicators

Executive summary

Over the past 15 years, Peru has experienced socio-economic development and improved well-being, and has significantly reduced poverty and inequality. For this progress to be sustainable and resilient, a sound governance system is needed to control corruption and provide a stable environment. While Peru has made important progress in strengthening its public integrity system, challenges remain, particularly the need to reinforce institutions and mitigate corruption risks.

Key findings

Since 2010, a High-level Commission Against Corruption (CAN), supported by a network of Regional Anti-corruption Commissions, has brought together several institutions from the public and private sectors and civil society to promote co-ordination and improve the integrity system across the country. However, the CAN does not include all important actors, and its technical secretariat needs to be strengthened so it can be more effective.

Currently, ethics and conflict-of-interest policies are fragmented, with no clear leadership for them; furthermore sanctions for integrity violations are not well formulated. In addition, Peru has adopted explicit provisions protecting whistleblowers, but they are currently not implemented effectively and there is no strategy for communicating about them or evaluating their results. The review also shows that internal control and risk management processes are not always properly implemented, and that there is some confusion in the public administration regarding the roles and tasks of internal control.

The risk of policy capture through the funding of political parties and campaigns, including through illicit sources of funding and informal lobbying, is perceived as high in Peru. The National Office of Electoral Processes (ONPE), responsible for the electoral processes, and the National Superintendence of Public Registries (SUNARP), responsible for the lobbying registry, both lack the power and resources to ensure compliance with existing rules and regulations.

Currently, there are two different administrative disciplinary regimes for Peruvian civil servants and employees, posing risks to the effective and fair enforcement. Also, independence from undue influence remains a major challenge in Peru's criminal justice system, mainly due to the use of provisional prosecutors and provisional judges. Enforcement authorities also lack in-house expertise or access to accounting and public procurement experts, especially at the regional level.

Key recommendations

To ensure a coherent and comprehensive public integrity system, the CAN should focus on its core mandate of ensuring co-ordination and policy coherence and should follow up and communicate on the status of National Anti-corruption Plans. To this end, the CAN could develop capacities in information management and communication and could be formally incorporated into the organisational structure of the Presidency of the Council of Ministers (PCM) as a Specialised Technical Organ. Also, the CAN could broaden its membership to include the Public Administration Office (SGP), the National Civil Service Authority (SERVIR), the ONPE, and a strengthened and independent Authority of Transparency and Access to Information (ANTAI).

The CAN's impact could be strengthened by establishing two technical sub-commissions or working groups: one on prevention and the other on enforcement. Regional anti-corruption plans could be further developed to ensure that all key stakeholders are involved and that the technical secretariats of the Regional Anti-corruption Commissions are implemented, strengthened, and fully utilized. Peru could also consider creating an effective co-ordination mechanism between the CAN and the CRA, as well as among the CRAs.

To cultivate a culture of integrity, Peru could create a single policy framework for promoting public ethics and managing conflict-of-interest situations across the public sector. Also, the roles and responsibilities of the agencies involved in developing and updating public ethics and conflict-of-interest policies require clarification. A clear lead role should be assigned to SERVIR, but effective co-ordination among the other actors should also be ensured. The role of the Office of the Comptroller General (CGR) in auditing asset declarations could be strengthened by granting it further powers to cross-check information through agreements with tax authorities and other relevant public bodies. Finally, the law on whistleblower protection could be fine-tuned and its implementation ensured through a broad communications strategy and increased awareness-raising efforts.

To enable accountability, Peru could address internal control, political finance, lobbying, and the administrative and criminal justice systems. Internal control and risk management functions should be mainstreamed in broader public management reforms. A clearer separation between internal control and internal audit could be achieved by redesigning the role and the operations of the Institutional Control Offices (OCIs) to focus on advising and supporting management, and on providing assurance over internal control processes. Also, a dedicated corruption risk management policy could support government entities in their efforts to implement controls to prevent, detect and sanction corruption effectively.

With respect to lobbying and political finance, responsibility for the lobbying registry and policy could be shifted to a strengthened and independent ANTAI, and compliance with registration and reporting could be made easier. The negative perception of lobbying could be addressed through training and public awareness campaigns. In political finance, the public funding programme in the Law on Political Organisations should be effectively resourced and enforced, and anonymous donations could be banned or the current threshold amount lowered. In addition, the investigative and sanctioning power of the ONPE could be strengthened and human and technical resources re-evaluated accordingly.

With respect to enforcement, Peru could consider moving towards an administrative disciplinary regime with a single inventory of offences and corresponding sanctions, and could more clearly delineate the jurisdictions and responsibilities of SERVIR and the CGR. Improved co-ordination and communication under the auspices of the CAN, as well as more ambitious capacity-building efforts, are needed to pave the way for future reforms. In the criminal justice regime, systematic co-operation should be ensured among agencies on corruption cases. The judiciary and prosecutors need access to guidance and training as well as to external expertise on relevant issues such as accounting and procurement. Finally, reducing the number of vacant judge and prosecutor positions is crucial: such a step would eliminate the use of provisional judges and prosecutors and would help ensure independence and continuity in the investigation of corruption cases.

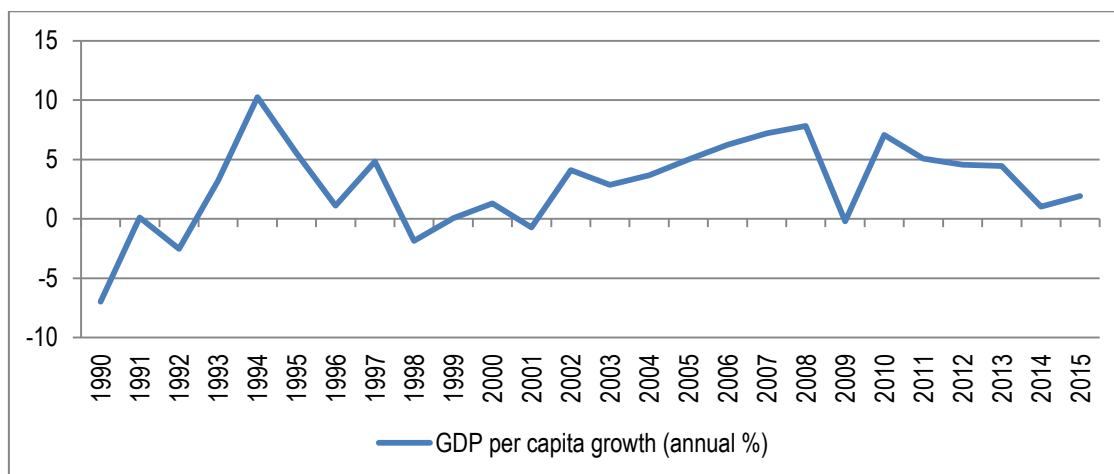
Chapter 1

Governance and corruption in Peru: An overview

This chapter provides an overview on international indicators measuring Peru's status with respect to governance and corruption. The results highlight the importance of addressing corruption risks and strengthening Peru governance system in order to sustain the economic and social progress made over the past two decades.

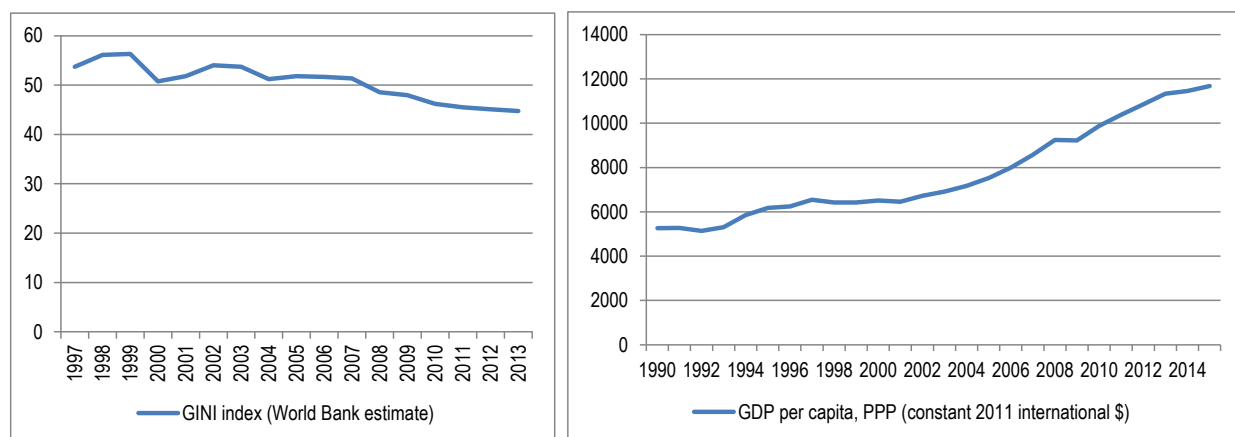
In recent years, Peru has experienced socio-economic development and improved well-being. Income per capita has more than doubled since 1990 (Figure 1.1). Especially since Peru's return to democratic elections in 2001, the country experienced significant macroeconomic stability and growth, which contributed to a reduction in poverty. Indeed, Peru has managed to diminish significantly its extreme poverty rates and has made progress in reducing inequalities (Figure 1.2). Peru's Human Development Index increased from 0.61 in 1990 to 0.73 in 2014, which puts Peru slightly above the average for Latin American and Caribbean countries.

Figure 1.1. Peru experienced continuous growth in gross domestic product (GDP) per capita



Source: World Development Indicators, The World Bank, <http://data.worldbank.org/data-catalog/world-development-indicators>.

Figure 1.2. Peru has made important progress in fighting extreme poverty and reducing inequality



Source: World Development Indicators, The World Bank, <http://data.worldbank.org/data-catalog/world-development-indicators>.

Research and insights from practice have emphasised that for this progress to be sustainable and inclusive, a sound governance system must mitigate risks of corruption and should provide an environment where productivity gains can be made and development achieved. Especially between 2000 and 2010, Peru also benefited from an

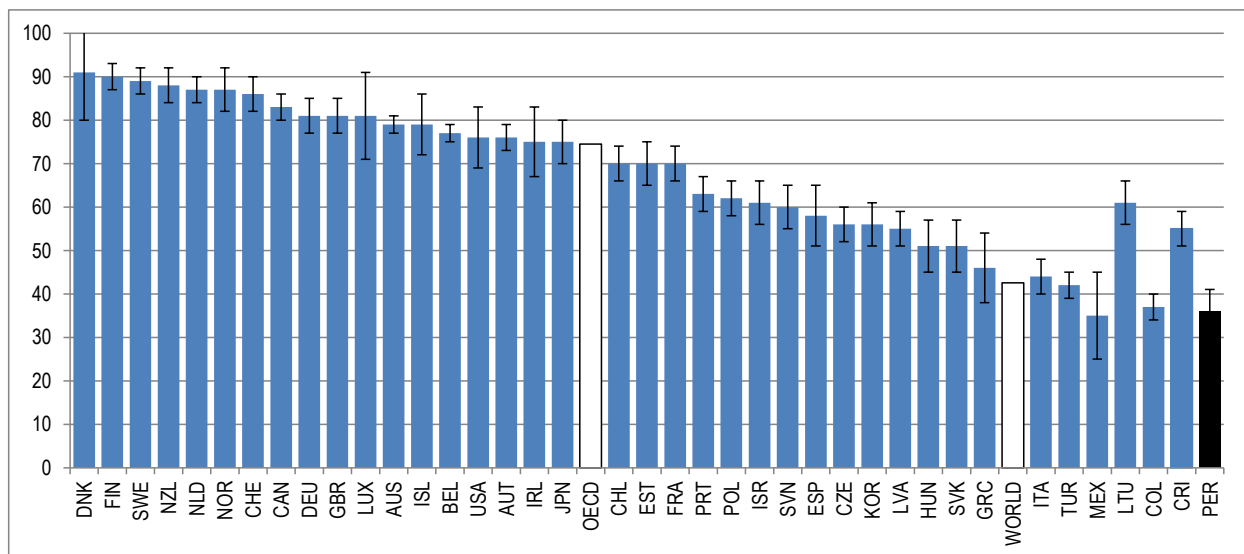
overall healthy international economic environment including high commodity prices, but failed to undertake deeper structural and political reforms. Indeed, the Bertelsmann Report for Peru 2016 notes the country’s failure to address severe distortions in the society that could help in further reducing key structural problems in the country: the informal sector, poverty and underemployment.

The available international indicators presented and discussed in the next sections underscore the challenges Peru is still facing in ensuring a sound governance framework and containing corruption. This Integrity Review analyses key areas of Peru’s public integrity system and identifies gaps and challenges. The recommendations can be followed in addition to pursuing the in-depth structural actions needed by Peru to ensure that the progress achieved can be sustained and expanded.

International governance and corruption indicators

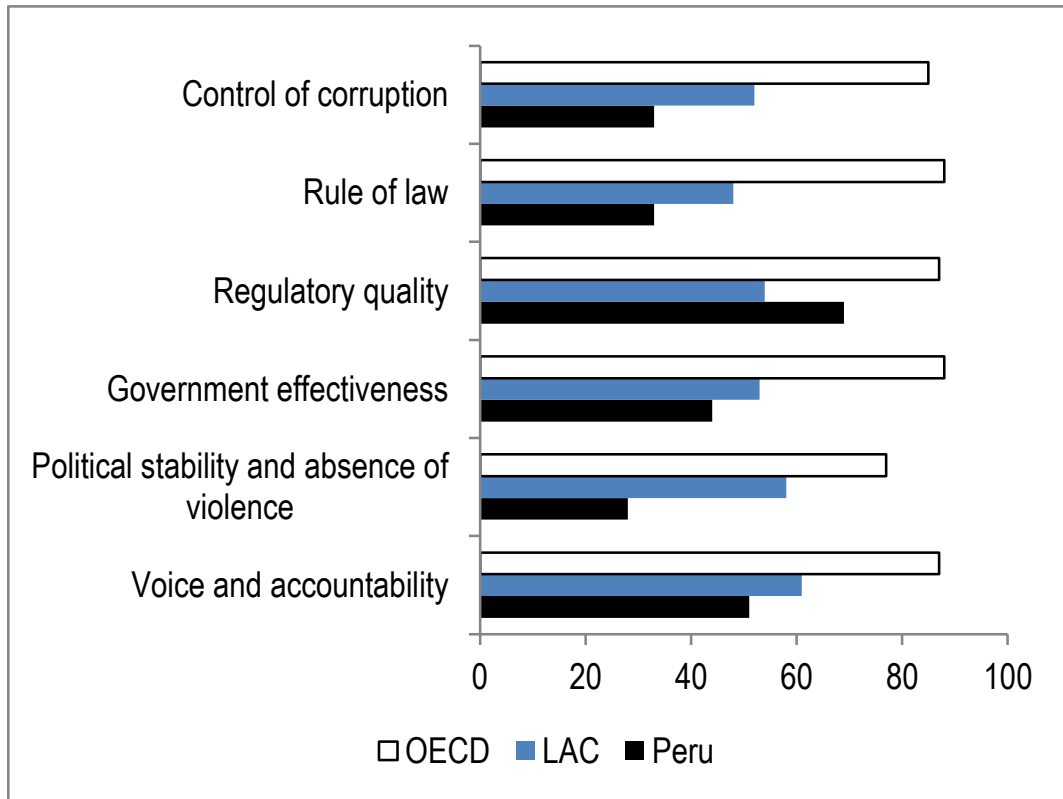
Perception of corruption in Peru remains higher than in OECD member countries (Figure 1.3). In comparison with current OECD accession countries, Peru’s score is not significantly different from Colombia’s (although Peru’s confidence interval is greater), but is significantly below the scores displayed by Lithuania and Costa Rica. A similar picture arises from the 2014 World Governance Indicators from the World Bank, where Peru scores lower than the average of OECD and Latin American and Caribbean (LAC) countries in all sub-indicators, except Regulatory Quality, where Peru’s score is better than the LAC average but remains still below the OECD average (Figure 1.4).

Figure 1.3. Peru’s Corruption Perception Index compared with OECD and accession countries, 2015



Source: Transparency International Corruption Perception Index (2015), www.transparency.org/cpi2015.

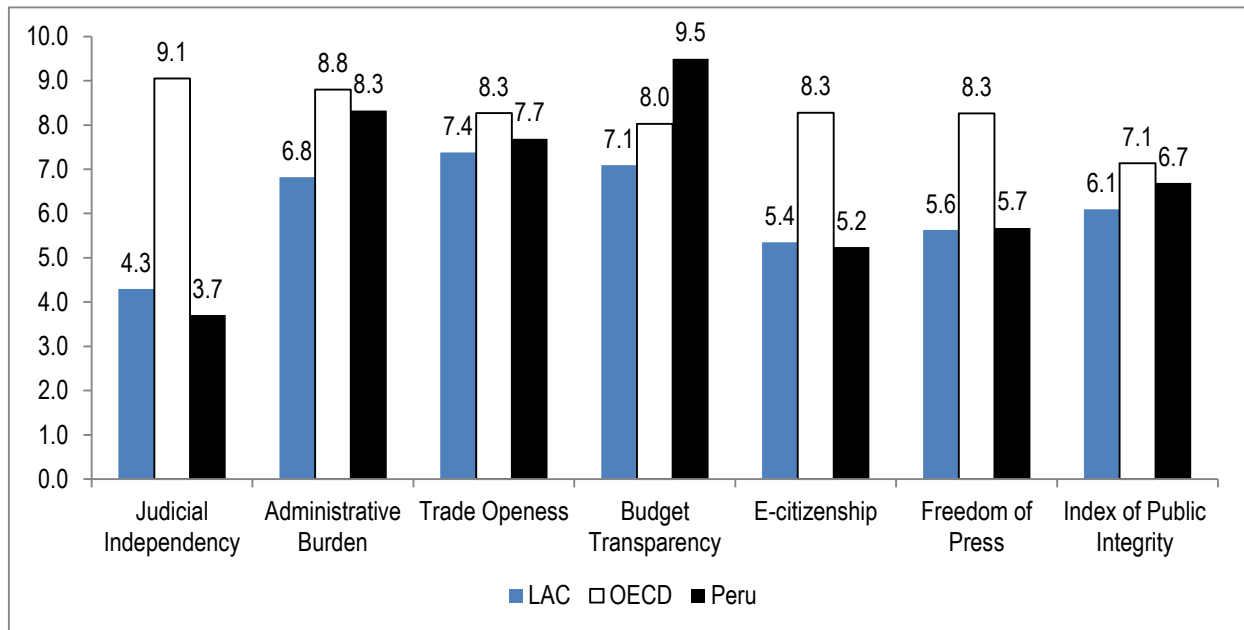
Figure 1.4. World Governance Indicators, Peru compared with OECD and LAC average, 2014



Source: The World Bank Group World Governance Indicators (2014), <http://info.worldbank.org/governance/wgi/index.aspx#home>.

The Index of Public Integrity (IPI) 2015 measures a country's resilience against corruption by looking at six specific sub-indicators based on structural issues that are known to determine corruption. Here, Peru scores higher than the average of Latin American countries, but lower than the average of selected OECD countries (Figure 1.5). Like in many other LAC countries, Peru's overall score is largely a result of its low score in the Judicial Independence sub-indicator. This issue will be analysed in more depth in Chapter 9.

Figure 1.5. Index of Public Integrity, Peru compared to OECD and LAC average, 2015



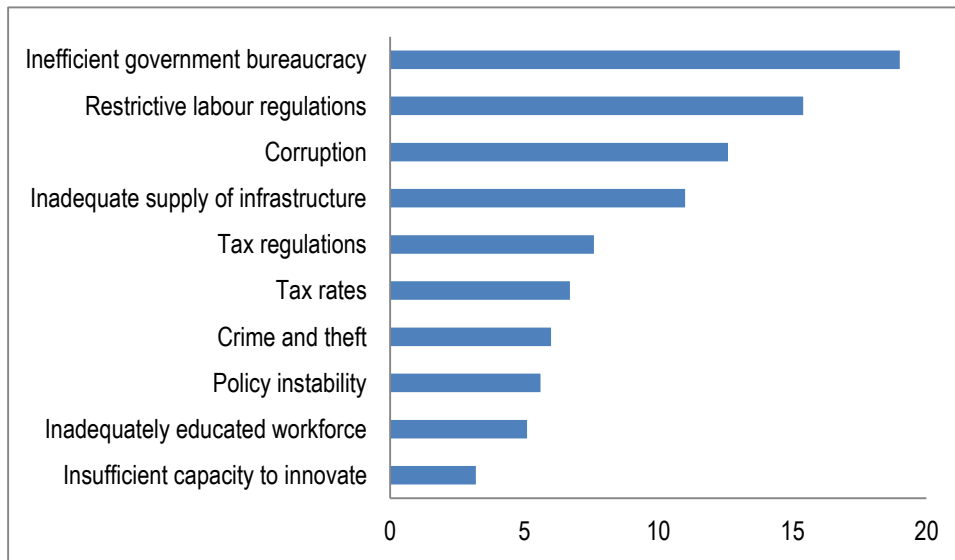
Note: The IPI is theory-driven and aims to assess a country’s capacity to control corruption based on composite scores in six subcomponents: Freedom of the Press, Administrative Burden, Trade Openness, E-Citizenship, Judicial Independency and Budget Transparency. The data for the IPI composite comes from the World Economic Forum, Doing Business, FreedomHouse, Open Budget Survey and some other sources. The IPI correlates strongly with the CPI, the WGI and other indicators. Latin American countries covered are: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Peru, Trinidad and Tobago, and Venezuela. All 35 OECD countries are covered except Australia, Canada, Israel, Iceland, Japan and Switzerland.

Source: European Research Centre for Anti-Corruption and State-Building (2015).

The business perspective on corruption

According to the Global Competitiveness Report 2015-16 from the World Economic Forum based on a survey of businesspeople, corruption is considered as the third most important obstacle to doing business in Peru, surpassed only by “inefficient government regulations” and “restrictive labour regulations” (Figure 1.6). Inefficient government regulations can create opportunities for corruption, when for example corrupt officials extract informal payments in order to get things done, or even may be the result of corruption, when regulations themselves are designed to create opportunities for rent-extraction in the first place. Also, the fourth most important problem, “inadequate supply of infrastructure”, may be related to corruption. Indeed, corruption in public works and infrastructure projects may lead to either white elephants, i.e. oversized and unneeded infrastructure, or infrastructure of lower quality than would be required to enhance economic productivity.

Figure 1.6. The ten most important problems for business in Peru, 2015-16

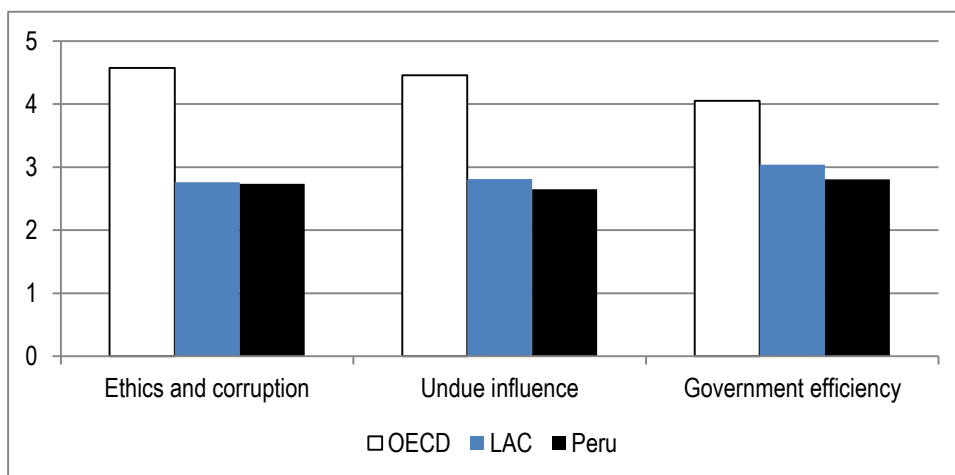


Note: From the list of factors, respondents were asked to select the five most problematic for doing business in their country and to rank them between one (most problematic) and five. The score corresponds to the responses weighted according to their rankings.

Source: World Economic Forum Global Competitiveness Report (2015), <http://reports.weforum.org/global-competitiveness-report-2015-2016/>.

The Global Competitiveness Report also constructs composite indices measuring aspects based on the responses provided in the survey. For instance, the report calculates composite indicators on “Ethics and corruption”, “Undue influence”, and “Government efficiency”. In all three indicators, Peru’s scores are almost identical to the LAC average, but significantly below the OECD average (Figure 1.7).

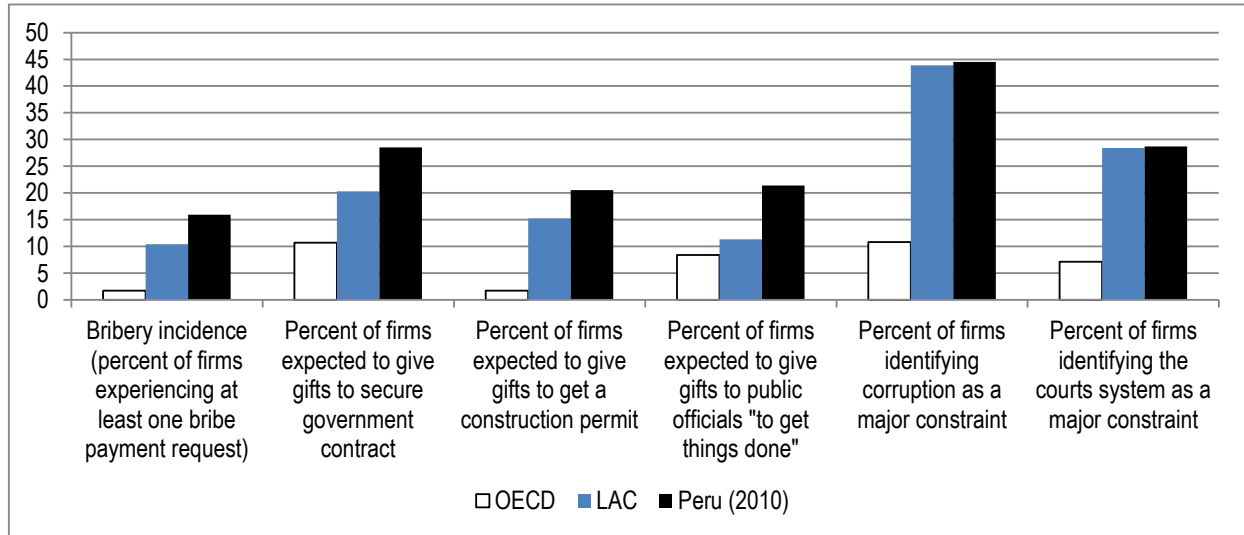
Figure 1.7. Global Competitiveness Report, results from Peru compared with OECD and LAC averages, 2015-16



Source: World Economic Forum Global Competitiveness Report (2015), <http://reports.weforum.org/global-competitiveness-report-2015-2016/>.

Another survey, conducted by the World Bank Enterprise Surveys, reveals perspectives on corruption and victimisation from the point of view of firms (Figure 1.8). Peru displays similar or lower levels than the average of LAC countries. Again, as in most countries in the region and confirming the Global Competitiveness Report, the courts are identified as a major constraint for business. Also, the responses related to expected gifts or bribe payments seem to indicate that corruption is a relatively common practice when companies deal with the Peruvian public administration.

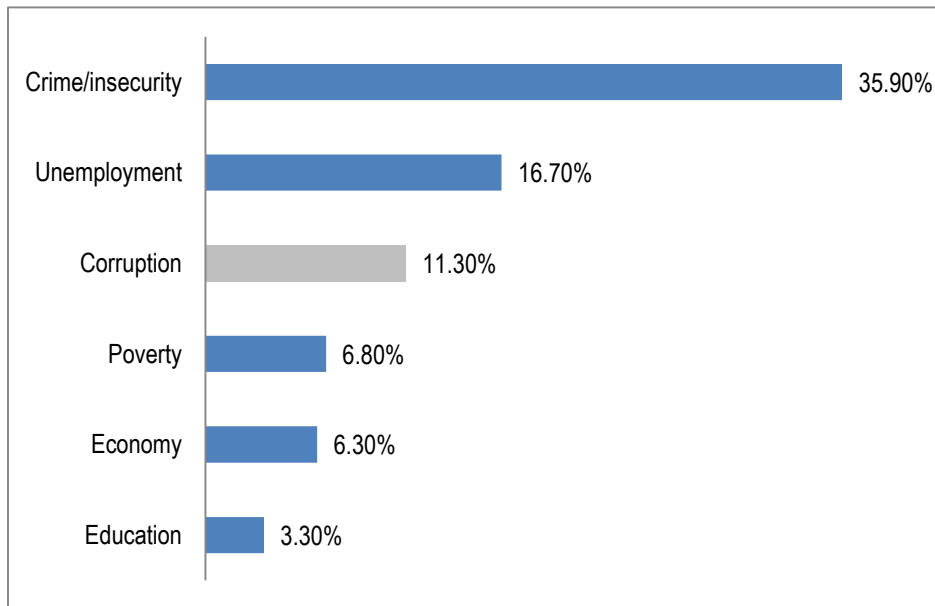
Figure 1.8. **How business perceives corruption in Peru in comparison with OECD and LAC averages**



Source: The World Bank Enterprise Surveys (2010), www.enterprisesurveys.org/.

The citizen perspective on corruption

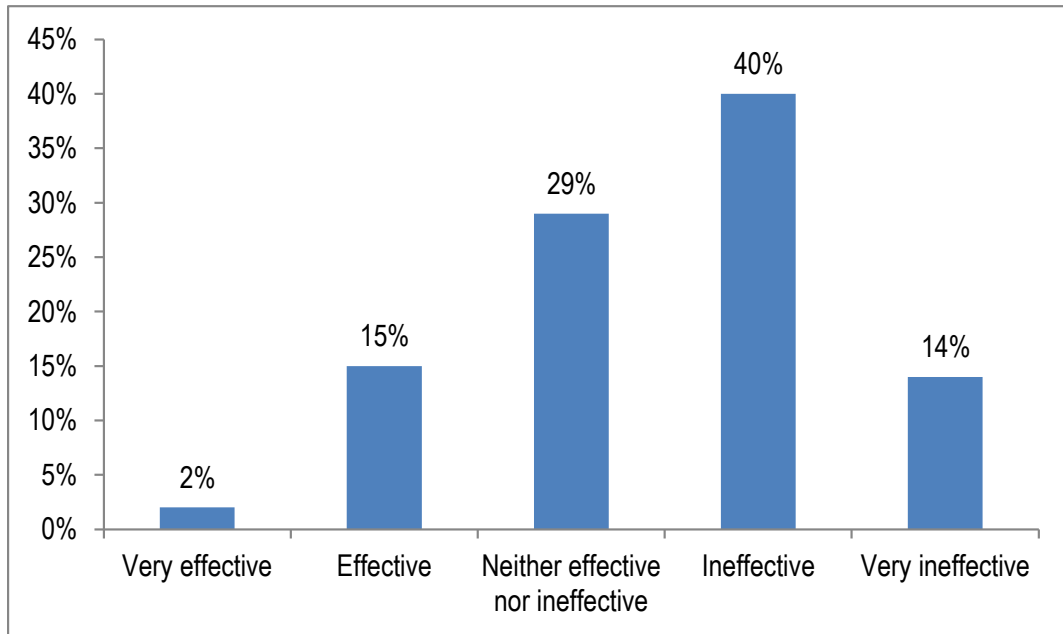
While the Survey of the Global Competitiveness Report and the Enterprise Surveys reflect the views of private sector managers, representative surveys at the country level provide another perspective. These surveys, usually referred to as barometers, reflect the views of “average citizens”. These barometers may be more strongly influenced by scandals and media coverage than the Corruption Perception Index (CPI) and the World Governance Indicators (WGI), and must therefore be interpreted with due care, but they still provide useful information on how the average citizen perceives and experiences corruption in a given country at a given moment in time. Like the Global Competitiveness Report for businesses, the 2015 Latinobarometer asks which problems citizens perceive as most urgent. In Peru, corruption is again the third most important problem after “crime/insecurity” and “unemployment” (Figure 1.9).

Figure 1.9. **The five most important problems for citizens in Peru, 2015**

Source: Based on data from Latinobarometer (2015), www.latinobarometro.org.

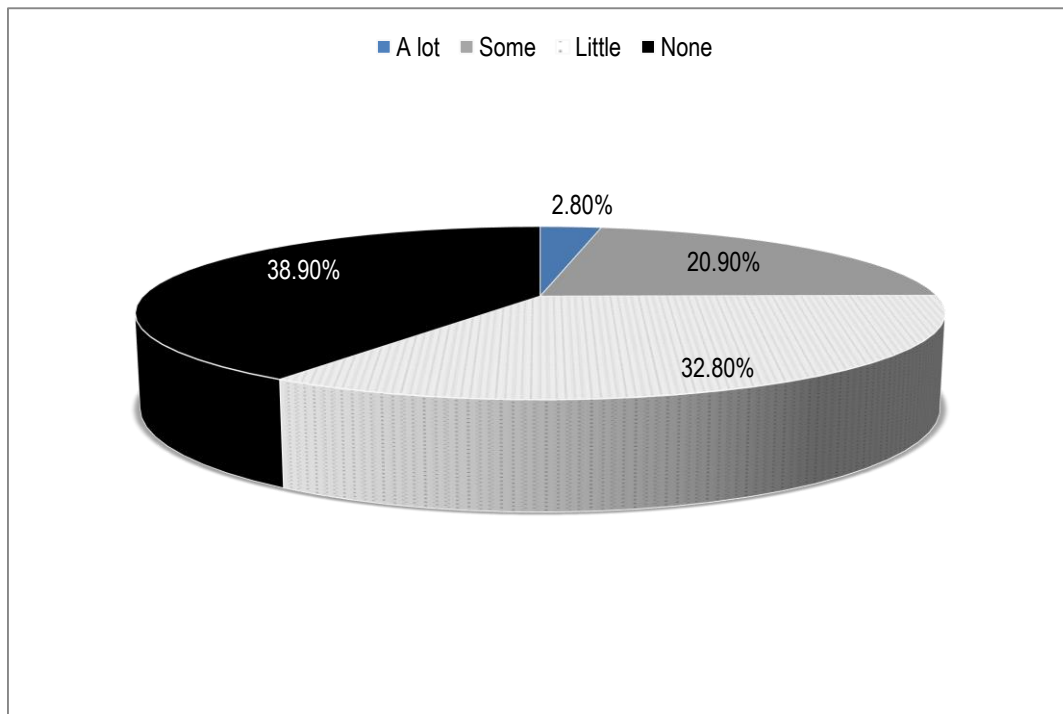
In addition, the Global Corruption Barometer and the Latinobarometer both ask questions related to the perceived effectiveness of government's anti-corruption measures. For instance, in 2013 an impressive 54% of Peruvians considered government actions against corruption as either ineffective (40%) or very ineffective (14%); only 17% considered them to be effective (14%) or very effective (2%) (Figure 1.10). Two years later, the 2015 Latinobarometer asked whether the citizen had perceived, over the previous two years, progress made in government actions against corruption. Again, the picture shows a high degree of discontent in the population: 38.9% of the surveyed citizens perceived no progress at all, 32.8% perceived little progress, 20.9% perceived some progress, and only 2.8% perceived that the government had made significant progress in reducing corruption in public institutions (Figure 1.11).

Figure 1.10. Peruvian citizens' perception of government action against corruption, 2013



Source: Transparency International Global Corruption Barometer (2013), www.transparency.org/gcb2013.

Figure 1.11. Peruvian citizens' perception of the progress made in reducing corruption in public institutions over the past two years



Source: Based on data from Latinobarometer (2015), www.latinobarometro.org.

Chapter 2

Promoting a comprehensive and co-ordinated integrity system in Peru

This chapter examines the institutional arrangements for integrity established in Peru at both the central and regional levels. First, it analyses the High-level Commission against Corruption (Comisión de Alto Nivel Anticorrupción, or CAN), the body officially mandated to guide the public integrity system. The analysis focuses on the Commission's capacity to fulfil its mandate, its independence from political interference, the availability of specialised and trained staff, and the adequacy of the resources and powers at its disposal. Second, this chapter looks more specifically at the core mandate of the CAN, which is to promote horizontal co-ordination between the different institutions of the public integrity system. Lastly, the chapter assesses the regional outreach and vertical co-ordination mechanisms of integrity policies that are in place, with a special focus on institutional capacities at the regional level.

The experience of OECD and non-OECD countries shows that an effective, comprehensive and coherent public integrity system is fundamental to enhance public sector integrity and to prevent and curb corruption. In particular, countries need to clarify institutional responsibilities across the public sector by establishing clear responsibilities and ensuring appropriate mandates and capacities to fulfil responsibilities. In addition, countries must promote mechanisms for co-operation and co-ordination between actors at the central level as well as with and between subnational levels of government.

Since the end of Fujimori’s regime in 2000, Peru has undergone a series of reforms and has shown important progress in enhancing its integrity system and in developing capacities at various levels. In the current National Anti-corruption Plan of the Government (Plan Nacional de Lucha contra la Corrupción 2012-16), the issue of improving the institutional arrangements related to integrity policies figures prominently in its number one objective on “Inter-institutional articulation and co-ordination for the fight against corruption”. More specifically, the National Anti-corruption Plan considers consolidating the process of interoperability between public institutions in charge of curbing corruption, strengthening the High-level Commission against Corruption (Comisión de Alto Nivel Anticorrupción, CAN), and creating local anti-corruption platforms (Strategy 1.1 of the Plan). The CAN was created by decree no. 016-2010-PCM in 2010 and was confirmed in 2013 by the Law no. 29976.

Strengthening the High-level Commission against Corruption (CAN)

To strengthen the General Co-ordination Unit (GCU) of the CAN, Peru could amend the law to clarify the criteria of selection of the General Co-ordinator and could clarify the rules for tenure and removal

Anti-corruption is not a mere matter of diagnosing problems and applying solutions. Often, if not usually, powerful interests will be directly affected by anti-corruption policies and will try to exert influence on decision-making and implementation processes in order to reduce their reach. As such, anti-corruption agencies need to be shielded from undue political interference. Beyond the risk of undue influence, another reason for shielding anti-corruption agencies from short-term political fluctuations is continuity. Anti-corruption policies, especially preventive measures, usually need time to unfold and show impact. Even when there is not an explicit will to sabotage anti-corruption efforts, each change at the head of an agency comes with the risk of a policy change that could undermine the continuity and coherency of an anti-corruption policy over time.

The CAN comprises two parts. At its centre, there is the High-level Commission itself, which is a round table of institutions from the public and private sectors as well as civil society. Bringing these actors around the table at regular intervals aims at promoting horizontal co-ordination and guaranteeing the coherence of the anti-corruption policy framework. It also contributes to protecting the CAN from undue influence by narrow interests. Several of the actors around the table are constitutionally autonomous bodies (Table 2.1).

Table 2.1. The composition of the CAN (as of October 2016)

Members with vote (10)	Members with voice but without vote (11)
President of the Congress (Congreso de la República)	Comptroller General (Contraloría General de la República, CGR)
President of the Judiciary (Poder Judicial)	Ombudsman (Defensoría del Pueblo)
Presidency of the Council of Ministers (Presidencia del Consejo de Ministros, PCM)	Executive Director of the Supervisory Body of Public Contracting (Organismo Supervisor de las Contrataciones del Estado, or OSCE)
Minister of Justice and Human Rights (Ministerio de Justicia y Derechos Humanos)	President of the National Assembly of Deans (Asamblea Nacional de Rectores)
President of the Constitutional Court (Tribunal Constitucional)	President of the National Council for Public Ethics (Consejo Nacional para la Ética Pública, Proética)
President of the National Council of the Judiciary (Consejo Nacional de la Magistratura)	President of the National Confederation of Private Business Entities (Confederación Nacional de Instituciones Empresariales Privadas)
Attorney General (Fiscalía de la Nación)	Representative of the labour unions of Peru
President of the National Assembly of Regional Governments (Asamblea Nacional de Gobiernos Regionales)	Representative from the Catholic church
President of the Association of Municipalities (Asociación de Municipalidades)	Representative from the Evangelical church
Executive Secretary of the National Agreement (Acuerdo Nacional)	Executive Director of the Peruvian Press Council (Consejo Prensa Peruana)
	General Co-ordinator of the CAN (Coordinador General de la CAN)

Source: Peru, Law 29976 (2013) creating the High-level Commission against Corruption (Comisión de Alto Nivel Anticorrupción, CAN).

The institutional presidency of the CAN rotates every two years. The candidate has to be elected from a full member of the CAN. The presidency is not *ad personam*, so if there is a change at the head of the institution having the presidency of the CAN, the presidency stays with this same institution. Together, the rotation of the presidency and the balance of different interests participating in the CAN provide reasonable safeguards against undue influence over a period of two years.

Next to the President is the General Co-ordinator, who heads the General Co-ordination Unit (Unidad de Coordinación General, or GCU) of the CAN. This unit functions like a technical secretariat in charge of co-ordination, advice and implementation of the agreements reached by the Commission. They provide background work and prepare meetings. The General Co-ordinator is in charge of the day-to-day business of the CAN and is responsible for the fulfilment of its responsibilities.

The appointment and removal process of the General Co-ordinator is therefore of utmost importance in assuring the CAN's continuity and immunity. The Law 29976 and its regulations provide procedures for the selection process of the General Co-ordinator. The full members of the CAN propose a candidate for whom there has to be a simple majority. The candidate has then to be ratified by the President of the Council of Ministers. By making the appointment of the General Co-ordinator the shared responsibility of several institutions, the potential for misuse of the GCU by the government or a particular political group is minimised.

However, Peru could consider drafting this procedure in a more precise manner. Currently, a General Co-ordinator must be Peruvian with knowledge in public management, must have proven moral solvency, and must be without officially registered sanctions. Beyond the knowledge of public management, which is a vague requirement, the expertise of the candidate is not further specified. Moreover, moral solvency is a difficult trait to measure. The criteria are thus relatively broad and make it possible for Co-ordinators to come from the private sector or from civil society. While this widens the pool from which potential candidates may be drawn, the criteria make the process of selection less transparent and less verifiable to external scrutiny. Peru could consider

including a minimum number of years of experience as a requirement. Peru could also be more precise with respect to the type of experience required. For instance, some experience with or previous knowledge of anti-corruption policies could be introduced as a criterion for candidacy.

Moreover, the Law currently does not provide rules on the period of tenure and on how and under which conditions the General Co-ordinator can be removed from office. Since 2010, there have been four General Co-ordinators. All have resigned officially from the post, which seems to reflect some degree of volatility. The lack of clear criteria concerning tenure and removal procedures may expose the General Co-ordinator to pressures as well as arbitrary removals, which may endanger the independence of the post. Arguably, ensuring independence is not a priority, since the CAN and the General Co-ordination Unit is not an autonomous control body with prosecution and sanctionary powers. However, rules aimed at maintaining one and the same Co-ordinator over a certain period could be beneficial. Indeed, given that many integrity policies do not achieve their goals in the short term but rather need time to produce results, ensuring continuity and coherence for the effectivity of integrity and anti-corruption policies is particularly relevant.

Peru therefore could consider amending the law on Co-ordinator tenure, looking to autonomous bodies as models. It is usually recommended to set tenure length by law in order to provide for some degree of predictability and job security for the head of the agency. Ideally, the beginning and the end of the tenure would not coincide with political cycles. With respect to removal, it is recommendable for the law to stipulate clearly the procedures of Co-ordinator removal and to specify the criteria on which this decision must be based (Schütte, 2015). Since all past CAN Co-ordinators have resigned, Peru could consider mitigating this situation in the future by delineating clear procedures for the interim period before a new co-ordinator is proposed, voted in and designated (Box 2.1).

Box 2.1. Examples of appointment procedures of heads of anti-corruption agencies

In Latvia, pursuant to the Law on Corruption Prevention and Combating Bureau, the Director of KNAB is appointed by the Saeima (Parliament) on recommendation of the Cabinet of Ministers for five years. The Cabinet of Ministers can announce an open competition for this position. Other Bureau officials in managerial positions, such as Deputies of the Director and heads of Divisions, as well as other officials of KNAB are appointed and dismissed by the Director. For example, in the process of appointment of the Director in 2004, the Cabinet of Ministers announced an open competition to which 20 candidates applied. The commission selecting candidates was headed by the Prime Minister and consisted of representatives of state institutions and one NGO.

The Head of Central Anti-Corruption Bureau (CBA) in Poland is appointed and recalled by the Prime Minister, with the consent of the President of the Republic of Poland, the Committee for Special Services and the Parliamentary Special Services Committee, for a period of four years, which may be renewed only once in accordance with the CBA Bill of 9 June 2006 (art. 5-11).

Source: European Partners against Corruption Anti-Corruption Working Group (2008), *Common standards and best practices for Anti-corruption agencies*, Report by the Special Investigation Service (Lithuania) and the Corruption Prevention and Combating Bureau (Latvia).

The CAN could benefit from focusing on its core mandate of ensuring co-ordination and policy coherence and should follow up and communicate on the status of National Anti-corruption Plans

The Law no. 29976 and its regulation in Decree no. 089-2013-PCM outline the CAN's mandate and responsibilities. The CAN's main mandated activities are articulating efforts, co-ordinating actions of multiple agencies, and proposing short, medium and long-term policies directed at preventing and curbing corruption in the country.

The responsibilities stipulated in the Law of the CAN further specify its responsibilities, which include proposing a National Anti-corruption Plan (Plan Nacional de Lucha contra la Corrupción) every four years. The current Plan has been developed for the years 2012-16. In this context, the CAN monitors and supervises the implementation of these National Plans and presents the annual reports on the implementation of these Plans before Congress. Its responsibilities also include encouraging a culture of integrity in Peruvian society; co-ordinating mechanisms of promotion and compliance with state entities with respect to transparency, citizen participation and public ethics; articulating efforts to investigate and sanction corruption cases; co-ordinating the implementation of the National Plan at subnational level with the regional and local anti-corruption commissions; formulating proposals for rules and regulations for preventing and sanctioning corruption; and co-ordinating the implementation of the Open Government Action Plan and other aspects related to the prevention and fight against corruption with the Multi-sectorial Commission for the implementation of the Open Government Action Plan of Peru (Comisión Multisectorial para implementación del Plan de Acción de Gobierno Abierto).

The Law specifies that the CAN has to respect the competencies of the involved entities order to avoid overlaps. In this sense, the CAN's role in promoting a culture of integrity in Peruvian society and its role in formulating proposals for rules and regulations necessary for preventing and sanctioning corruption could benefit from clarification. As a result, resources from the CAN could be used more efficiently to fulfil responsibilities related to its core mandate and leverage its relative advantage in co-ordinating Peruvian anti-corruption institutions.

Developing the CAN's capacities in information management and communication would enhance its impact and strengthen its focus

Acknowledging the CAN's primary mandate of policy making and co-ordination, weaknesses in the areas of information management and communication were identified.

Peru could therefore consider strengthening its evidence base through an information management system located at the CAN. One of the key mandated responsibilities of the CAN is to develop a national anti-corruption plan and to monitor its implementation. This requires timely and accurate information. During the interviews conducted in Peru, various institutions drew attention to the lack of reliable information and data with respect to corruption and integrity. In order to improve the design and monitoring of these national plans, Peru could consider rendering the platform of the CAN as an information hub which would unify and analyse statistics and information from the CAN members. Colombia has recently made an interesting step towards a transparent monitoring of its national anti-corruption plan (Box 2.2).

The legal foundation for this is already outlined in Law 29976, which stipulates that all public sector entities are required to submit the information requested by the CAN. A first step could consist in conducting an overview of the quantitative data that is already available in the member institutions. This information could be analysed with respect to consistency, coherency and utility to inform policies, and could be published on the CAN's website. To this end, as a second step, the CAN could work on improving the interoperability of the different systems and provide guidance on indicators. In order to carry out this function effectively and credibly, the CAN could partner with accredited universities.

Box 2.2. Providing relevant information to the public: The Colombian Observatory of Transparency and Anti-corruption

The Transparency Secretariat of Colombia has implemented a web portal (Observatory of Transparency and Anti-corruption, or Observatorio de Transparencia y Anticorrupción) which, among other information management and communication tasks, provides important indicators related to integrity and anti-corruption. The website bundles available information on: 1) disciplinary, penal and fiscal sanctions; 2) the Open Government Index (Índice de Gobierno Abierto); and 3) the Fiscal Performance Index (Índice de Desempeño Fiscal). The data on the penal sanctions comes from the Prosecutor General's Office (Fiscalía General de la Nación), the data on disciplinary sanctions from the Attorney General's Office (Procuraduría General de la Nación), and the data on fiscal sanctions from the Supreme Audit Institution (Auditoría General de la República). The Fiscal Performance Index is elaborated by the National Planning Department (Departamento Nacional de Planeación), while the Open Government Index is calculated by the Attorney General's Office.

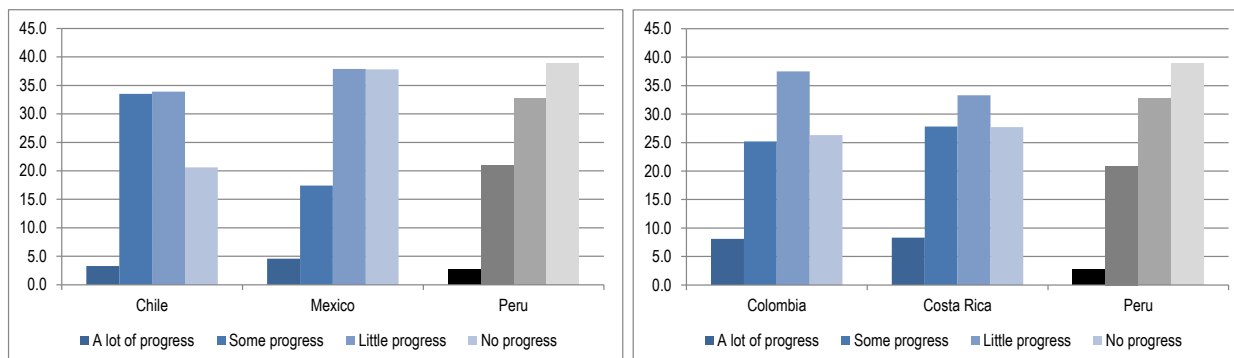
Additionally, the Observatory's website provides indicators related to Transparency and the implementation status of the Public Anti-corruption Policy elaborated by the Transparency Secretariat. The indicators related to Transparency comprise: 1) a composite index of accountability; 2) a composite index of the quality of the Corruption Risk Maps; 3) an indicator related to the demand and supply of public information; and 4) a composite index on the Regional Anti-corruption Commissions (Comisiones Regionales de Moralización). The indicators of the Public Anti-corruption Policy measure are composite indexes showing the progress made related to the strategies of: 1) improving the access to and the quality of the public information; 2) making more efficient the public management tools for preventing corruption; 3) enhancing social control to prevent corruption; 4) promoting a culture of legality in the state and society; and 5) reducing impunity related to corrupt practices.

All indicators are also available in Excel format (Open data), which makes the data readily usable for research, comparisons and media reports. Details on the methodology for elaborating the indicators are also provided.

Source: Observatorio de Transparencia, Colombian Transparency Secretariat, www.anticorrupcion.gov.co/paginas/Indicadores.aspx.

Secondly, the CAN, and with it the Peruvian public integrity system, could benefit from a clearer communication policy. In general, the individual members of the CAN acknowledge the importance of this entity and emphasise that the discussions have led to co-ordinated approaches amongst the members. However, various stakeholders have voiced concerns that the CAN has not been able to generate immediate, palpable results that are presentable to Peru's citizens. Interviews conducted in Peru revealed that the CAN is often perceived as an institution without impact or with very limited impact. Also, the general population is still rather sceptical about the progress made in the fight against corruption, both in comparison with Chile and the region's two OECD accession countries, Colombia and Costa Rica. Only Mexico exhibits results similar to those of Peru (Figure 2.1).

Figure 2.1. **Anti-corruption: Citizens in Peru perceived that little if no progress has been made in the country over the last two years – Comparison with regional OECD and OECD accession countries**



Source: Based on data from Latinobarometer (2015), www.latinobarometro.org.

The importance of generating and sustaining support of anti-corruption reform has been recognised (Hussmann et al, 2009). Peru could therefore consider having the CAN develop a communication strategy that aims to show concrete results of the benefits of a co-ordinated approach.

Specifically, the communication strategy could focus on two aspects:

- communicating success stories to generate trust and support in the population and the public sector, showing that change is possible
- transmitting the notion that fighting corruption is more than detection and sanction by showing that corruption may be prevented through good public management, e.g. planning, human and financial resource management, and internal control.

The General Co-ordination Unit of the CAN could be strengthened by formally incorporating it into the organisational structure of the Presidency of the Council of Ministers (Presidencia del Consejo de Ministros, or PCM) as a Specialised Technical Body (Órgano Técnico Especializado)

Organisationally, the GCU is currently situated within the executive branch of the Peruvian State, under the Presidency of the Council of Ministers (Presidencia del Consejo de Ministros, or PCM), which is responsible for the co-ordination of national and sectorial policies of the Executive Branch. The PCM co-ordinates relations with other branches of government, constitutional bodies, regional governments, local governments and civil society. The Council of Ministers is headed by the Prime Minister.

In order to build and retain the required human capital and dispose of the expertise for carrying out its mandate and responsibilities, international experience recommends that the personnel of an anti-corruption body should enjoy an appropriate level of job security in their positions. Salaries need to reflect the nature and specificities of the work required. As mentioned previously, even though the CAN is not an autonomous anti-corruption body and does not need to become one, a certain degree of labour stability is important to ensure the building of specific knowledge and expertise and to enable a learning curve with respect to the challenges of co-ordination among public institutions. However, the CAN is part of a group of councils and commissions whose supporting structures are not

officially integrated into the formal organisational chart of the PCM. In other words, the posts of the staff of the General Co-ordination Unit of the CAN do not appear in the official budget of the PCM.

Today, approximately 75 to 85 per cent of the CAN's budget is dedicated to personnel costs. The General Co-ordination Unit of the CAN currently counts 12 people. All members of the personnel, including the General Co-ordinator, are contracted based on short-term service contracts (*Contratos Administrativos de Servicios*, or CAS) that are renewed every three months. Moreover, the Co-ordinator General does not have authority over the human resources activities of the unit; all contracts are handled administratively by the PCM. This creates significant risk and instability both for the staff and for the CAN, because institutional memory and specialised human capital get lost when staff leave in search of a more stable labour opportunity. This phenomenon has been observed within the CAN. In addition, staff having short-term contracts may be more vulnerable to political pressure.

Closely related to the issue of personnel is the CAN's budget. Of course, political will is mirrored in the budget that is assigned to a specific task. The importance of adequate and reliable funding to carry out the mandate is primordial. Currently, the budget for the CAN is assigned by a budget provision (*pliego presupuestal*) of the Council of Ministers. Thus, the unit is administratively and financially dependent from the PCM, and is reliant on the political priority that the Presidency of the Council of Ministers gives to the CAN in promoting the integrity agenda. It is noteworthy to consider that since the creation of the CAN in 2010, there have been ten different Presidents of the Council of Ministers, seven alone of these holding office under President Ollanta Humala. Each change in Presidency of the Council of Ministers comes with the risk of a shift in priorities that could endanger the continuity of efforts in the area of corruption prevention and enforcement.

The budget of the CAN increased significantly after its first year of existence and then remained more or less stable, with a slight decrease between 2014 and 2015 (Table 2.2). In order to secure continuity and enable the planning of activities beyond the short term, the CAN needs a budget that reflects the personnel structure and its mandate and responsibilities. If the General Co-ordination Unit had a formal organigram with official posts and their respective job descriptions, the risk of budget fluctuations would be reduced, thus also reducing overall uncertainty.

Table 2.2. **Annual budget of the CAN, 2012-17**

Year	Budget (Nuevo Soles)	Budget (EUR, 24.01.2017)
2012	S/. 491 473.00	139 492.63
2013	S/. 1 149 984.00	326 247.51
2014	S/. 1 303 196.00	369 731.79
2015	S/. 1 110 033.00	314 929.21
2016	S./ 1 266 972.00	359 431.18
2017	S./ 1 255 340.00	356 104.70

Source: Data provided by the CAN for the OECD questionnaire for the Integrity Review (October 2015).

While the high-level setup of the CAN and its enshrinement in a Law may show a certain degree of political will, the lack of an official support structure makes it more vulnerable to drawbacks. In order to encourage the efforts of the CAN, Peru could consider elevating the General Co-ordination Unit of the CAN into the organisational structure of the PCM. Given the Article 33 of the Organic Law of the Executive Branch no 29158 (Ley Orgánica del Poder Ejecutivo), the best option appears to convert the CAN into a Specialised Technical Organ (Organismo Técnico Especializado, or OTE).

Such an arrangement would allow shortcomings to be addressed. Specifically, by becoming part of the organic structure of the PCM as an OTE, the CAN would enjoy the following advantages:

- budget autonomy in spending
- autonomy in the selection of the staff according to a Table of Assignment of Personnel (Cuadro de Asignación de Personal, CAP). This CAP would have to specify posts with profiles according to the mandate and responsibilities of the CAN. The selections process would be secured according to clear and transparent internal procedures that would need to be specified in the CAN regulations.
- The staff of the CAN could start the process of transition into the new civil service under the Law Servir (Ley N° 30057) to make them more independent from changes in political leadership.

The CAN could also potentially be transformed into a Decentralised Public Body (Organismo Público Descentralizado), or could be placed within the Secretaría de Coordinación (similar to the Comisión Ejecutiva Multisectorial de lucha contra el lavado de activos y el Financiamiento del Terrorismo, CONTRALAFI); both options would give the unit functional independence.

To support the functions of the CAN, Peru could further develop the General Co-ordination Unit of the CAN’s knowledge of public management, and could create one or two additional positions dedicated to quantitative data management and analysis

The CAN currently employs personnel with detailed knowledge of Peruvian integrity policies and the realities of the Peruvian public administration and judiciary. They also have experience with respect to the challenges of co-ordinating with different actors and with regional outreach. This knowledge and experience is valuable for sustaining the ongoing efforts and for moving forward. Table 2.3 shows the profiles of the staff currently working at the CAN.

Table 2.3. Staff profiles at the CAN (October 2016)

Title	Number of Staff	Profile
General Co-ordinator	1	Undergraduate studies and meeting the requirements of Article 7 of Law 29976.
Legal Advisors	6	Undergraduate studies, preferably with post-graduate studies.
Public Policy Advisor	1	Undergraduate studies, preferably with post-graduate studies.
Manager	1	Undergraduate studies.
Assistant Manager	1	High school graduate.
Public Relations Officer	1	Undergraduate or technical studies.
Secretary	1	Undergraduate or technical studies.

Source: Data provided by the CAN for the OECD questionnaire for the Integrity Review (October 2015)

Given the Unit’s knowledge and accomplishments thus far, it is recommendable to use the existing personnel as the foundation of the GCU. Their capacities could be further developed through specialised training and programmes, especially with respect to the following three areas:

- specialisation with focus on public policies with emphasis on preventive anti-corruption measures and strategies
- public management skills, including strategic and operational planning, monitoring and evaluation
- communication and moderation skills.

In order to centralise and analyse available quantitative data from other CAN members, the CAN’s capacity would need to be strengthened by one or two additional posts focusing on quantitative data management and analysis. The required profile for this role would be akin to that of an information systems engineer. Such a person would have the capacity and knowhow to design and maintain an information hub, could bring together different sources of data and could perhaps provide guidance on how to strengthen the information system. If Peru decides that the CAN will also carry out analyses in order to inform policy design and to further develop monitoring and evaluation exercises, an additional post will need to be created. Such a person should have the training of an economist or political scientist and should have a strong background in statistics and econometric analysis as well as experience in monitoring and evaluating public policies.

Horizontal co-ordination: Bringing together the key actors of the Public Integrity System

The CAN could be strengthened by broadening its membership with key actors that are currently not part of the Commission; ideally, this would occur before the development of the next National Anti-corruption Plan (2017-21)

Preventing, investigating and sanctioning corruption as well as enhancing integrity are complex tasks that require a multi-actor and multi-level approach. Usually, a variety of institutions deal explicitly or implicitly with aspects necessary to making progress in fighting corruption. As in most countries, there are various public institutions in Peru that are directly or indirectly involved in either corruption prevention or detection, or both.

With an increased number of actors participating in anti-corruption efforts, the risk of duplication and overlap increases, and the need for effective co-ordination grows. But co-ordination is not an easy task, as it requires that “elements and actors (...) remain plural and different, while it aims for results that are harmonious and effective” (OECD, 2004). Clear, comprehensive, and effective arrangements are of utmost importance for ensuring the impact of integrity policies. Weak co-ordination may considerably diminish the effectiveness of anti-corruption efforts or even generate loopholes for corrupt actors to escape from prosecution.

When looking at OECD country experiences with respect to the institutional set-up of anti-corruption bodies, it becomes clear that there is no one-size-fits all solution and that much depends on the context, especially the already existing socio-political, legal, and administrative framework (OECD, 2015b).

In Peru, the CAN brings together key institutions of Peru’s integrity system from the public sector, from the private sector and from civil society (Table 1). By virtue of its structure, the CAN is thus meant to facilitate co-ordination amongst different bodies. As mentioned before, this is explicitly acknowledged in the Law of the CAN, which states that the competencies of the CAN members have to be respected.

However, when looking at the composition of the CAN, it appears that some key players are not included. In particular, the preventive side is relatively under-represented compared to the detection and sanction side, where key actors responsible for strengthening aspects of the preventive integrity system are absent.

The OECD therefore recommends including the following institutions into the co-ordination platform of the CAN, either at the level of the Commission or the technical sub-commissions as proposed in the recommendation below:

- **National Civil Service Authority** (Autoridad Nacional del Servicio Civil, or SERVIR): The weaknesses of the current civil service in Peru are creating integrity and corruption risks. The ongoing reform in Peru to strengthen and modernise the civil service is a cornerstone for providing a better public administration, but it is also a key condition for an effective public integrity system. On the one hand, SERVIR plays an essential role in the promotion of ethical values in the public administration and linking these to human resources policies (see Chapter 3). On the other hand, SERVIR is responsible for applying disciplinary sanctions, and thus plays an important role alongside CGR and the criminal justice system in enforcing integrity (see Chapters 8 and 9). Securing co-ordination and coherence with other actors of the CAN is thus essential.
- **Public Administration Office** (Secretaría de Gestión Pública, or SGP). The mandate and responsibilities of the SGP encompass important tasks for strengthening the public integrity system. For example, the SGP is responsible for the modernisation of public management, and as proposed in Chapter 5, it could be given the task of developing guidance on internal control and internal audit in order to separate more clearly the internal system of management and financial control (public management) from the external control and oversight carried out by the Comptroller General’s Office (Contraloría General de la República, or CGR).
- **Authority for Transparency and Access to Information** (Autoridad Nacional de Transparencia y Acceso a la Información, or ANTAI). The Law on Transparency and Access to Public Information of 2003 (Law no. 27806) does not foresee a specific institution to act as the guarantor of the Right of Access to Information with the authority to monitor and sanction breaches of the law, resolve disputes, promote and disseminate this right among citizens, or provide technical advice to public entities. Such a specialised entity with independence and capacity is crucial to fully guarantee the implementation and respect of the law. In October 2015, the members of the CAN agreed to create an institution responsible for the promotion of transparency and the enforcement of the Law. The recently passed Legislative Decree 1353 of 2017 creates a dedicated transparency department in the Ministry of Justice. However, due to this set-up, it currently lacks the independence to credibly fulfil its mandate and functions. Therefore, it is strongly recommended to strengthen the independence and power of the institution. A strengthened ANTAI also should closely co-ordinate with the SGP in all aspects related to policies of transparency and citizen oversight.

Furthermore, as argued in Chapter 7, the ANTAI could take the lead in implementing the Law on Lobbying (Law no. 28024). Once operational and independent, the ANTAI should become a full member of the CAN.

- **National Office of Electoral Processes** (Oficina Nacional de Procesos Electorales, or ONPE). The weakness of political accountability is another fundamental problem in Peru that causes many integrity risks and inertias in the public administration. The financing of elections, political parties and political movements requires that the ONPE have a stronger mandate and functions, as recommended in Chapter 6. In addition, it should work in concert with other public agencies involved in the CAN even in non-electoral times, e.g. related to work with political parties.
- Additionally, Peru could consider formally involving the **Ministry of Economy and Finance** (Ministerio de Economía y Finanzas, or MEF) in order to ensure that the Plans and measures decided at the level of the CAN are given the funds needed to effectively implement them. The **Financial Intelligence Unit** (Unidad de Inteligencia Financiera del Perú, or UIF-Perú) could also be given a formal role, given its involvement in the control and investigation activities of various other actors in the Peruvian integrity system.

Since the SGP and SERVIR are part of the PCM, it could be argued that these entities are represented by the President of the Council of Ministers who is already a formal member of the CAN. However, while the articulation between the President of the PCM and these entities may work well or not depending on the relationship and the individuals in office, it is considered that this additional layer of authority impairs an effective and formally institutionalised inclusion of these key institutions into the CAN, and with it their knowledge and buy-in, potentially impeding an effective implementation of decisions taken in the CAN corresponding to them. Therefore it is considered that including the SGP and SERVIR into the CAN would not only improve the preventive work of the CAN, but also strengthen these institutions and their role in the system.

Ideally, the inclusion of these institutions into the CAN could also significantly improve the design of future National Anti-corruption Plans, assuring better identification and articulation of the preventive anti-corruption objectives. Other important institutions, such as the **National Centre for Strategic Planning** (Centro Nacional de Planeamiento estratégico, or CEPLAN) and the **Supervisory Bodies** (Superintendencias), for their role as oversight institutions, could be invited to participate in CAN meetings, or in the technical sub-commissions proposed below, without becoming full members.

To ensure policy goals are translated into concrete actions, the National Anti-corruption Plan and other decisions by the CAN need to be included in the operational plans of the CAN members

Involving more relevant actors alone does not ensure that the National Anti-corruption Policy or the decisions taken in the realm of the CAN will actually be implemented by the different members. The National Plan thus risks remaining an empty strategy with no important impacts. As highlighted by Hussmann et al (2009):

“The responsibility for implementation of the individual components remains with the respective sector government agencies – as these have the required legal mandate, powers, and institutional capacities – while the overall co-ordination and oversight may be concentrated within one particular agency.”

In Peru, the oversight and co-ordination mandate lies with the CAN, responsible for the development of the National Anti-corruption Plans. In developing these plans, the CAN could and should take advantage of the various kinds of expertise around the table. But as mentioned earlier, the CAN has neither the mandate nor the capacities to implement this plan on its own. Indeed, a typical failure of anti-corruption strategies is that implementation is assigned to a single anti-corruption agency without acknowledging that these bodies usually lack the authority to demand action from other public institutions (Hussmann et al, 2009).

A solution to this problem could be to seek an agreement amongst the members of the CAN, including the new actors as proposed above, to include those aspects of the National Plan that fall under their mandate into their own respective internal planning. This would guarantee that resources for the implementation of these specific measures are set aside. The role of the CAN on the one hand would be to promote such an agreement and to encourage ownership of the Plan by its members. On the other hand, in line with its mandate, the CAN would be in charge of monitoring the implementation status of the respective actions undertaken by its members.

To further ensure impact and increase ownership of the CAN member institutions, technical discussions and decisions could be encouraged by establishing two technical sub-commissions or working groups: one on prevention and the other on enforcement

Currently, there seems to be a gap between the high-level discussions at the level of the CAN and the technical levels of the CAN member institutions. This gap threatens the actual implementation of the National Plans and hampers the efficient use of the different types of technical knowledge available in the various CAN member institutions.

In order to better connect the technical levels with the decision-making level, technical working groups on prevention and enforcement could be created in the CAN. They would enable previous technical discussions between the institutions and could help avoid or mitigate risks associated with national anti-corruption strategies. Indeed, national anti-corruption strategies typically suffer from a lack of diagnostic and evaluation, failure to integrate the strategy into other existing policies, and a lack of communication. A number of other typical gaps are also common.

These gaps are (Hussmann, 2007):

- an overly strong focus on legislative and normative reforms with insufficient emphasis on actual implementation
- a tendency to favour politically attractive high-level prosecution cases instead of deeper structural reforms targeting the root causes of corruption
- overly ambitious objectives with limited institutional capacities
- technocratic solutions with no acknowledgement of the problem of vested political or economic interests
- a tendency to favour holistic and broad approaches without acknowledging the necessity to set priorities and consider the timing of interventions.

Ideally, technical discussions in the Technical working groups of the CAN would lead to better design and implementation of the next National Anti-corruption Plans. The working groups would have different roles along the policy cycle of a National Anti-

corruption Plan. When designing the National Anti-corruption Plans, these technical working groups could provide helpful information and proposals to the GCU of the CAN. While the concrete proposal of the new plan based on better information would be presented as usual for approval by the CAN, this participative approach would also help in generating ownership of the CAN members at a more technical level. During the implementation of a National Anti-corruption Plan, the technical working groups could meet to monitor and discuss implementation challenges and propose adjustments. Towards the end of the implementation, the technical working groups could provide valuable input for the evaluation phase and could help to inform the design of the next plan.

Peru could consider granting other CAN members the right to vote in order to increase ownership and accountability for the decisions taken in the commission by all its members

For an effective co-ordination and implementation of the National Anti-corruption Plans, the creation of ownership in each single CAN member institution is crucial. Ownership refers to the opportunity provided for real participation in the decision-making processes. However, currently, only ten CAN members have the right to vote. Also, half of the members with voting rights do not technically work on preventing or prosecuting corruption: these are the President of the Congress, the President of the Council of Ministers, the President of the National Assembly of Regional Governments, the President of the Association of Municipalities, and the executive secretary of the Foro del Acuerdo Nacional. Given that decisions are taken by a simple majority and actors that are important within the scope of the public integrity system are not able to vote or are not currently represented in the CAN, this may be problematic.

Though participating in debates provides the opportunity to contribute to discussions, only the right to vote can entice members to feel totally committed to translating decisions into veritable actions.

At the time this report was written, there was an ongoing discussion on opening the vote to all members. Only the Ombudsman Office (Defensoría del Pueblo) made it clear that it would prefer to stay a neutral observer. The OECD recommends moving forward with this decision of extending the vote, and applying this to potential new members of the CAN as well. However, Peru could discuss whether the private sector (represented currently by three entities) and civil society (represented by four entities) should be given the same voting power (i.e. one vote for the private sector and one vote for civil society).

Reaching the regions: Implementing public integrity systems at the regional level

As highlighted by Rodrigo, Allio and Andres-Amo (2009), “Expanding a framework for high quality regulation at all levels of government can only be achieved if countries take into consideration the diversity of local needs and the particularities of lower levels of government.” This of course also applies to a public integrity system. Peru is a country of 1 285 220 km², more than twice the size of France, with about 30 million inhabitants. While the territory can be broadly divided into three zones that have certain geographic and socio-demographic commonalities (the Costa, the Sierra, and the Selva), the 25 regions of Peru have different levels of development and face quite different challenges.

The Organic Law of Regional Governments from 2002 (Ley Orgánica de Gobiernos Regionales, Ley No. 27867) determines a range of responsibilities for the regions (Art. 9). Amongst them, the most relevant from an integrity perspective include formulating a regional development plan, administrating the regional resources, regulating economic activities, providing authorisations and licences, promoting and executing regional public investments and infrastructure projects, and administrating and allocating urban areas. The effective prevention, detection and sanction of corruption in these and other regional processes is of utmost importance for the development of the region in general.

Reaching the regions is a challenge. In general, the relationship between the national level and regions may suffer both from overlaps and from a number of “gaps” (Charbit and Michalun, 2009). The types of gaps in question are the information gap, the capacity gap, the funding gap, the administrative gap, and the policy gap. This also applies to integrity policies; their implementation requires co-ordination at the national level, but also co-ordination with local levels. The following analysis discusses these gaps and makes concrete recommendations for Peru.

The development of regional anti-corruption plans should be further promoted by the Regional Anti-corruption Commissions (CRAs), ensuring that they are constructed in a participative way, involving all key actors

The information gap stresses the existence of information asymmetries between levels of government when designing, implementing and delivering public policy. Usually, regional governments are likely to be better placed to identify corruption risks and opportunities for more effective integrity and anti-corruption measures adapted to the regional context (Box 2.3). Acknowledging the importance of reaching the regions, the Law 29976 foresees the creation of regional anti-corruption commissions (Comisiones Regionales Anticorrupción, or CRA). To date, all 25 regions possess a CRA. However, not all regions show the same degree of commitment.

Amongst the tasks of the CRA is the elaboration of a regional anti-corruption plan. Such a plan may thus reflect the specific issues and challenges of the region. However, as of now, only six regions have developed such a plan (San Martín, Pasco, Amazonas, Cusco, Piura and Huancavelica), and it is unclear how to what extent these plans are effectively implemented.

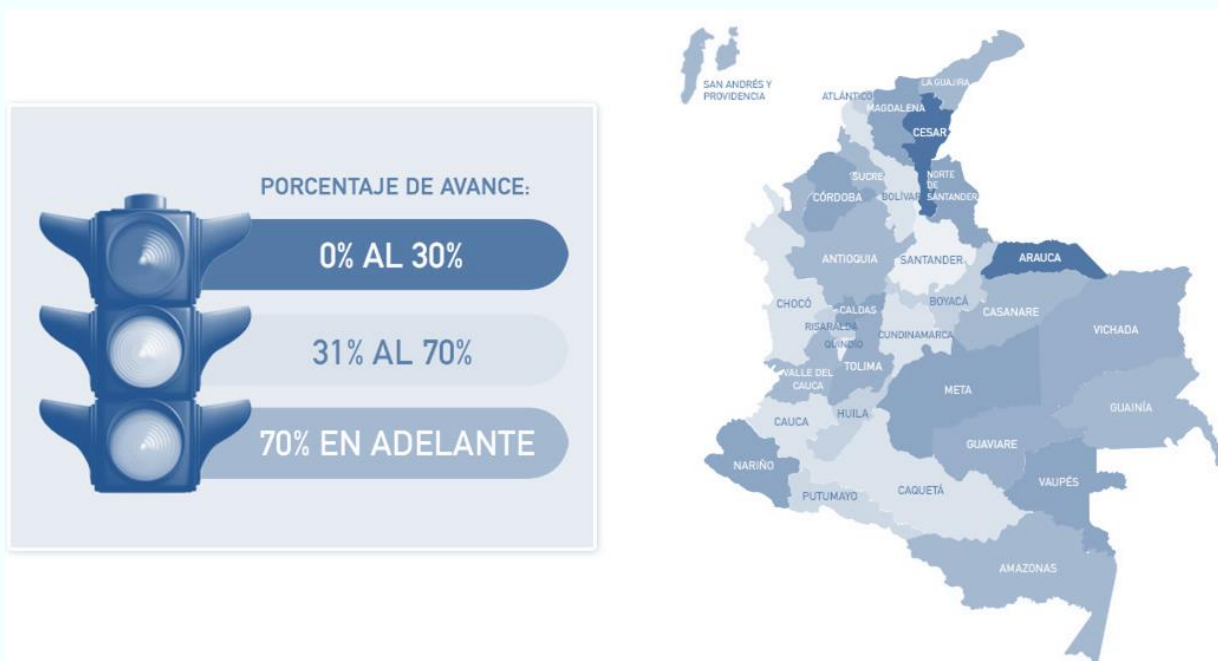
Box 2.3. Colombia's Regional Moralisation Commissions

Each department in Colombia set up a Regional Moralisation Commission (Comisión Regionales De Moralización, or RMC), which is responsible for supporting the implementation of the National Anti-corruption Policy as well as for sharing information and co-ordinating local initiatives among the bodies involved in the prevention, investigation and punishment of corruption.

The RMCs are composed of the regional representatives of the Attorney General's Office, the Colombian Treasury Inspector's Office, the Attorney General's Office, the Sectional Council of the Judiciary and the Office of the Departmental, Municipal and District Treasury Inspectors. According to Law 1474 of 2011, attending these monthly meetings is mandatory and may not be delegated. Furthermore, other entities can be called on to be a part of the Regional Moralisation Committee, if considered necessary, namely: the Ombudsman's Office, the municipal representatives, the specialised technical police forces, the Governor and the President of the Department Assembly. In order to promote citizen participation and social control over the RMCs, at least one quarterly meeting must be held with civil society organisations to address and deal with their requests, concerns, complaints and claims.

Consistency among departments is favoured by a set of Guidelines elaborated by the National Moralisation Commission (Comisión Nacional de Moralización, or NMC), which are complemented by model documents the RMCs may use to carry out their Action Plans. These include the Internal Regulation, the Biannual Management Report and the Attendance List. Such Guidelines also contain an overview of main challenges and good practices from the RMCs.

The Observatory of Transparency and Anti-corruption (Box 2) also publishes a RMCs Composite Index (Indicador Compuesto de las Comisiones Regionales de Moralización) which evaluates the compliance and development of the Action Plans adopted by each RMC. These evaluations are translated into graphs which show the composite score as well as the departmental scores. The following map, for instance, depicts the progress measured in each department.



Sources: Colombian Law 1474 of 2011, *Operational guidelines for Colombia's Regional Moralization Commissions*, www.anticorruptcion.gov.co/SiteAssets/Paginas/lineamientosCRM/Cartilla_CRM.pdf; Observatorio de Transparencia, Colombian Transparency Secretariat, *RMCs Composite Index*, www.anticorruptcion.gov.co/Paginas/indicador-comisiones-regionales-moralizacion.aspx.

The OECD recommends continuing to promote the development of these regional plans, ensuring that they are constructed in a participative way. To be effective, it is important that the regional plans build upon the knowledge of the local stakeholders with respect to their specific regional context. At the same time, however, they must remain coherent with the National Anti-corruption Plan. Involving all the main stakeholders, including civil society and the local private sector, is thus a key success factor and also helps in raising awareness, building ownership and providing a platform for dialogue on the issue of corruption. Coherence with the National Plan, in turn, can be secured by the CAN when they provide support to the regional commissions.

As at the national level, the work of the CRAs could be strengthened considerably by involving key actors that are currently not participants. As discussed in the previous section on horizontal co-ordination, integrity policies involve a range of different actors. Just as the integrity system needs co-ordination at the central level, this co-ordination needs to be carried out at regional levels as well. The CRAs are designed in a way to mirror the composition of the CAN in order to promote inter-institutional horizontal co-ordination at the regional level. However, the same weaknesses detected at national level arise at regional level, where preventive work, in particular, could be strengthened. Peru could therefore consider involving actors with regional presence in the work of the CRAs. Peru could also make sure that aspects related to internal control, planning and human resources management are covered in the CRA.

Peru could strengthen the capacities of the technical secretariats of the CRAs through a focused capacity development strategy and could transfer funds from the national level to support them

The capacity and funding gap refers to the common problem that human and financial resources, as well as knowledge and infrastructure capacities may not be sufficiently available to carry out assigned responsibilities. Regional governments might not have the capacity to design and implement integrity strategies, and may need capacity building or guidance from the central government. The CAN has provided guidelines on how to set up the regional commissions and has suggested how regional anti-corruption plans might be developed. Ad hoc technical guidance, as well as on-site visits, has also been provided by the General Co-ordination Unit of the CAN in order to help the regional commissions. Nevertheless, this review and the interviews conducted showed that the capacities at regional level are limited.

On the one hand, the OECD recommends strengthening the individual and organisational capacities of the technical secretariats of these CRAs. Indeed, their work and therefore the potential impact of the CRAs currently depend strongly on regional political will to move the integrity agenda forward in an effective manner. Currently, the CRAs' technical secretariats are either inexistent or relatively weak, and are likely to be politically dependent and therefore subject to potential substantive changes after elections. In the future, to secure continuity of efforts and build capacities at the regional level, it will be of utmost importance to develop and encourage these technical units and shield them from undue political influence. Staff from the technical secretariat of the CRA could receive specific training in Lima, and/or training could be offered at regional levels. Bringing CRA staff together in Lima would additionally favour cross-regional learning. Also, the technical secretariats would benefit from developing clear internal rules and procedures.

On the other hand, and in addition to strengthening capacities, Peru could consider a transfer of funds to the technical secretariat of the CRA from the national level. Root funding for the technical secretariats could guarantee operations and could shield CRAs from regional political interference, ultimately building their overall capacities. In order to set a good example, the CRA would need to secure a transparent use of these funds and be accountable both to the CRA and the CAN members.

To ensure coherence and knowledge transfer between the national and the regional level, an effective co-ordination mechanism between the CAN and the CRAs could be institutionalised

The policy gap refers to potential incoherence between sub-national policy needs and national level policy initiatives. This kind of gap is particularly common for policy issues that are inherently cross-sectorial, as is the case with integrity policies. Overcoming this gap requires co-ordination at the central level and on-going consultation with the sub-national level to determine needs, implementation capacity, and to maintain open channels of information exchange in order to monitor and evaluate policy impact.

Therefore, the OECD recommends institutionalising an effective co-ordination mechanism between the central and regional levels. According to the CAN, co-ordination between the CAN and CRAs has been intermittent in the past, and is usually limited to phone calls and e-mail exchanges. An equal flow of information is key to ensuring policy coherence, but the current arrangement seems too heavily reliant on the motivation of regional level staff. In the survey, the CAN reported that a web-based platform to submit information related to anti-corruption progress at the regional level and to exchange experiences had been developed. The platform is designed as an intranet and will be accessed with a user name and password provided by the CAN. The platform exists but is not yet operational, in part because the CRAs are still implementing their respective technical secretariats. Such a platform has the potential to facilitate the exchange of information between the national and regional levels, and may help to ensure coherence between the national anti-corruption plan and regional plans. The platform will not, of course, be a substitute for ad hoc and personal interaction between CAN staff and the CRAs.

A mechanism, e.g. an intranet platform or regular joint meetings, could help to ensure information and experience sharing between regions in order to improve mutual learning in the design and implementation of the regional anti-corruption plans

Finally, the administrative gap acknowledges that the administrative borders of a region may not delimit the effective boundaries of a given problem. Indeed, while the regions are likely to have their own challenges with respect to corruption and integrity risks, corrupt networks and the dynamics of corrupt practices do not often obey geographical boundaries. Also, vulnerabilities and corrupt practices may be quite similar across similar regions, which may provide opportunities for cross-regional learning and policy-making in specific areas. However, the review showed that there is currently only very limited exchange, if any, between regions.

The OECD therefore recommends developing a mechanism, e.g. an intranet platform or regular meetings that could help to ensure information and experience sharing between regions in order to improve the design and implementation of the regional anti-corruption plans. Such a co-ordination between the regions would be important to tackle

trans-regional issues arising in the fight against corruption and the promotion of integrity. Additionally, because challenges and opportunities are likely to share certain characteristics, the CRAs would gain from sharing experiences with respect to the design and implementation of their regional anti-corruption policies.

As mentioned before, such cross-regional learning opportunities could be organised during training provided to the CRA staff in Lima. Meetings held among staff of neighbouring regions, likely to be facing similar challenges, could be arranged. Finally, the intranet platform mentioned in the previous section could be used to promote inter-regional dialogue, e.g. through a subsection dedicated to the CRAs.

Proposals for action

Institutional arrangement and effective co-ordination amongst the actors involved is a fundamental aspect of the Peruvian efforts to enhance integrity and mitigate corruption risks at all levels. The OECD therefore recommends that Peru consider taking the following actions in order to enhance its public integrity system:

Strengthening the High-level Commission against Corruption (CAN)

- To strengthen the General Co-ordination Unit (GCU) of the CAN, Peru could amend the Law to clarify the criteria according to which the General Co-ordinator is selected. It could also clarify rules for the General Co-ordinator's tenure and removal.
- The CAN could benefit from focusing on its core mandate of ensuring co-ordination and policy coherence. In addition, it could enhance efforts to follow up on the implementation status of the National Anti-corruption Plans.
- Developing the CAN's capacities in information management and communication would enhance its impact and strengthen its focus.
- The General Co-ordination Unit of the CAN could be strengthened by formally incorporating it into the organisational structure of the Presidency of the Council of Ministers (PCM) as a Specialised Technical Body (Órgano Técnico Especializado).
- To support the functions of the CAN, Peru could further develop the GCU's knowledge base on subjects of public management, and could create one or two additional positions dedicated to quantitative data management and analysis.

Horizontal co-ordination: Bringing together the key actors of the Public Integrity System

- The CAN could be strengthened by broadening its membership with key actors that are currently not part of the Commission; ideally, this would occur before the development of the next National Anti-corruption Plan (2017-21).
- To ensure policy goals are translated into concrete actions, the National Anti-corruption Plan and other decisions by the CAN need to be included into the operational plans of the CAN members.

- To further ensure impact and increase ownership of the CAN member institutions, technical discussions and decisions could be encouraged by establishing two technical sub-commissions or working groups: one on prevention and the other on enforcement.
- Peru could consider expanding the right to vote to other CAN members in order to increase ownership and accountability for the decisions taken in the commission by all its members.

Reaching the regions: Implementing public integrity systems at regional level

- The development of regional anti-corruption plans should be further promoted by the Regional Anti-corruption Commissions (CRAs), ensuring that they are constructed in a participative way, involving all key actors.
- Peru could strengthen the capacities of the technical secretariats of the CRAs through a focused capacity development strategy and consider transferring funds from the national level to support them.
- To ensure coherence and knowledge transfer between the national and the regional levels, an effective co-ordination mechanism between the CAN and the CRAs could be institutionalised.
- A mechanism, e.g. an intranet platform or regular joint meetings, could help to ensure information and experience sharing between regions in order to improve mutual learning in the design and implementation of the regional anti-corruption plans.

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Chapter 3

Strengthening public ethics and conflict-of-interest management in Peru

This chapter identifies ways to strengthen public ethics and the identification and management of conflict-of-interest situations in Peru through improvements in institutional design, guidance and control. While each of these functions and elements are separate, important building blocks, they should be complementary and mutually reinforcing. Resilient interaction and synergy is required among these elements to achieve a coherent and integrated ethics infrastructure in Peru.

Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Embedding a culture of integrity in the public sector requires defining common values to which all public employees should adhere and drawing up concrete standards of conduct that they need to apply in their daily work. Setting values and standards of conduct for public officials in a code of ethics and actively implementing them is particularly relevant in situations where a conflict of interest may arise. Ensuring that conflict of interest is identified and managed adequately is among the first steps towards safeguarding integrity and transparency in the public sector. The growing synergies between the public and private sectors have meant greater opportunity for horizontal movement and ancillary work. In turn, this has raised the possibility of conflicts of interest between public duties and private interests and may be detrimental to employer/employee confidence. Ensuring that the integrity of government is not compromised by public officials' private interests has become a growing concern across OECD member countries. To ensure a public service based on integrity, a strong culture of ethical behaviour facilitated through an Ethics Law or Code is imperative and operates as the backbone to managing conflict-of-interest situations. Managing conflict of interest is an inherent part of the wider ethics framework and is intrinsic to the integrity of government.

A country's ethics infrastructure has at its base a legal framework in which laws and regulations define the basic standards of behaviour for public servants and enforce them through systems of investigation and prosecution. However, legal provisions and policies remain strings of words on paper if they are not adequately communicated and inculcated. Socialisation mechanisms are the processes by which public servants learn and adopt ethical norms, standards of conduct, and public service values. Furthermore, in order to effectively uphold public ethics and values, a balance is required between promoting extrinsic motivation through a rules-based approach and intrinsic motivation through a values-based approach. A value-based approach can be advocated for through an open organisational culture whereby the tone at the top needs to be conducive to nurturing an ethics-based climate. Similarly, if this approach is not upheld or an open organisation culture is not effectively implemented, formalised compliance is required to ensure that the system operates effectively with enforcement and sanctions in place.

In response to serious acts of corruption that have been committed in Latin America during the last decade, many countries have made progress in creating and implementing codes of ethics for their public officials and employees. Ethics codes are one among many mechanisms for preventing and combating corruption. In Peru, the Public Administration Code of Ethics Law (Law No. 27815) was enacted in 2002 and applies to each Public Administration regardless of the labour regime under which public employees were contracted. The code also states that public servants are prohibited from maintaining situations of conflict of interest. Additionally, various laws contain specific conflict-of-interest regulations. To ensure that its ethical infrastructure functions soundly and encourages high standards of behaviour, Peru could consider strengthening public ethics and the identification and management of conflict of interest through a set of recommendations. These recommendations would aim to improve institutional design, provide guidance on ethical issues and conflict of interest, and raise awareness and provide training. Finally, they would aim to ensure effective control, monitoring and evaluation, including through the system of asset disclosure forms.

Each function and element is a separate, important building block, but the individual elements should be complementary and mutually reinforcing. Resilient interaction and synergy is required among these elements to achieve a coherent and integrated ethics infrastructure in Peru.

The institutional framework for public ethics and management of conflict of interest

As a long-term objective, Peru could consider developing a single policy framework for promoting integrity and conflict-of-interest management, including a definition of conflict-of-interest; in the meantime, Peru should ensure that the National Manual on Ethical Principles, Duties and Prohibition in the civil service developed by the CAN is effectively mainstreamed and used across the Peruvian public sector by engaging with SERVIR, SGP, and Human Resources Offices at organisational levels

Codes articulate boundaries of behaviour as well as expectations of behaviour. In other words, they should outline values clearly and provide markers of prohibited and expected behaviour. Of particular importance is a definition of what constitutes a conflict of interest, and the provision of guidance to public officials in such situations. Realistic knowledge on which circumstances and relationships can lead to a conflict-of-interest situation should provide the basis for the development of a regulatory framework to manage conflict-of-interest situations in a coherent and consistent approach across the public sector (Box 3.1). Of key importance is the understanding and recognition that everybody has interests; interests cannot be prohibited, but rather must be properly managed.

In all OECD member countries, conflict-of-interest policies and rules are stated in the country's legal framework. The descriptive and prescriptive approaches to managing conflict-of-interest situations are usually used simultaneously.

- Descriptive approach: General principles set out the regulations for managing conflict-of-interest situations for public officials, while complementary specific rules exemplifying cases provide guidance.
- Prescriptive approach: Specific situations that are incompatible with the role and duties of public officials are described, and public officials are given detailed enforceable standards they should use to manage them.

In Peru, the Public Administration's Code of Ethics Law (Law No. 27815) establishes a set of principles, ethical duties and prohibitions. It is applicable to officials, servants or employees of the public administration agencies at all hierarchical levels, including persons working in State Owned Enterprises (132-2012-SERVIR/GPGRH). The Code of Ethics Law also regulates the management of conflict-of-interest situations. Specifically, Article 8 prohibits maintaining relationships or situations in which the personal, labour, economic or financial interest is in conflict with the official duties of the public officials.

In addition to the Code of Ethics Law, the Peruvian legal framework addressing conflict-of-interest situations is fragmented throughout various provisions (Table 3.1). It contains regulations prohibiting ministers from engaging in the management of private companies and associations (Peruvian Political Constitution, Article 126) or from acting as lawyers, attorneys, advisors or similar in processes relating to government activities for up to one year after the termination of the official duty (Law No. 27588), establishing regulations to avoid nepotism (Law No. 26771) and regulating the public procurement process by excluding former public officials for up to 12 months after the renouncement of their positions (Law No. 30225) and by obliging public officials not to be part of contracts where they or their relatives have an interest (Law No. 30057). However, with

the abolishment of the Supreme Decree No. 033-2005-PCM, Article 3, the Peruvian legal framework no longer provides an explicit definition of conflict of interest.

Table 3.1. **Key primary legislation on conflict-of-interest in Peru**

Legal provision	Description
Peruvian Political Constitution. Article 126	Ministers are prohibited from holding public offices other than legislative posts. Ministers are banned from engaging in gainful activity and must not interfere in the management of companies or private partnerships that they have a personal interest in.
Law No. 27815, Public Administration's Code of Ethics Law, Article 8	All public officials are prohibited from maintaining a conflict of interest: that is, maintaining relationships or accepting situations in which context, personal, labour, economic or financial interests may conflict with the fulfilment of the duties and functions of his office
Law No. 26771, establishing the prohibition of exercising the faculty to appoint and recruit in the public sector in cases of kinship. Article 1	Officers, directors and public servants, and/or trusted staff of institutions and public agencies are prohibited from appointing, employing or inducing someone else to do so in their entity, with respect to their relatives.
Law No. 27588, establishing prohibitions and non-compatibilities of public officials and public servants, as well as those who provide services to government under any contractual arrangement	Up to one year after the conclusion or end of the link, directors, owners, senior officials, members of consultative councils, administrative courts, committees and other bodies that perform a public function or government custom, directors of state-owned enterprises or representatives of boards of directors, advisors, officials who have had access to privileged or relevant information, or whose opinion is determinative in decision making, for companies or private institutions included in the specific area of its civil service, may not: <ol style="list-style-type: none"> 1) provide services therein in any modality; 2) accept remunerated representation; 3) form part of the board of directors; 4) acquire directly or indirectly shares or units of a company or any of its subsidiaries which could have an economic link; 5) have any civil or commercial contracts therewith; 6) participate as lawyers, attorneys in fact, advisors, sponsors, arbitrators or individual experts in the processes related to the distribution of government in which they serve, while holding office or fulfilling the task conferred; except on his own behalf, of his spouse, parents or minor children. Impediments will permanently subsist with respect to specific causes or matters in which they have directly participated.
Law No. 28024, Lobbying Regulation in the Public Administration	The Law 28024 contains a range of provisions concerning conflict-of-interest situations and incompatibilities that impedes being active as a lobbyist. Public officials are not allowed to undertake lobbying activities while in office and during the 12 months after leaving office. Exclusions also include: individuals and legal persons that are participating in collegial bodies of the public administration, owners and directors of national or international media, as well as relatives of public officials, if the lobbying activity concerns an area of competence of the public official.
Law No. 30225, Government Procurement Law. Article 11	The law regulates the procurement process and prohibits public officials and relatives who are at risk of a conflict-of-interest situation from participating in a procurement process for up to 12 months after leaving office.
Law No. 30057, Public Service Law, Article III, Art. 39	The law lists the principles of the Civil Service, amongst which it is stated that the civil service shall promote transparent, ethical and objective actions by civil servants. Civil servants shall act based on principles and ethical values established in the Constitution and the Laws. Art. 39 further stipulates a series of obligations.

Source: Response provided by the CAN to the OECD survey for the Integrity Review (October 2015), Law no. 28024 and 30057 added.

This fragmentation and lack of definition may render it difficult to ensure clarity and compliance amongst public servants. As a long-term objective, Peru could therefore consider creating a single policy framework addressing public ethics and the management of conflict-of-interest situations, unifying the Laws, regulations, decrees and resolutions into one single coherent regulation which provides public officials with the standards they can use as orientation and be held accountable for. This should also include a brief and explanatory definition of conflict of interest (Box 3.1).

Box 3.1. Definitions of conflict of interest in Portugal and Poland

In its 2003 Guidelines for Managing Conflict of Interest in the Public Service, the **OECD** proposes the following definition: A “conflict of interest” involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.

Portugal has established a brief and explanatory definition of conflict of interest in the law: conflict of interest is an opposition stemming from the discharge of duties where public and personal interests converge, involving financial or patrimonial interests of a direct or indirect nature.

Similarly, **central European** countries in transition have put an emphasis on providing public officials with a general legal definition applicable across the whole public service that addresses actual and perceived conflict of interest. For instance, the Code of Administration Procedure in **Poland** covers both forms of conflicts: a situation of actual conflict of interest arises when an administrative employee has a family or personal relationship with an applicant. A perceived conflict exists where doubts concerning the objectivity of the employee exist.

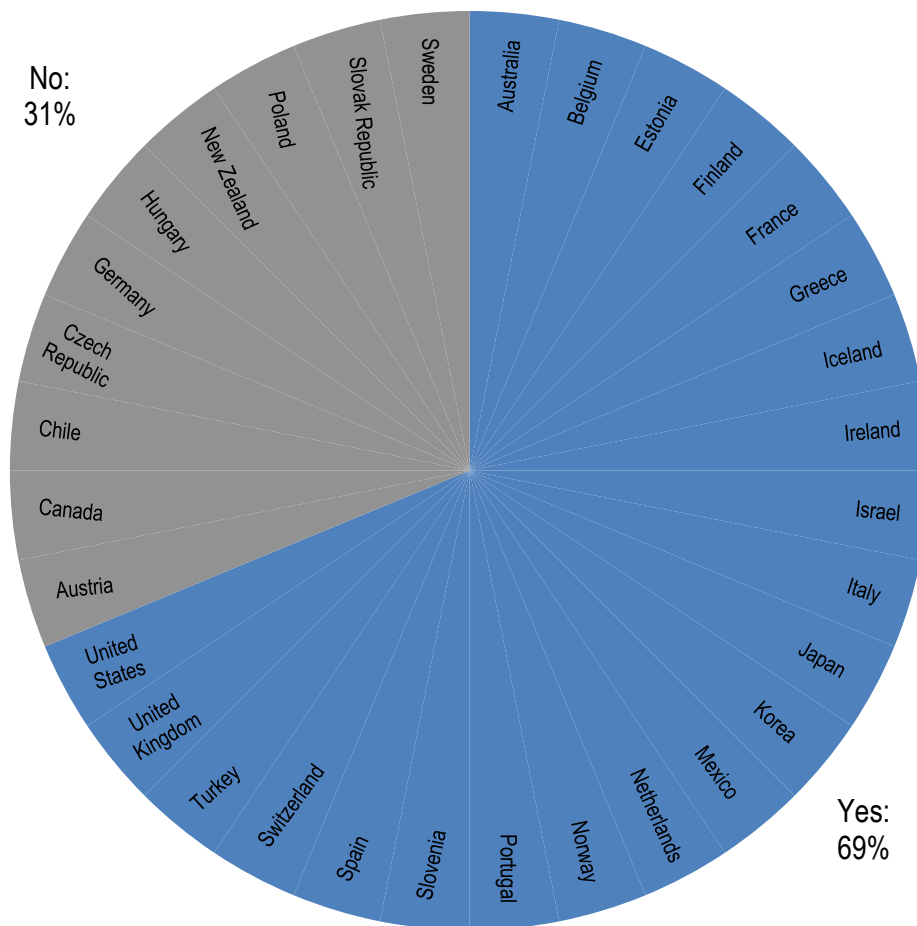
Source: OECD (2004), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264104938-en>.

The High-level Anti-Corruption Commission (Comisión de Alto Nivel Anticorrupción, or CAN) has developed, with support from the German international co-operation agency (Deutsche Gesellschaft für Internationale Zusammenarbeit, or GIZ), the “National Manual on Ethical Principles, Duties and Prohibition in the civil service” (“Principios, deberes y prohibiciones éticas en la función pública. Guía para funcionarios y servidores del Estado”). It is a guiding document for all public employees on the scope and content of the Public Administration’s Code of Ethics. The manual provides an overview of the various legal foundations as well as examples of real, apparent and potential conflict-of-interest situations and how to resolve them. However, there seem to be no coherent plans to mainstream it across public entities. Therefore, a clear strategy should be developed to ensure that the manual will be effectively disseminated to all public officials. To promote its diffusion, mainstreaming and use, the CAN therefore should aim at involving the National Civil Service Authority (Autoridad Nacional del Servicio Civil, or SERVIR) including through the courses and modules provided by the National School of Public Administration (Escuela Nacional de Administración Pública, ENAP) which belongs to SERVIR. In addition, the Public Administration Office (Secretaría de Gestión Pública, or SGP) and the Office of the Comptroller General (Contraloría General de la República, or CGR), which share some responsibility for implementing the Code of Ethics Law, and which promote awareness and deliver training, should also be involved. Updates and new editions of the Manual should also be developed in close co-operation with these entities in order to promote their ownership and buy-in.

Peru could clarify the roles and responsibilities of the agencies involved in developing and managing public ethics and conflict-of-interest policies, attributing the lead role to SERVIR to ensure coherence with human resources management policies, training and enforcement; co-ordination with SGP and CGR could be ensured through the platform provided by the CAN

Many OECD member countries have introduced a central function responsible for the development and maintenance of conflict-of-interest policies. According to the 2014 OECD survey on managing conflict of interest, 68% of respondent OECD member countries have such a central function and apply identical or similar definitions of conflict of interest and guidelines for handling the situation to their ministries and agencies, ensuring consistency throughout the measures (Figure 3.1).

Figure 3.1. Countries with a central function (not necessarily an independent agency) responsible for the development and maintenance of conflict-of-interest policies



Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: OECD Survey on Management of Conflict of Interest (2014).

Central co-ordination bodies can take on various forms – parliamentary committees, central agencies, or specially created bodies – and assume various functions: “general promoter” of public sector ethics, a role performed by Norway’s Ministry of Labour and Government Administration and New Zealand’s State Services Commission; and “counsellor and advisor”, such as the United States Office of Government Ethics (OECD, 2000). In the case of the United Kingdom, the Civil Service Commission was established to safeguard an impartial civil service. It is an executive non-departmental public body sponsored by the Cabinet Office (Box 3.2).

Box 3.2. The role of the Civil Service Commission in the United Kingdom

The Constitutional Reform and Governance Act 2010 established the Civil Service Commission on a statutory basis. The Commission is independent of Government and of the Civil Service. The UK Civil Service Commission is an executive Non-Departmental Public Body sponsored by the Cabinet Office.

The Civil Service Commission has two important roles in relation to the Civil Service Code, which defines the terms and conditions of UK civil servants. The Commission hears complaints under the Code from civil servants. The Commission also works with Departments to help them with their promotion of the Code.

There are currently seven Commissioners. They are recruited on merit following public advertisement and a fair and open selection competition. By virtue of their careers and interests, the Commissioners bring experience of the public, private and voluntary sectors and a clear and independent perspective. This helps the Civil Service Commission to support a civil service that is effective, politically impartial, and that builds upon its core values to meet challenges.

Source: UK Civil Service Commission, <http://civilservicecommission.independent.gov.uk/about-us/>.

In Italy, this role is entrusted principally to the Department for Public Administration (DPA) with the collaboration of the National Anti-Corruption Authority. The Anti-Corruption Law puts the heads of public entities in charge of overseeing implementation and requires the DPA to carry out an annual review of how the codes have been implemented (OECD, 2013a). The case of Italy demonstrates that the recommendation to consolidate responsibilities within one body should not be construed as absolving departments and managers of the responsibility for ensuring ethical conduct within their jurisdictions.

In Peru, analysis and interviews showed that the fragmented normative framework on public ethics and conflict of interest in Peru is mirrored in a lack of clarity with respect to the public agencies responsible for ethics in the public sector. This lack of clarity can create an environment where awareness and understanding of principles and practices may differ significantly among entities, where clear guidance is not ensured, and where control mechanisms in the maintenance and continuous improvement of standards may be lacking.

SERVIR, the specialised technical agency and ruling body of the government’s Human resources Administration System, is responsible for promoting a transparent, ethical and objective performance of civil servants according to the legal framework. SERVIR emits legal reports with respect to the application and interpretation of the Code of Ethics Law, and its Civil Service Tribunal (Tribunal del Servicio Civil) is currently the

authority responsible for appeals in the administrative disciplinary proceedings regulated by Law 30057 and Regulation 040-2014-PCM which sanctions, among other conducts, violations of the Code of Ethics Law (see Chapter 8).

However, the SGP is also responsible for defining, co-ordinating, supervising and evaluating policies of access to public information, transparency and citizen oversight, but also for the promotion of ethics in the public service. In addition, as mentioned above, the General Co-ordination Unit (Unidad de Coordinación General, or CGU) of the CAN has issued the “National Manual on Ethical Principles, Duties and Prohibition in the civil service”, and has developed training as well as promotional and dissemination activities with respect to the scope of the Public Administration’s Code of Ethics Law.

To mitigate potential problems arising from this unclear institutional setting, e.g. overlaps or incoherencies, Peru should clarify the exact roles and responsibilities of each of the three actors mentioned to ensure that the Code of Ethics Law is a valuable, efficient contribution to the improvement of a culture of ethics in the public sector, including in conflict-of-interest management. Given the clear mandate provided currently to SERVIR, Peru should ensure that SERVIR takes the lead on all policies and activities related to the promotion of ethics in public administration and the management of conflict-of-interest situations. SERVIR has the unique opportunity to ensure coherence between human resources management and public ethics and conflict-of-interest management. It may benefit from the programmes of ENAP to promote and further develop training on ethics and conflict-of-interest management, and can, if necessary, ensure compliance through disciplinary sanctions and legal clarifications. However, in order to effectively do so, the capacities of SERVIR would need to be strengthened, both in terms of human resources dedicated to the topic and financial resources matching the responsibilities. Also, a close co-ordination with SGP and the CGR should be ensured within the CAN.

In addition, Peru should maintain its practice, pursuant to Article 9 of Law No. 27815, of tasking a Senior Executive body in each public agency with implementing measures to promote a culture of integrity, transparency, justice and public service established in the code. In addition, this Senior Executive body, under the guidance of SERVIR, would provide public officials with guidance for the management of conflict-of-interest situations and would set forth mechanisms and incentives to enable the correct, transparent and fair performance of public servants. Such an appointment could, for instance, fall under the purview of the Human resources office of each entity, as they are responsible for the planning, delivery and evaluation of training and development (Public Governance Review of Peru, 2016).

Providing guidance on ethics and conflict of interest

To resolve work-related ethical problems, SERVIR could implement guidance, advice and counselling by engaging senior officials responsible for public service ethics and conflict of interest within each organisation

A code of ethics and conflict-of-interest policies alone cannot guarantee ethical behaviour. While a code of ethics can offer guidance on expected behaviour by outlining the values and standards to which public officials should aspire, to be effectively implemented it must also be part of a wider organisational strategy, supported by a strong commitment at the top. Training and awareness-raising measures are also necessary.

High staff turnover, lack of guidance and a weak tone from the top are impediments to an open organisational culture where advice and counselling can be sought to resolve ethical problems. Moreover, when staff rotation is high there may be less importance placed on the implementation of a strong ethics culture in the workplace, because employees are not employed long enough to apply these measures in practice. Generally, senior civil servants embody and transmit core public service values such as integrity, impartiality, transparency and merit. They set the example in terms of performance and probity, and are essential players in the development of future planning and strategic capacity.

In the case of Peru, staff instability is an issue that permeates from the top down. In fact, in Peru, instability of the senior leadership cadre appears to generate instability throughout the civil service, as senior managers appear to change their teams and responsibilities at a rate that impedes long-term progress and continuity (OECD Public Governance of Peru, 2016). Longevity, continuity and institutional memory are important elements that promote an appreciation and collective commitment to substance, content, and an ethics-oriented workplace that ensures the everyday respect of integrity.

Given the timeliness of the new Civil Service Law in Peru and its focus on the capacity of senior civil service leaders, SERVIR should consider doubling up on these efforts and engaging senior officials responsible for public service values and ethics as well as managing conflict-of-interest situations within each organisation in order to facilitate implementation and raise awareness of public ethics and values in practice.

For the abovementioned reasons, many OECD countries focus on senior civil servants both in terms of individual development and in terms of special management rules, processes and systems. Guidance in the form of advice and counsel for public servants to resolve ethical dilemmas at work and potential conflict-of-interest situations can be provided by immediate hierarchical superiors and managers or dedicated individuals available either in person, over the phone, via email or through special central agencies or commissions. Similarly, guidance, advice and counselling could be provided by senior officials, as is the case in Canada (Box 3.3). In turn, senior officials can issue guidance on how to react in situations that are ethically challenging and can communicate the importance of these elements as a means of safeguarding public sector integrity.

Box 3.3. Canada: Senior officials for public service values and ethics and departmental officers for conflict-of-interest and post-employment measures

Senior officials for public service values and ethics

- The senior official for values and ethics supports the deputy head in ensuring that the organisation exemplifies public service values at all levels of their organisations. The senior official promotes awareness, understanding and the capacity to apply the code amongst employees, and ensures management practices are in place to support values-based leadership.

Departmental officers for conflict-of-interest and post-employment measures

- Departmental officers for conflict-of-interest and post-employment are specialists within their respective organisations who have been identified to advise employees on the conflict-of-interest measures in Chapter 2 of the Values and Ethics Code.

Source: Treasury Board of Canada Secretariat, www.tbs-sct.ca.

SERVIR could develop specific guidelines with practical examples of conflict-of-interest situations and how to identify and resolve them, including guidelines on implementing codes at the organisational level such that ownership and impact on behaviour are emphasised

Providing clear and realistic descriptions of what circumstances and relationships can lead to a conflict-of-interest situation by giving a range of examples of private interest at risk and examples of unacceptable conduct and relationships without claiming to cover all situations will help public officials to better identify relevant situations. Providing guidance on conflict of interest also should include descriptions of situations and activities that can lead to actual, apparent and potential conflict-of-interest situations.

In order to complement the “National Manual on Ethical Principles, Duties and Prohibition in the civil service” mentioned above, SERVIR could also provide more specific guidelines and codes at organisational levels, while ensuring that they align with the overarching principles that are integral to the public sector. Indeed, just as different organisations face different contexts and kinds of work, they may also be faced with distinct ethical dilemmas and specific conflict-of-interest situations. For instance, the challenges might differ significantly among the Ministry of Energy and Mines, the Ministry of Health, the Ministry of Agriculture, the Ministry of Justice, and the various supervisory and regulatory bodies. Furthermore, elaborating and implementing a code at the organisational level in a participative way is already an important awareness-raising exercise. When an organisation’s public officials are involved, the sense of ownership of the code and its values is strengthened. A middle-term goal, connected to the current public service reform, is to ensure that Peru’s general framework is adapted to each public entity through specific codes of conduct and guidance.

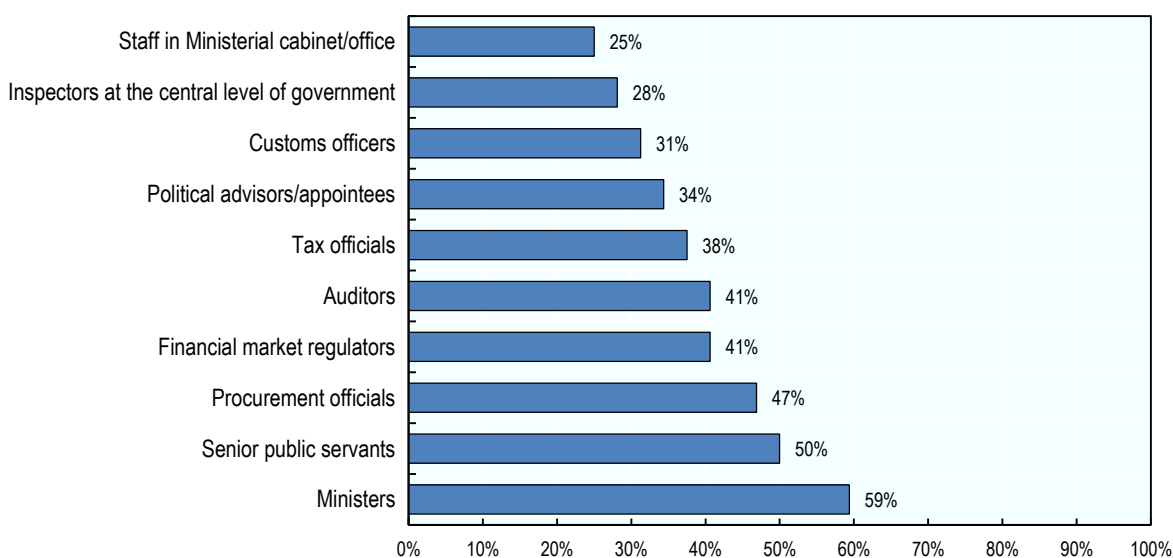
In fact, various public agencies in Peru already have adopted rules of ethics applicable to their civil servants, either through the approval of specific or sectorial codes of ethics or conduct or by incorporating provisions on the subject in their Internal Work Regulations. Codes of Ethics have been created, for instance, in the Chair of the Council of Ministers (Ministerial Resolution No. 253-2002-PCM), the National Office of Electoral Processes (Departmental Resolution No. 230-2002-J/ONPE), Public Records (Resolution of the National Superintendent of Public Records No. 287-2002-SUNARP/SN), the National Fund for Compensation and Social Development (Executive Management Resolution No. 074-2002-FONCODES/DE) and the Office of the General Comptroller of the Republic (Office of the Comptroller Resolution No. 077- 99-CG) (UN, 2005).

However, currently there seems to be no clear guidance on how to develop and implement such specific organisational codes or on how to ensure coherence of these codes with the Public Ethics Law. Acknowledging that the process of elaborating an organisational code is of utmost importance, such guidance would contribute to ensuring and effectively mainstreaming the core values throughout the Peruvian public sector. A directive from 2009 (Ministerial Resolution no. 050-2009-PCM) foresaw that the Public Ethics Code was disseminated throughout the Executive. It assigned responsibility to the Secretary General of the entities and provided guidance on how to raise awareness of the Code, e.g. a by establishing an internal working group. However, this guidance is restricted to the diffusion of the Ethics Code as such, and does not consider its potential adaptation to a given entity, nor does it discuss how such an adaptation might be implemented.

Specific guidance for at-risk categories of public officials could be developed: such categories include senior civil servants, financial market regulators, auditors, tax officials, political advisors, customs officers, inspectors at the central level of government and the ministerial office

The role of ensuring clear guidance also encompasses taking into consideration the specific risks associated with the administrative functions and sectors that are most exposed to corruption (see also Chapter 5 on internal control and risk management). While the individual public official is ultimately responsible for recognising the situations in which conflicts may arise, most OECD countries have tried to define those areas that are most at risk and have attempted to provide guidance to prevent and resolve conflict-of-interest situations. Indeed, some public officials operate in sensitive areas with a higher potential risk of conflict of interest, such as justice, tax and customs administrations and officials working at the political/administrative interface. Special standards are needed for these sectors. Countries such as Canada, Mexico, Switzerland and the United States aim to identify the areas and positions which are most exposed to actual conflict of interest. For these, regulations and guidance are essential to prevent and resolve conflict-of-interest situations (Figure 3.2).

Figure 3.2. **Development of specific conflict-of-interest policy/rules for particular categories of public officials in the OECD countries**



Source: OECD Survey on Management of Conflict of Interest (2014)

In Peru, Article 126 of the Political Constitution provides specific regulations for ministers to avoid actual conflicts of interest by prohibiting ministers from holding more than one public office, other than legislative posts, and by banning the management of private companies. Similarly, the Government Procurement Law (Law 30225, Article 11) identifies the procurement process as particularly at risk for conflict-of-interest situations and has banned former public officials from participating in tenders for up to 12 months after resignation.

As a long-term goal, Peru could establish specific conflict-of-interest policies for other remaining at-risk areas such as senior civil servants, financial market regulators, auditors, tax officials, political advisors, customs officers, and inspectors at the central level of government and the ministerial office. This specific risk-based guidance would complement the organisational codes mentioned before. Though the areas of activity are not the same, procurement officers in education and health face similar challenges.

Raising awareness and providing training

A cross departmental public ethics awareness campaign could be implemented as a shared and co-ordinated activity between SERVIR, SGP, and the CAN, including reaching out to the private sector, civil society and citizens

Without communication and education, values are simply words on paper. The vast majority of OECD member countries employ measures to distribute and communicate core values for public servants. The most frequently used method is to provide the stated core values when someone joins the public service (OECD, 2000).

In their respective roles, SERVIR, the SGP and the CAN have a responsibility to promote a culture of integrity and raise awareness of the importance of abiding by public service values and ethics and managing conflict-of-interest situations. Specifically, as already mentioned, Article 9 of the Public Administration's Code of Ethics Law, Law 27815, and its regulations establish that the Senior Management Authority of each public agency is responsible for the following:

- disseminating the Public Administration's Code of Ethics
- designing, establishing, implementing and disseminating incentives and enticements for public servants who comply with the principles, duties and obligations of the Code and respect its prohibitions
- developing educational campaigns on sanctions for public servants whose practices are contrary to the principles established in the Code.

In this context, Article 9 also designates senior administration officials to promote a culture of integrity, transparency and justice and tasks them with the responsibility of disseminating the conflict-of-interest policies, rules and regulations and providing relevant information.

In order to raise awareness in Peru, some public administration agencies provide a copy of the Public Administration's Code of Ethics to their employees when they join the institution; others develop training or provide induction when they join. The Code of Ethics can also be found on the websites of certain public agencies. With respect to awareness-raising measures for conflict-of-interest management, OECD countries generally combine complementary awareness-raising measures in order to ensure a comprehensive effort in this regard (Table 3.2).

Table 3.2. Awareness-raising activities for managing conflict of interest

	Initial dissemination of rules/ guidelines to public officials upon taking office	Proactive updates regarding changes to conflict-of-interest rules/guidelines	Publication of the conflict-of-interest policy online or on the organisation's intranet	Regular reminders about conflicts of interest and public officials' responsibility to avoid them	Training	Regular guidance and assistance	Advice line or help desk where officials can receive guidance on filing requirements or conflict-of- interest identification or management
Australia	●	●	●	●	●	●	●
Austria	●	●	○	●	●	●	○
Belgium	●	○	●	●	●	●	●
Canada	●	●	●	●	●	●	●
Chile	●	○	●	○	●	●	○
Czech Republic	○	○	○	○	○	○	○
Estonia	○	●	●	○	●	●	●
Finland	●	○	●	○	●	○	○
France	○	○	○	●	●	○	●
Germany	●	●	●	●	●	●	●
Greece	●	●	●	○	○	○	○
Hungary	●	●	○	○	○	○	●
Iceland	●	●	●	●	●	●	○
Ireland	●	●	●	○	○	○	●
Israel	●	○	○	○	○	●	○
Italy	○	○	●	●	○	●	○
Japan	●	●	●	○	●	○	○
Korea	●	○	●	●	●	●	●
Mexico	●	●	○	○	○	○	○
Netherlands	●	●	●	●	●	●	●
New Zealand	●	●	●	●	●	●	●
Norway	●	●	●	○	●	●	●
Poland	●	○	●	○	○	●	○
Portugal	●	○	○	●	●	○	○
Slovak Republic	○	○	○	○	○	○	○
Slovenia	●	○	○	○	●	●	●
Spain	●	●	●	●	●	●	●
Sweden	●	●	●	●	●	○	○
Switzerland	●	●	●	●	●	●	●
Turkey	●	○	○	○	●	○	○
United Kingdom	●	●	●	●	●	●	●
United States	●	●	●	●	●	●	●
Yes ●	27	19	22	17	23	20	17
No ○	5	13	11	15	9	12	15

Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: OECD Survey on Management of Conflict of Interest (2014).

As a way of promoting the Public Administration's Code of Ethics Law and its guidelines on managing conflicts of interest across organisations, Peru may wish to issue a cross-departmental awareness campaign akin to that of the UK, where the Civil Service Commission, working in conjunction with the Cabinet Office and a group of Permanent

Secretaries produced a best practice checklist of actions for departments to uphold and promote the Code. Similarly, to this end, in the Netherlands, the government issued a brochure entitled “The Integrity Rules of the Game” that explains in clear, everyday terms the rules to which staff members must adhere. It considers real-life issues such as confidentiality, accepting gifts and invitations, investing in securities, holding additional positions or directorships, and dealing with operating assets (Public Governance Review of Slovakia, 2015).

While SERVIR, and especially ENAP, the SGP and the CAN may all promote public service values and ethics in public administration and in society as a whole, a clear distinction needs to be made between their roles in disseminating ethical and conflict-of-interest awareness-raising campaigns and that of initiating training. In order to avoid overlap and duplication, without standardisation, the mandates of these aforementioned organisations cannot all include training. In fact, training may be viewed as a separate dimension of the awareness-raising campaign altogether. In particular, the CAN could consider building broad awareness-raising campaigns such as the current campaign “Real Peruvians” (Peruanos de Verdad), which promote integrity values beyond the public administration by reaching out to the private sector, civil society, and to citizens in general. Such strategies to promote values beyond the public sector may also include working with the Ministry of Education (Ministerio de Educación del Perú) to develop activities and tools to address primary, secondary and tertiary education.

Training efforts should be consolidated within SERVIR/ENAP as the lead agency in close co-ordination with Human resources Offices, the SGP and the CGR

Training on ethics and conflict-of-interest management for public officials is one of the instruments necessary for building integrity in the public sector and ensuring high-quality public governance. The United Nations Convention against Corruption (UNCAC) requires that the state parties “promote education and training programmes to enable [public officials] to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialised and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions” (UNCAC, Article 7 [d]).

As such, at least one public agency must be responsible for the overall framework for training on conflict-of-interest management and ethics, for central planning, co-ordination and evaluation of results. In fact, most OECD countries’ training modules are developed by a single central entity that also offers guidance on how public employees should apply their codes of conduct, particularly in sensitive situations. For example, in Turkey, the Council of Ethics for Public Officials is the leading institution in the provision of ethics training.

At the moment, in Peru, training of public ethics is carried out by a number of organisations, namely SERVIR (with ENAP), the SGP, the CGR (through the National School of Control, Escuela Nacional de Control), and the CAN. The SGP provides training at the national level to the three levels of government. This training consists of lectures and facilitation workshops on Public Ethics. The National School of Public Administration (SERVIR/ENAP) and the SGP both offer courses on Public Ethics based on a practical and case-by-case approach. Specifically, ENAP offers the “Ethics in Public Administration” course, which is designed to reinforce civil servants’ understanding of the ethical concepts and principles of public administration. Civil servants thus may apply

such principles in a critical, reflective and committed manner in the discharge of their duties. They are encouraged to take responsibility for their decisions and to develop good practices in order to generate public value. Therefore they may provide better service to citizens, contributing in the long term to the country's development. Also, the CGR offers training on control and public management which deals in part with the ethical behaviour of public servants. Since one of the functions of the CAN is to promote a culture of values in Peruvian society, it has also assumed the role of organising workshops and participating in talks at various government entities of different levels, in order to train public officials and the general public on the Public Administration's Code of Ethics, the National Plan to Fight Corruption and Transparency and the Law to Access Public Information.

It is crucial to ensure collaborative management between all the bodies involved to avoid inefficiency, organisational rivalry or self-promotion in the search for public money. For instance, in Estonia, the Ministry of Finance co-ordinates the horizontal "Central Training Programme" and is responsible for commissioning various training programmes such as the induction programme and the general programmes on civil service and public service ethics. It would be beneficial for Peru to consider adopting such a system or a close hybrid.

Specifically, Peru should consider consolidating its ethics training efforts within a central body. The natural candidate for this function is SERVIR due to its link to ENAP and the Human resources Offices. In addition, by alleviating CAN of its current role in the area of ethics training, resources could instead be used to enhance co-ordination efforts between SERVIR, SGP and CGR (see earlier in this section and Chapter 2).

Peru could consider implementing innovative and targeted training on ethics and dealing with arising conflict-of-interest situations.

Professional socialisation enables public servants to apply core values in concrete circumstances. This requires informing them of the expected standards of behaviour and developing skills to help them solve their ethical dilemmas. Almost all OECD countries provide training on ethics issues. Various types of training schemes and educational programmes exist in OECD countries. They range from rules-based training, with a focus on the obligations of public employees and sanctions in the event of misconduct, to value-based training that examines ethical dilemmas in the workplace and provides guidance on the appropriate attitudes to adopt in cases of conflict of interest.

The scope of the ethics training varies greatly from one country to another. Some countries have a general training scheme covering the entire public service, while others only have specific programmes determined by particular ministries and agencies. In the former case, training on ethical issues is more likely to be mandatory. With respect to training for the management of conflict-of-interest situations, training is often compulsory at the beginning of the career. In some countries, such as Germany, Poland and the United States, in-service training is provided. However, even within a general training scheme, countries vary in the scope of application of the mandatory training, ranging from a general target to specific groups. In Germany and Italy, for example, training is obligatory for all public service employees. In Korea, this applies to all public officials, and in Greece, to the majority of its civil servants. Ethics training is specifically required of all new public servants in countries such as Finland, Hungary, Luxembourg and the United States. In the United Kingdom, ethics is included in the induction training for all

new senior civil servants. Ethics is part of the Concept of Public Servants' Training in the Czech Republic both for pre-service and in-service training (OECD, 2000).

In countries where individual ministries and agencies are responsible for determining the scope of ethics training, training is often provided on a voluntary basis and is rarely mandatory. The training is provided individually to respond to the specific needs of public servants within each ministry or agency by providing information upon employees' request (Canada, Ireland) or by providing specific guidance when employees are confronted with ethical conflicts. The training sessions are mainly organised by individual ministries and agencies. Nevertheless, in some countries, there is close co-operation with other specific agencies to determine the content of their ethics training. Courses could be established under the requirements set by a central ethics office (United States), monitored or provided by instructors trained by a similar central office (Japan) (OECD, 2000).

Attempts at mandatory training in Peru have produced results that were deemed far from satisfactory. Though compulsory courses may thus not be desirable, Peru could consider exploring innovative measures that would be feasible and applicable to various contexts and target groups. One possible approach could be to develop measures akin to those used in public sector innovation labs (Box 3.4). Specifically, to this end, Peru could design and carry out tailor-made experiments with public officials and with users of public services both as a diagnostic and as baseline for policies specific to public ethics training and conflict-of-interest management.

Box 3.4. Public Sector Innovation Labs

Recent years have seen the emergence of public sector innovation labs in many OECD governments. This has occurred partly in response to the increased complexity of public policy issues that requires new approaches and new ways of working. These labs provide a place to help the public sector frame issues in new ways and redesign services by drawing on a broad range of perspectives. Labs help institutionalise co-creation by actively involving the users of public services at all stages of policy and service development and by using different disciplines, from design and ethnography to psychology and sociology. At their best, innovation labs can help the public sector to work in a new and often challenging way, yielding results which accurately address service users' needs.

The term "laboratory" is borrowed from science and refers to the practice of experimenting – investigating a situation, exploring how it occurs and testing solutions in a safe and controlled environment. On occasion, governments around the world have invested time, money and social capital in large-scale policies and programmes which have failed to achieve expected results. Public-sector labs can provide something of an antidote to this. They are dedicated spaces for investigating and experimenting through trial and error to understand better what works in practice.

Over the past decade, public-sector innovation labs have been appearing across the world. There is great diversity in the innovation-lab model, with labs at different levels of government and scope. For example, Mindlab in Denmark, the Central Innovation Hub in Canada, and Laboratorio de Gobierno in Chile all work at the central-government level across multiple departments. The United States Office of Personnel Management has a dedicated lab that began looking primarily at issues related to internal management similar to those faced by SERVIR, and has since expanded to include a broader policy role.

Relative to other practices in the field of public governance, innovation labs are still in their infancy. This means that the knowledge and understanding of different global models is continually developing.

Source: OECD (2016), *OECD Public Governance Reviews: Peru: Integrated Governance for Inclusive Growth*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264265172-en>.

When there is a limited budget for training programmes, it is crucial to prioritise training target groups. Targeting also helps to make training more focused on the practical needs of a specific group of public officials, thus increasing motivation for participation. Several groups could be targeted for ethics training. For example, all new public officials could be provided with ethics training in addition to senior public officials in management positions and public officials in areas of risk. Similarly, training on conflict-of-interest regulations for several groups could be prioritised. Elected public officials, senior public officials in management positions and public officials in areas of risk could, for example, be targeted. Compulsory training for these groups is advisable. In addition, HR officers in each public entity could be trained in disseminating conflict-of-interest policies in the organisation. Training and education may range from value-oriented to rules-based and dilemma type programmes in order to help public officials fully grasp the entire code of ethics.

Senior management could attend each training programme in order to better lead by example and to offer constant guidance to staff on how to apply the code day-to-day. Combining training with an incentive-based programme could also help motivate public officials to strive for high standards of conduct.

To help prioritise and focus training efforts and improve their cost effectiveness, SERVIR could consider developing a training needs assessment in ethics, paying special attention to the development of senior managers

As the needs for ethics training vary significantly among countries, it is important to understand these needs before embarking on a long-term investment in training programmes. A needs assessment can help prioritise and focus training efforts and improve their cost-effectiveness. Surveys or studies that analyse the level of integrity in public administration could help diagnose the problems and evaluate training needs. When such surveys are carried out on a regular basis, they can serve as a tool for assessing trends, and may provide insight into the effectiveness of training programmes.

In addition to developing specific induction training, Peru could consider making training for incumbent employees more widely available, providing specialised ethics courses and training for employees in at-risk-positions, and tailoring courses for managers. The directive to branch out into these different and specific avenues would come from the SERVIR and could be carried out by Human resources Offices within each of the entities, or through the ENAP, depending on the content. In Canada, the Canada School of Public Service offers specific courses tailored to roles and functions, including public service orientation, training on performance management and authority delegation training.

Ensuring effective control, monitoring and evaluation

To ensure effective monitoring and evaluation, SERVIR could design tools and processes, including surveys, reviews of the guidance provided on the code, and statistical data on disciplinary actions and disclosures

A code of ethics is a flexible instrument. Therefore, monitoring its implementation will help determine whether it truly helps in promoting high standards of conduct within the public service. If it does not, further guidelines may be drawn up to clarify the values and standards of conduct that the code lays down.

However, in Peru, no research has been carried out to determine how familiar public officials are with the values of public service and official standards at national level and within the regions. Note that this exercise should not be limited to gathering and analysing statistics on infractions. Given the absence of research on public officials' awareness of the principles and values of public service in Peru, it is difficult to monitor the real implementation and respect of the Code of Ethics and conflict-of-interest policies. There are also no procedures to assess the effectiveness of measures to promote ethical behaviour and prevent corruption and misconduct. In order for Peru to make progress in ethics and integrity, it will first need to its current situation.

As a starting point, SERVIR could consider the following:

- monitoring the implementation of its code of ethics through diagnostic tools such as surveys and statistical data (Box 3.5)
- reviewing public employees' knowledge of standards of ethics (to determine, for example, if dissemination and training are sufficient)
- reviewing how public organisations provide guidance on the code
- reviewing how many disciplinary actions were taken and the corresponding data collection as mentioned in Chapter 8
- systematically collecting data and information regarding the use and effectiveness of reporting mechanisms, as suggested in Chapter 2.

Box 3.5. Monitoring of the implementation of code of ethics in Poland

A survey known as the monitoring of “Ordinance no. 70 of the Prime Minister dated 6 October 2011 on the guidelines for compliance with the rules of the civil service and on the principles of the civil service code of ethics” was commissioned by the Head of the Civil Service (HCS) in 2014. The HCS is the central government administration body in charge of civil service issues under the Chancellery of the Prime Minister.

The survey was given to three groups of respondents:

1) Members of the civil service corps

In this case the survey pertained, on one hand, to the degree of implementation of the ordinance in their respective offices and, on the other hand, to their subjective assessment of the functioning and effectiveness of the ordinance. The members of the civil service corps were asked to complete a survey containing 16 questions (most framed as closed questions, with a few allowing for comments). The questions pertained to the following issues, among others:

- knowledge of the principles enumerated in the Ordinance
- impact of the entry into force of the Ordinance on changes in the civil service
- the need/advisability of expanding the list through the addition of new rules
- comprehensibility/clarity of the guidelines and principles laid down in the Ordinance
- the usefulness of the Ordinance for the purposes of solving professional dilemmas.

Box 3.5. Monitoring of the implementation of code of ethics in Poland *(continued)*

In addition, the correct understanding of the principle of “selflessness” and “dignified conduct” as well as the need to provide training in the field of compliance were also assessed. The surveys were available on the website of the Civil Service Department. The respondents were asked to respond and submit the survey electronically to a dedicated e-mail address.

2) Director Generals, directors of treasury offices and directors of tax audit offices

In this case the survey was intended to verify the scope and manner of implementation of tasks which they were under duty to perform according to the provisions of the ordinance, including, for example:

- the manner in which compliance with the rules in the given office is ensured
- information on whether the applicable principles were complied with when adopting decisions authorising members of the civil service corps to undertake additional employment or authorising a civil service employee occupying a higher position within the civil service to undertake income-generating activities
- the manner in which the principles in question are taken into account in the human resources management programmes which are being developed
- the manner in which the relevant principles were taken into account in the course of determination of the scope of the preparatory service stage, etc.

3) Independent experts – public administration theorists and practitioners

In this case the survey was intended to obtain an additional, independent specialist evaluation of the functioning of ethical regulations within the civil service, to obtain suggestions on the ethical principles applicable to civil service and to identify the aspects of the management process which may need to be supplemented or updated, clarified or emphasised to a greater extent or even corrected or elaborated.

The response rate differed across the three groups. The HCS received 1 291 surveys completed by members of the civil service corps (the number of surveys completed represents approximately 1% of all civil service corps members), 107 surveys dedicated to the directors (that is, 100% of all directors generals, directors of treasury offices and directors of tax audit offices (98 in total). Other surveys, filled in on a voluntary basis by the head of the tax offices, and seven replies from independent experts, or approximately 13% of all experts invited to the study, were also received. Given that this survey was the first such an exercise conducted at a large scale, information gathered could be used in further developing the integrity policy in the Polish civil service system.

Source: Adopted from the presentation by the Polish Chancellery of the Prime Minister at the OECD workshop in Bratislava in 2015.

While surveys are sometimes distributed to participants in order to review specific modules on public ethics, the points outlined above suggest a more expansive survey on public ethics implementation and efficiency across the public administration. Similarly, it is important to stress that the positive results of such assessments should not be taken as a deterrent to conducting further research. It is only where such research is performed that there is an opportunity to ensure the actual functioning of ethical regulations and to adjust such regulations to a rapidly changing environment.

To enable the monitoring and evaluation of the implementation of the Public Administration’s Code of Ethics Law, and to publish annual progress reports, clear and transparent indicators should be developed

At an organisation level and with respect to the public ethics code itself, these monitoring and review exercises could be overseen by Human resources Offices, while the CGR could generate the results of its annual reports and findings regarding disciplinary measures and reported disclosures. In turn, these findings and data could be compiled by SERVIR, which could assume the responsibility of generating clear and transparent indicators from which this monitoring process could evolve. Indicators could be collected and updated on a regular basis (e.g. quarterly) and could be used to convene the necessary stakeholders (SERVIR/ENAP and Human resources Offices, SGP) to discuss progress.

In addition, following these reviews and data gathering exercises, Peru could consider implementing an evaluation of the Public Administration’s Code of Ethics Law (Law No. 27815), and how it operates in practice. An annual report on the implementation and effectiveness of public ethics measures could help ensure that evaluation efforts are taken seriously and acted upon.

As addressed in Chapter 2, effective institutional co-ordination between actors involved in the implementation of the Code remains essential. As such, these evaluation processes need to be carefully co-ordinated among SGP, SERVIR/ENAP and Human resources Offices to avoid overlap and duplication. Again, the CAN, and specifically the sub-commission on prevention, if created, could provide the platform for this co-ordination and discussions. Such a platform could also display the results from the monitoring and evaluation exercises.

Clear and consistent criteria of violations and sanctions for breaching the code of ethics and conflict-of-interest policy should be established

A balance between extrinsic and intrinsic motivation to respect ethics guidelines and principles should be sought whereby an open organisational culture and tone from the top lead the way to safeguard integrity. Management is essential in facilitating activities that promote ethical conduct. Because balance is required between a values-based and a rules-based system, an open organisational culture has to be paralleled with relevant enforcement mechanisms (Box 3.6).

It is indispensable to introduce an effective and consistent enforcement mechanism in order to guarantee compliance with the code of ethics and conflict-of-interest policy. It is necessary to define clearly what constitutes a violation of standards. Among OECD member countries, the most utilised sanctions for breaching the conflict-of-interest policy are disciplinary and criminal prosecution, along with the cancellation of affected decisions and contracts.

In Peru the type of sanctions for public officials has not yet been clearly set for different kinds of breaches. Failing to identify and resolve a conflict of interest when it arises, accepting or maintaining a prohibited private interest, not reporting a known conflict of interest of a colleague and failing to resolve or manage conflicts of interest are considered violations to which disciplinary sanctions must be applied (Annex Decree No. 023-2011-PCM, and Chapter 8). However, regarding the provision of information about assets and private interests, sanctions have not yet been regulated. Peru ought to

consider creating a clear guide to the types of conflict-of-interest policy violations and the specific sanctions they engender.

Box 3.6. Setting proportional sanctions for breaching conflict-of-interest policies

The nature of the position is taken into consideration when countries determine appropriate personal consequences for breaching the conflict-of-interest policy. The following list of personal consequences indicates the variety of severe sanctions applied to different categories of officials in Portugal:

- loss of mandate for political and senior public office holders, advisors or technical consultants
- immediate cessation of office and return of all sums which have been received for ministerial advisors
- three-year suspension of senior political duties and senior public duties for senior civil servants
- loss of office in case of managerial staff
- fine and inactivity or suspension for civil servants and contractual staff.

Source: OECD (2004), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264104938-en>.

Asset disclosure forms could be expanded to include information on outside positions (paid and non-paid), gifts and previous employment according to the level of risk associated to the position of public officials.

Mandatory asset and interest disclosure forms can help to determine whether an employee's participation in a decision may be tainted by a personal interest such as real estate, stakeholders in companies, etc. Asset disclosures can also be an effective tool for detecting illicit enrichment. In addition, the oversight mechanism can strengthen public trust in government by offering a tool with which to analyse public officials' assets and relations to ensure the implementation of conflict-of-interest policies (OECD, 2015b).

There is no uniform standard on the scope of information that should be declared across OECD member countries. According to a survey among OECD members in 2014, assets, liabilities, income sources and amount, paid and non-paid outside positions, gifts and previous employment are all types of assets that could be included (OECD, 2015b). The type of monitoring being carried out will determine which information is required. Monitoring conflicts of interest, for example, requires information about interests such as gifts or outside positions which can influence a public official's duties, while the detection of illicit enrichment requires information about all sources of income and assets.

In Peru, Law No. 27482 from 2001 and Law No. 30161 from 2014, but which was not yet active at the moment of this review and is therefore out of scope, regulate the asset declaration of public officials. Similar to most OECD countries, all public officials have to file an asset declaration before assuming their post, annually while in office and at the termination of their duties (OECD, 2012).

The declaration solicits details on:

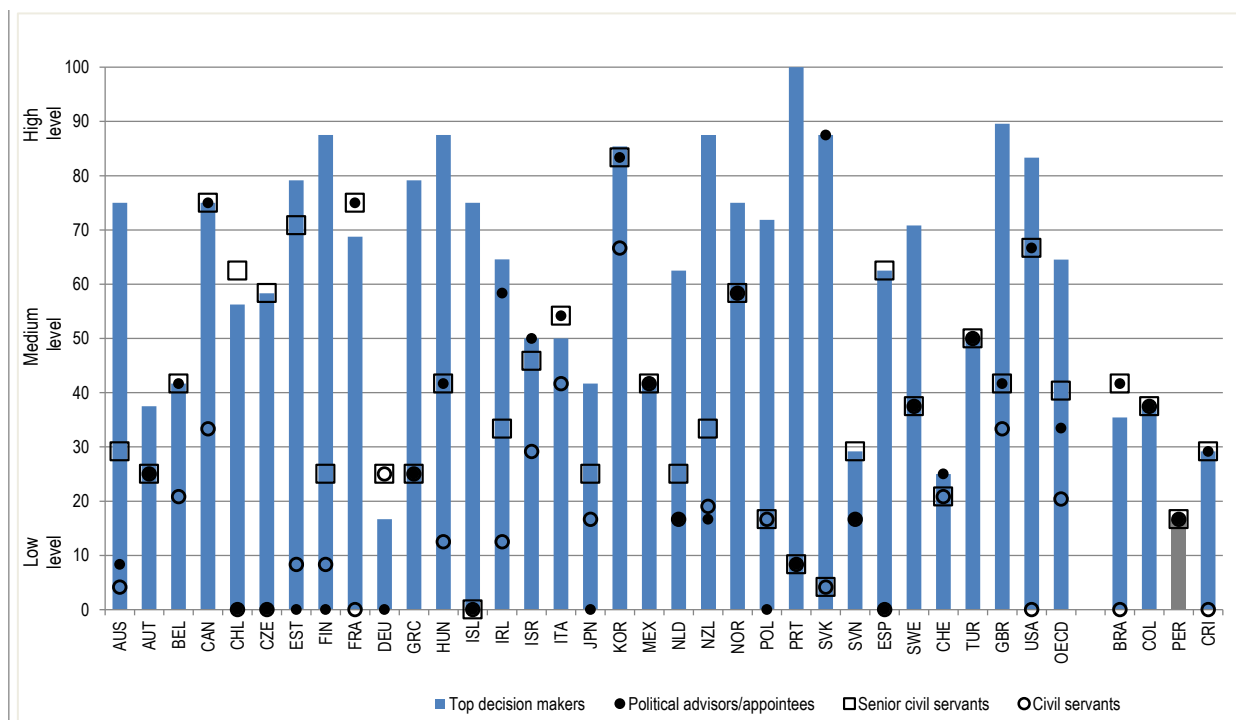
- monthly income (salaries, fees, gratuities, bonuses, income from leased, subleased or transferred property, leased, subleased or transferred furniture, interest arising from placement of capital, royalties, annuities, allowances or similar, sale of real property or personal property, savings, loans, deposits, investments in the financial system and other income)
- real property in Peru and abroad
- personal property in Peru and abroad
- savings, loans, deposits and investments in the financial system, made by the respondent or the spouse
- other assets and income of the respondent or the spouse
- debt and liabilities.

The asset disclosure system in Peru was introduced as a tool to prevent illicit enrichment. This is reflected in the information solicited. As such, beneficial ownership could be included as additional information to be assessed, as in Chile's disclosure system.

While the management of conflict of interest should be the responsibility of public officials, Peru could aim to strengthen the integrity system not only through training and awareness-raising, but also through ensuring effective monitoring and control. Asset disclosure forms could be expanded to include information on outside positions (paid and non-paid), gifts and previous employment similar to the information disclosed in the majority of OECD members (OECD, 2012). To avoid conflict-of-interest situations, a civil servant should not handle matters pertaining to his or her previous or future employer or a partner or competitor immediately after or before taking up a new position. To monitor this, Peru could consider the disclosure of previous employers in the asset declarations. In addition, the asset disclosure system could go beyond the public official and the spouse and could also require that close relatives disclose assets information. This practice has been adopted in Chile, Sweden, Korea and the United States (OECD, 2015b).

The circle of public official required to disclose their assets differs across OECD member countries. In Peru, all public officials need to declare the same type of information. In many OECD countries, the level of disclosure depends on the level of seniority. Disclosure requirements for top-decision makers are the most extensive followed by senior civil servants, political advisors or appointees and civil servants (Figure 3.3). Peru could consider a similar approach, while also considering different levels of disclosure for public officials in at-risk positions, such as tax and customs officials or procurement officials.

Figure 3.3. Level of disclosure and public availability of private interests within the executive branch



Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: Results of the OECD Survey on Management of Conflict of Interest (2014).

Peru could strengthen the CGR's role to audit asset declarations by granting it further powers to cross-check information through agreements with tax and financial units.

Beyond the scope of the declaration, it is essential to establish a system of oversight to provide monitoring and enforcement. The effectiveness of the disclosure regime depends on the system's ability to detect violations and administer sanctions. Regular audits accompanied by a credible threat of sanctions are an effective deterrent against illicit enrichment and maintenance of conflict-of-interest situations (OECD, 2015b). In Peru, failure to file the asset declaration constitutes an administrative disciplinary offence with the possibility of dismissal and ineligibility for any public service position for up to five years according to Law 27482 which regulates the submission of the asset declaration of public officials and servants (*Ley que regula la presentación de declaración jurada de ingresos, bienes y rentas de los funcionarios y servidores públicos del estado*). Former public officials who are no longer employed by the state are not eligible for a public contract or any public position for one year. Criminal sanctions are applicable in cases of providing false information. However, criminal sanctions require a reliable verification mechanism.

According to an OECD survey in 2012, following the collection of disclosure forms, over 80% of OECD countries that have disclosure requirements in place verify that disclosure forms are submitted (Table 3.3). However, less than half perform internal audits of the submitted information for accuracy. No actions are taken following the

collection of the disclosure forms in Ireland, Italy, Switzerland and Turkey. However, in Ireland and Italy, most of the disclosed information is available to the public, allowing citizens to scrutinise the information submitted.

Table 3.3. Actions for disclosing private interests by public officials

	Verification that disclosure form was submitted	Review that all required information was provided	Internal audit of the submitted information for accuracy
Australia	●	○	○
Austria	●	●	●
Belgium	●	●	○
Canada	●	●	○
Chile	●	●	○
Denmark	●	●	○
Estonia	●	⊙	⊙
Finland	●	●	○
France	●	⊙	⊙
Germany	●	●	⊙
Hungary	●	○	○
Iceland	●	○	○
Ireland	○	○	○
Italy	○	○	○
Japan	○	●	●
Korea	●	●	●
Luxembourg	x	x	x
Mexico	●	●	⊙
Netherlands	●	●	○
New Zealand	●	●	⊙
Norway	●	⊙	○
Poland	●	●	⊙
Portugal	●	●	●
Slovak Republic	●	●	○
Slovenia	●	⊙	⊙
Spain	●	●	●
Sweden	●	●	⊙
Switzerland	○	○	○
Turkey	○	○	○
United Kingdom	●	●	●
United States	●	●	○
Egypt	●	●	○
Ukraine	⊙	⊙	○
Total OECD			
● Procedure conducted for all those required to submit disclosure form	25	19	6
⊙ Procedure conducted for only some required to submit disclosure form	0	4	8
○ Procedure not conducted	5	7	16

Source: OECD (2013c) *Government at a Glance 2013*.

In Peru, the declaration is submitted online to the CGR in two formats. The first format contains confidential information and the second format, from which confidential information has been removed, is published in the official newspaper “El Peruano” and the Transparency Portals of the public entities. Recent improvements to the online submission system (Sistema de Registro de Declaraciones Juradas en Línea, or SIDJ)

include features that allow a more structured and standardised declaration of information aimed at reducing form completion errors. In addition, automatic controls now prevent mandatory registration fields from being left blank, and automatic alerts are sent to respondents and to those responsible for monitoring time deadlines for declaration completion.

With the implementation of the new system, each declaration is verified for the purpose of detecting errors such as incomplete information or unsigned declarations, issuing alerts to the entities or the declarant so that corrective actions can be taken. At the same time, the respondents' sense of being controlled increases. Beyond this checking of formal issues, the CGR audits the accuracy of selected declarations. As was explained during the interviews conducted in Peru, the CGR sets a specific focus (e.g. sectors) according to which a certain number of declarations are verified. Nonetheless, the CGR reportedly has no access to some key information, i.e. bank secrecy and tax reserve, due to Constitutional constraints. The verification process therefore mainly consists of ensuring formal compliance, and in case of a possible illicit enrichment, the declarations are passed to the Attorney General's Office (Ministerio Público/Fiscalía de la Nación, or AGO) for verification. The role of the CGR could be strengthened by granting it further powers to cross-check information through agreements with responsible units, such as the Tax Service (Superintendencia Nacional de Aduanas y de Administración Tributaria) or the Banking Commission (Superintendencia del Mercado de Valores), similar to the rights of the Comptroller General in Chile (Box 3.7).

Reportedly, the CGR's audit process is burdened by the fact that all public officials are required to file an asset declaration. Peru could consider reducing the number of officials required to disclose their assets and define coverage according to the risk of potentially compromising situations. The level of disclosure should be proportionate to the public official's seniority. The disclosures could be compared over time and against other sources such as tax information. The results of the audit, overall compliance rate and subsequent sanctions could be made public.

Box 3.7. Conflict of interest and asset declaration system in Chile

In Chile, according to Law N° 20.880, all public servants, including elected officials, Generals of the Armed Forces, directors of state-owned enterprises and board members of state universities have to submit a conflict of interest and asset declaration. The declaration must be submitted upon assuming duties, annually and upon departure from a post.

The declaration has to be submitted electronically via a portal administered by the Comptroller General (Contraloría General de la República de Chile, or CGR Chile). The declaration consists of the following information:

- all professional, union or charitable activities, paid and unpaid
- property in Chile or abroad
- water use rights
- personal property
- income and assets

Box 3.7. Conflict of interest and asset declaration system in Chile *(continued)*

- total liabilities
- assets of spouse or civil partner
- assets of children under their authority
- voluntary declaration of any other sources that might present a conflict of interest.

Once cleared of sensitive information such as private address, the conflict of interest and asset declarations of the most senior public officials are made public. The remainder of the declarations are made available upon request.

In case of violations concerning the duty to submit the declaration (i.e. failure to submit or late submission), the official can be fined or dismissed.

The CGR Chile oversees the timeliness, completeness and accuracy of the content of these statements and has the right to request information from the Superintendency of Banks and Financial Institutions, the Superintendency Securities and Insurance, the Superintendency of Pensions, the Internal Revenue Service, the Land Registry, the Civil Registry or any other entity.

Source: Contraloría General de la República de Chile (CGR), 2016, *Guía sobre la declaración de interferes y patrimonio de la Ley N° 20.880*, www.declaracionjurada.cl/dip/pdf/GUIA_25.08.2016.pdf.

Proposals for action***The institutional framework for public ethics and management of conflict of interest***

- As a long-term objective, Peru could consider developing a single policy framework for promoting integrity and conflict-of-interest management, including a definition of conflict-of-interest; in the meantime, Peru should ensure that the National Manual on Ethical Principles, Duties and Prohibition in the civil service developed by the CAN is effectively mainstreamed and used across the Peruvian public sector by engaging with SERVIR, SGP, and Human resources Offices at organisational levels.
- Peru could clarify the roles and responsibilities of the agencies involved in developing and managing public ethics and conflict-of-interest policies, attributing the lead role to SERVIR to ensure coherence with human resources management policies, training and enforcement; co-ordination with SGP and CGR could be ensured through the platform provided by the CAN.

Providing guidance on ethics and conflict of interest

- To resolve work-related ethical problems, SERVIR could implement guidance, advice and counselling by engaging senior officials responsible for public service ethics and conflict of interest within each organisation.
- SERVIR could develop specific guidelines with practical examples of conflict-of-interest situations and how to identify and resolve them, including guidelines on how to implement codes at the organisational level. Such guidelines could be constructed in a way to ensure ownership and impact on behaviour.

- Specific guidance for at-risk categories of public officials could be developed: such categories include senior civil servants, financial market regulators, auditors, tax officials, political advisors, customs officers, inspectors at the central level of government and the ministerial office.

Raising awareness and providing training

- A cross-departmental public ethics awareness campaign could be implemented as a shared and co-ordinated activity between SERVIR, SGP, and the CAN, including reaching out to private sector, civil society and citizens.
- Training efforts should be consolidated within SERVIR/ENAP as the lead agency in close co-ordination with Human resources Offices, the SGP and the CGR.
- Peru could consider implementing innovative and targeted training on ethics and dealing with arising conflict-of-interest situations.
- To help prioritise and focus training efforts and improve their cost-effectiveness, SERVIR could consider developing a training needs assessment in ethics, paying special attention to the development of senior managers.

Ensuring effective control, monitoring and evaluation

- To ensure effective monitoring and evaluation, SERVIR could design tools and processes, including surveys, reviews of guidance provided on the code, and statistical data on disciplinary actions and disclosures.
- To enable the monitoring and evaluation of the implementation of the Public Administration's Code of Ethics Law, and to publish annual progress reports, clear and transparent indicators should be developed.
- Clear and consistent criteria of violations and sanctions for breaching the code of ethics and conflict-of-interest policy should be established.
- Asset disclosure forms could be expanded to include information on outside positions (paid and non-paid), gifts and previous employment according to the level of risk associated to the position of public officials.
- Peru could strengthen the CGR's role of auditing asset declarations by granting it further powers to cross-check information through agreements with tax and financial units.

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Chapter 4

Implementing whistleblower protection in Peru

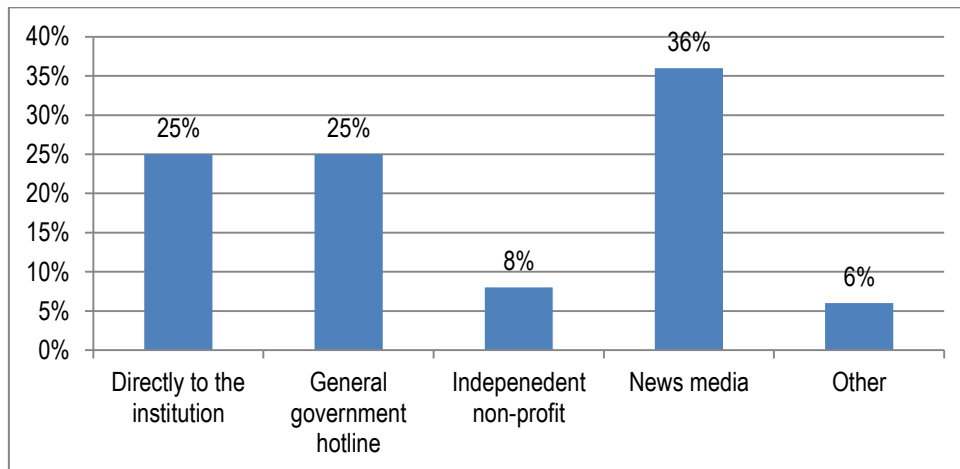
There is a general consensus among policy makers that effective whistleblower protection is needed to promote transparency, promote integrity, and detect misconduct. To this end, Peru, like a number of OECD countries, has enacted a dedicated whistleblower protection law. This chapter provides a review and analysis of Peru's whistleblower protection system and proposes a set of actions for consideration. Although important steps have been made in protecting whistleblowers and safeguarding integrity, the present section recommends that Peru make additional efforts in order to strengthen protections, enhance awareness and systematically review and evaluate its whistleblowing system.

Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Protecting whistleblowers promotes a culture of accountability and integrity and facilitates the reporting of misconduct, fraud and corruption. Employees have access to up-to-date information concerning the practices in force in their workplaces, and are usually the first to recognise wrongdoings (UNODC, 2015). Providing effective protection for whistleblowers supports an open organisational culture where employees are not only aware of how to report but also have confidence in reporting and in the protection and follow up procedures in place.

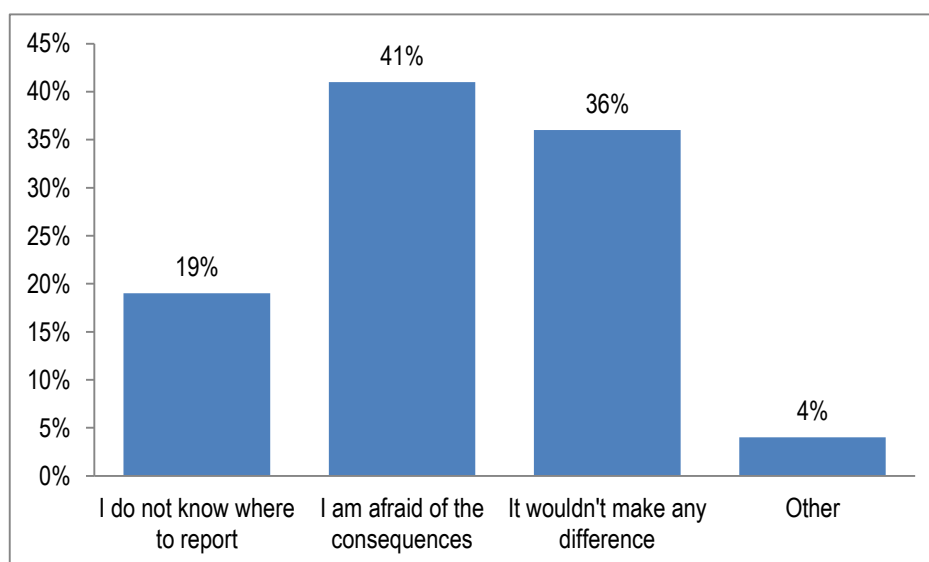
The Global Corruption Barometer yields some interesting insights. When asked whether they would report a wrongdoing, 81% of the respondents said they would, while 19% said they would not. Figure 4.1 below shows that of those who responded “yes”, most would prefer to report to the media; this has been confirmed during interviews conducted in Peru. In turn, Figure 4.2 explores why some citizens would refrain from reporting. Results show that most respondents in this category believe that the report wouldn’t make any difference, or would be afraid of the consequences.

Figure 4.1. **Peruvians willing to report wrongdoings would report primarily to the media**



Source: Data based on Transparency International Global Corruption Barometer (2013a), www.transparency.org/gcb2013.

Figure 4.2. The reasons why Peruvians may choose not to report wrongdoings

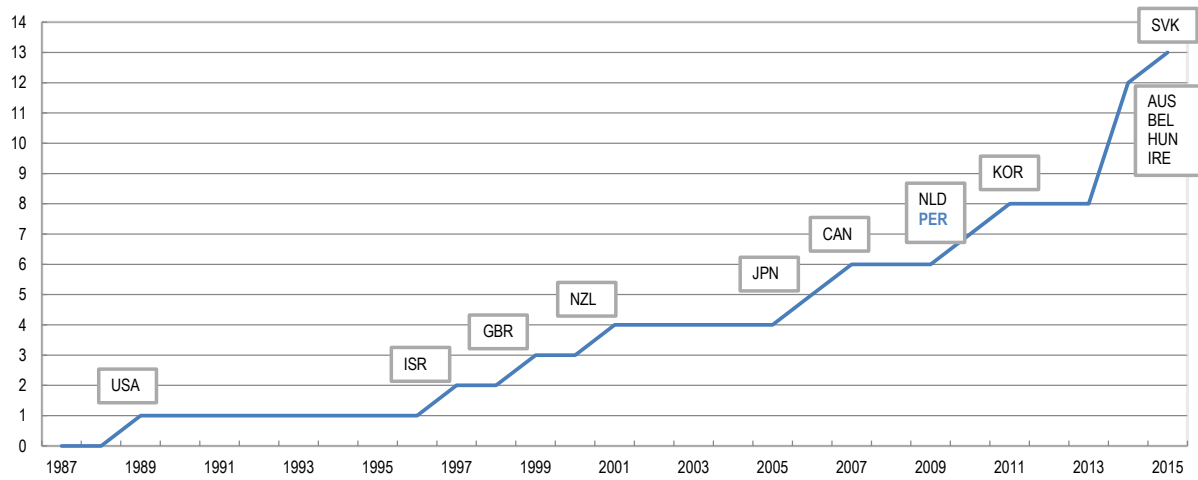


Source: Data based on International Global Corruption Barometer (2013a), www.transparency.org/gcb2013.

Translating whistleblower protection into dedicated law legitimises and structures the mechanisms under which individuals can disclose actual or perceived wrongdoings, protects them against reprisals, and, at the same time, can help encourage them to come forward and report wrongdoing.

Whistleblower protection laws are coming into force in a growing number of OECD countries. In fact, over the last decade, an increasing number of OECD countries have developed a specific legal framework to protect whistleblowers. More OECD countries have put in place dedicated whistleblower protection laws in the past five years than in the previous quarter-century (Figure 4.3). Peru is no exception. Peru has demonstrated efforts to provide protection to whistleblowers by developing a specific legal framework to this end. Whistleblower protection is the ultimate line of defence for safeguarding the public interest.

Figure 4.3. Entry into force of dedicated whistleblower protection laws: A timeline



Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

However, adopting a comprehensive whistleblower protection law is just one part of an effective whistleblowing framework, and it is insufficient on its own to effectively promote a culture of openness and integrity that is supportive of whistleblowers. In addition, periodic awareness-raising campaigns that are specifically tailored to each context are key to improving public perceptions of whistleblowers. Awareness-raising campaigns are most effective at establishing positive perceptions of whistleblowers when they are associated with additional concrete measures such as transparent decision making and clear solutions. Such measures show that senior managers and decision-makers are committed to “walking the talk”.

Peru’s whistleblowing framework is primarily designed to protect public servants. However, it also covers citizens and those under temporary labour regimes, who are protected when they report wrongdoings occurring in a public entity. For the purposes of this review, the focus will be on policies that seek to directly and indirectly protect whistleblowers in the workplace, which include public servants, contractors and suppliers, irrespective of their labour regime.

Despite their dedicated nature and wide-spanning coverage, Peru’s whistleblower policies should not be put in place as a “cardboard shield.” A “cardboard shield” is a flimsy policy that would provide token protection for disclosing a limited set of misconducts to specific predisposed audiences while failing to adequately protect whistleblowers who may have endangered their livelihoods by exposing wrongdoing for the benefit of the organisation or public. Whistleblower laws should be viewed as “metal shields” behind which a whistleblower is kept safe from reprisal (Devine and Walden, 2013). Peru needs to ensure that its whistleblower policies are metal shields that truly facilitate the reporting of wrongdoing and effectively protect against reprisal. To this end, for the reasons examined below, Peru could consider strengthening its protections, ensuring accountability for the recipients of whistleblower allegations, raising awareness, conducting evaluations and increasing the use of metrics.

Strengthening protections

To mitigate the risk of having whistleblowers come forward with information that may not constitute protected disclosures, and to avoid potentially exposing them to unnecessary risks and overburdening the intake system with non-applicable cases, Peru could further clarify the nature of a protected disclosure

One of the main objectives of whistleblower protection systems is to promote and facilitate the reporting of “illegal, unethical or dangerous” activities (Banisar, 2011). Peru’s Law No. 29542, Article 1, stipulates that facts concerning arbitrary or illegal acts, which take place in a public entity and can be investigated and administratively sanctioned, constitute protected disclosures. Arbitrary and illegal facts are further defined in Article 3 to include acts or omissions carried out by public servants contravening laws or threatening the public service. This somewhat vague and general definition may cause confusion and uncertainty on the part of potential whistleblowers and may deter them from coming forward.

The precise classification of elements of disclosure that warrant protection is vital for clarity and public confidence in the process. The legal framework should provide a clear definition of what constitutes a protected disclosure and should specify which acts call for disclosure, including violations to any codes of conduct, regulations or laws; gross waste or mismanagement; abuse of authority; dangers to the public health or safety; or corrupt acts (Devine and Walden, 2013). However, there should be a middle ground between excessive prescription, which requires the discloser to have detailed knowledge of relevant legal provisions, and an overly relaxed, general framework which would allow for unlimited disclosures. Too many disclosures may discourage the internal resolution of issues within an organisation (Banisar, 2011).

The categories of wrongdoing, outlined in Figure 4.4 below and extracted from existing whistleblower protection laws in OECD countries, encompass a broad range of subject matters which warrant the status of protected disclosures. In total, 11 OECD countries implicitly or explicitly consider all the categories of wrongdoing listed as constituting protected disclosures.

Indeed, while the whistleblower systems in some of these countries explicitly outline the disclosures that are considered protected, others take an umbrella approach, providing protection for these disclosures more generally. Peru’s system delineated by Law No. 29542 falls under the latter category because it provides general protection for facts concerning arbitrary or illegal acts. However, such a broad scope may provide would-be whistleblowers with an inaccurate sense of confidence that their disclosure is protected in practice.

There are concerns that disclosures may not be afforded protection in spite of the formal comprehensive scope of protection provided for by Law No. 29542. Such concerns seem to be confirmed by the responses to the 2014 OECD Survey on Whistleblower Protection, where Peru answered that protected disclosures are currently limited to the following categories:

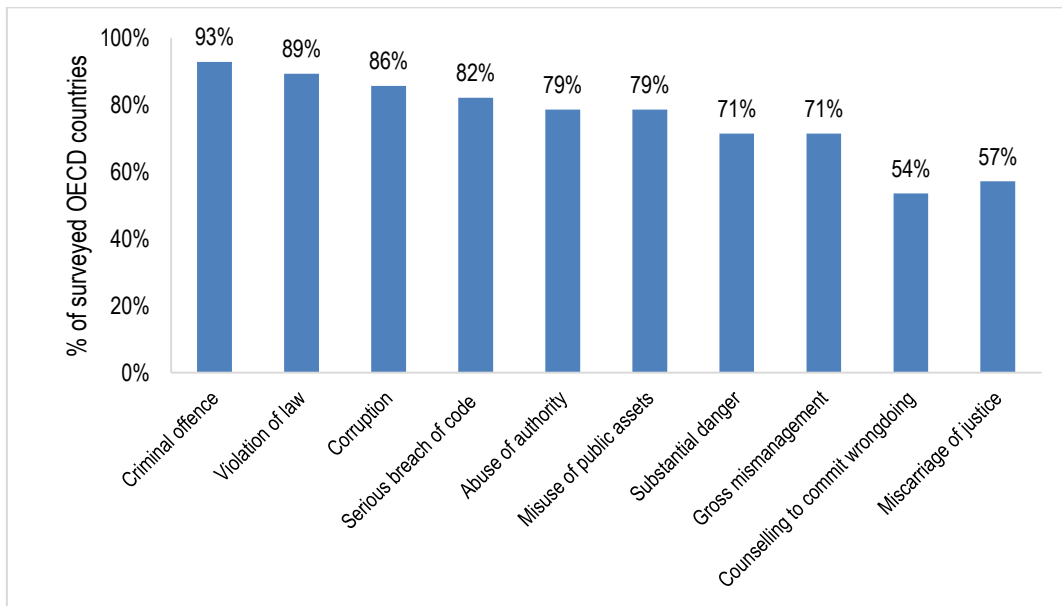
- a violation of law, rule, or regulation
- a serious breach of a code of conduct
- a miscarriage of justice has occurred is occurring or is likely to occur

- a gross mismanagement in the public sector
- a misuse of public funds or a public asset
- abuse of authority.

At the same time, the survey responses made it clear that Peru does not provide protection for disclosures pertaining to:

- a criminal offence that has been committed, is being committed or is likely to be committed
- an act or omission that creates a substantial and specific danger to the life, health or safety of persons or to the environment, other than a danger that is inherent in the performance of the duties of the functions of a public servant
- types of wrongdoing that fall under the term “corruption”, as defined under domestic law(s)
- knowingly directing or counselling a person to commit a wrongdoing.

Figure 4.4. **Categories of wrongdoing that could constitute a protected disclosure in OECD countries and Peru**



Note: Respondents were asked the following question: “Which of the following wrongdoings constitutes a protected disclosure?” The wrongdoings listed as possible answer choices in the 2014 OECD Survey on Public Sector Whistleblower Protection were: A violation of law, rule, or regulation; A serious breach of a code of conduct; A gross mismanagement in the public sector; A misuse of public funds or a public asset; Abuse of authority; A criminal offence has been committed, is being committed or is likely to be committed; An act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties of the functions of a public servant; Types of wrongdoing that fall under the term “corruption”, as defined under domestic law(s); Knowingly directing or counselling a person to commit a wrongdoing (as set out above). Twenty-seven OECD countries responded to this survey question.

Source: OECD (2014), “OECD Survey on managing Conflict of Interest in the executive branch and Whistleblower Protection” (survey), OECD, Paris.

To mitigate the eventuality of having whistleblowers come forward with information that may not be considered as a protected disclosure, potentially exposing them to unnecessary risks and overburdening the intake system with non-applicable cases, Peru may wish to consider a more detailed and balanced approach similar to the system in place in the United Kingdom. The UK legislation provides a balanced approach with a detailed definition including exceptions (Box 4.1).

Box 4.1. A detailed definition of protected disclosures in the United Kingdom

Part IV - A: Protected disclosures

43A: Meaning of “protected disclosure”

In this Act a “protected disclosure” means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of Sections 43C to 43H.

43B: Disclosures qualifying for protection

(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following:

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part “the relevant failure”, in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

Source: UK Public Disclosure Act of 1998, adding Part IV - A to Employment Rights Act of 1996.

Peru may consider clarifying that disclosures that do not lead to a full investigation or to prosecution are still eligible for legal protection.

To facilitate the reporting of what whistleblowers interpret as misconduct harming the public interest, whistleblowers must be able to assess with high certainty whether they will be eligible for legal protection. Basing the eligibility for such protection on the decision to investigate disclosures and subsequently prosecute related offences decreases certainty surrounding legal protections against reprisals. This is because such decisions are often taken on the basis of considerations that remain inaccessible to the public. Indeed, it may be more effective, in terms of detecting misconduct, to implement facilitation measures through which whistleblowers may report relevant facts that *could* lead to an investigation or prosecution. Whistleblowers will be more likely to report relevant facts if they know they will be protected regardless of the decision to investigate or prosecute.

However, while Peru’s Whistleblower Protection Act Law No. 29542 includes a reference to how its provisions modified Law 27378, which establishes protection for those disclosing information pertaining to organised crime, it does not, in and of itself, establish protection measures for whistleblowers when they report acts of corruption that might not be recognised as crimes but could be subject to administrative investigation. Moreover, the eligibility for legal protection provided by Section 7 of the Law No. 29542 appears to be subject to the qualification of the disclosure as related to an act or omission that is arbitrary or illegal, a threshold that may not be reached without a full investigation and prosecution. Therefore, Peru may consider clarifying that disclosures not leading to a full investigation or to prosecution, either criminal or administrative, may still be protected, unless the person making the disclosure knew the disclosure was false or misleading.

To avoid prospective professional marginalisation of whistleblowers, Peru could undertake awareness-raising campaigns, allow for fair compensation to whistleblowers suffering prospective losses of revenue, and ensure fair recruitment of civil servants based on merit and on commitment to promoting the public interest

While Peru’s Law No. 29542 provides broad coverage, including protecting former public servants, it should be noted that protection could be extended even further to whistleblowers’ prospective losses of revenue. Whistleblowers who have been retaliated against may suffer from stigma arising from publicised disputes with their former employer. They may remain unemployed for long periods of time as a result of being ostracised from their professional community and network. Whistleblowers are sometimes effectively blacklisted from future employment within their field of work.

The United States’ framework for whistleblower protection provides an important example. The United States protects prospective job applicants at the Federal level as well as current and former Federal employees. This illustrates the importance of a more extensive and inclusive dimension to the “no loophole” approach; which could also extend protection to a wider range of persons, including job applicants, the unemployed, persons who have been blacklisted and family members (Chêne, 2009). Moreover, appropriate remedies for prospective losses of revenue due to publicised labour disputes with a former employer may lead to a fairer compensation of whistleblowers, while meaningful awareness-raising campaigns about the essential role played by

whistleblowers will contribute to a more positive perception of such individuals on the labour market.

The threat of reprisal could be included as an offence in Peruvian law

Peru's Law No. 29542 provides protection to whistleblowers from being unfairly dismissed by their employer as a result of their disclosure of misconduct. The law requests that the Comptroller General adopt measures that will allow whistleblowers to exercise remedies under Peru's Labour Law to enforce these prohibitions. To complement this prohibition, Peru may consider including the exercise of reprisals against whistleblowers as well as the threat of such reprisals as criminal offences in Peru's Criminal Code. The threat of criminal prosecution may help to deter wrongdoers from intimidating whistleblowers or enacting reprisals against them, and will reinforce the message that reprisals against whistleblowers will not be tolerated.

In Australia's whistleblower protection system, it is an offence to take a reprisal or to threaten reprisal against a person having made a public interest disclosure. This also applies when individuals come forward with a suspected public interest disclosure, as per Part 2 – Subdivision B (13), of the Public Interest Disclosure Act 2013. In Canada, Section 425.1 of the Canadian Criminal Code also criminalises reprisals against whistleblowers, or the threat of reprisal, under certain conditions.

To ensure that potential whistleblowers can choose where they would like to submit their disclosures, Peru could provide alternative formalised channels through which individuals may disclose information; internal and external options could operate concurrently

In Peru, the Comptroller General's Office (Contraloría de la República, or CGR) is the authority competent to receive and evaluate disclosures. The CGR has established a reporting system, the National Processing Complaints System (Sistema Nacional de Atención a Denuncias, or SINAD), which allows citizens to report corruption cases in the public administration (OECD, 2014). Disclosures can be submitted in person to the CGR or through the SINAD website. The CGR's regional offices follow this approach as well. While it is helpful to provide potential whistleblowers with a specific disclosure channel, either through the central CGR or the regions, Peru could consider adding additional channels through which protected disclosures can be made. These could include internal disclosures made to a Senior Officer for Disclosure, external disclosures to a designated body (CGR) and external disclosures to the public or to the media.

It has been recommended that the individual circumstances of each case should determine the most appropriate channel of disclosure (Council of Europe, 2014). As such, a variety of channels need to be available to match the circumstances. Whistleblowers could benefit from having a choice of channels through which they may disclose their information. As outlined by the UNODC Resource Guide on Good Practices in the Protection of Reporting Persons and the UNODC Technical Guide to the United Nations Convention against Corruption, channels of reporting should not be limited to a choice of either reporting internally within the organisation or directly to external authorities. Instead, both levels should operate concurrently so that potential whistleblowers may choose where they would like to submit their disclosures. The individuals who decide to report internally should also be able to submit their disclosure to an external body if the internal disclosure did not produce the desired effects in a reasonable timeframe. In addition, potential whistleblowers should have direct access to external review agencies,

thus skipping the internal element of the disclosure process if they fear and have reason to expect reprimand by their organisation's internal mechanism. Despite the assigned paths of disclosure, providing whistleblowers with the chance to decide to whom to disclose and within which parameters enables them to do so more willingly and with greater ease.

Internal reporting is a channel that whistleblowers tend to explore first. This is true across borders: "people in the UK, Turkey and South Korea would all prefer to blow the whistle through a formal internal procedure" (Transparency International, 2009). However, while employers should react in a supportive and accountable manner by executing the letter of the law or abiding by organisational policies, the reality is that some do not. In these scenarios, often the whistleblower fears their employer's indifference or feels they must disclose externally in order to ensure a timely and well-received response that will effect change and put an end to the wrongdoing. Opting for external disclosures as the first port of call may be indicative of a closed organisational culture, where management is not responsible or willing to protect its employees (ODAC, 2004).

Employees who come across wrongdoing should be able to disclose this information first internally, without fear of reprisal and as an alternative to the CGR channel. An unimpeded path, free of reprimand and retribution, can pave the way for an open organisational culture between the discloser and management. This tone from the top should be set by management and permeate the entire organisation. In order to provide a variety of disclosure channels and offer whistleblowers the option of disclosing internally, Peru could consider designating Senior Officers for Disclosure within the management of each Organisation. Organisations could operate on the premise that employees who come forward to management with disclosures of wrongdoing, questions and advice would receive support and encouragement from management. Management would follow the measures in place to protect the disclosing employees and would investigate the allegations accordingly. By remaining receptive to disclosures and encouraging disclosure as a method of detection, management could mitigate the reputational damage that might otherwise have resulted from an external disclosure.

In Canada, employees have three different options in terms of disclosing misconduct. Their first option is to make protected disclosures to their supervisors. In addition, they can disclose misconduct to their organisation's designated Senior Officer for Disclosure who receives, records and reviews disclosures of wrongdoing, leads investigations of disclosures, and makes recommendations to the chief executive regarding corrective measures to be taken in relation to the wrongdoing in question. Senior Officers for Disclosure also have key leadership roles in providing information and advice to employees and supervisors on the act (Box 4.2).

Finally, if employees prefer not to use internal reporting channels, they may disclose externally to the independent Public Sector Integrity Commissioner, who protects whistleblower identity and acts upon allegations of misconduct made by federal civil servants.

Box 4.2. Options for making a protected disclosure of wrongdoing in Canada

What are your options for making a protected disclosure of wrongdoing? Know your options and ask yourself:

- Who do I feel comfortable approaching if I want to make a disclosure?
- Does my organisation have internal policies on how to make an internal disclosure?

My Supervisor / Manager	My Senior Officer	The Office of the Public Sector Integrity Commissioner
I can go directly to my supervisor/ manager to make an internal disclosure.	I can find the coordinates of my Senior Officer on my organization's intranet or I can consult the Treasury Board list of Senior Officers (www.tbs-sct.gc.ca). If my organization has not identified a Senior Officer, I can make a disclosure to the Office of the Public Sector Integrity Commissioner.	I can go directly to the Office at any time. I do not have to exhaust internal mechanisms before making a disclosure to the Office.

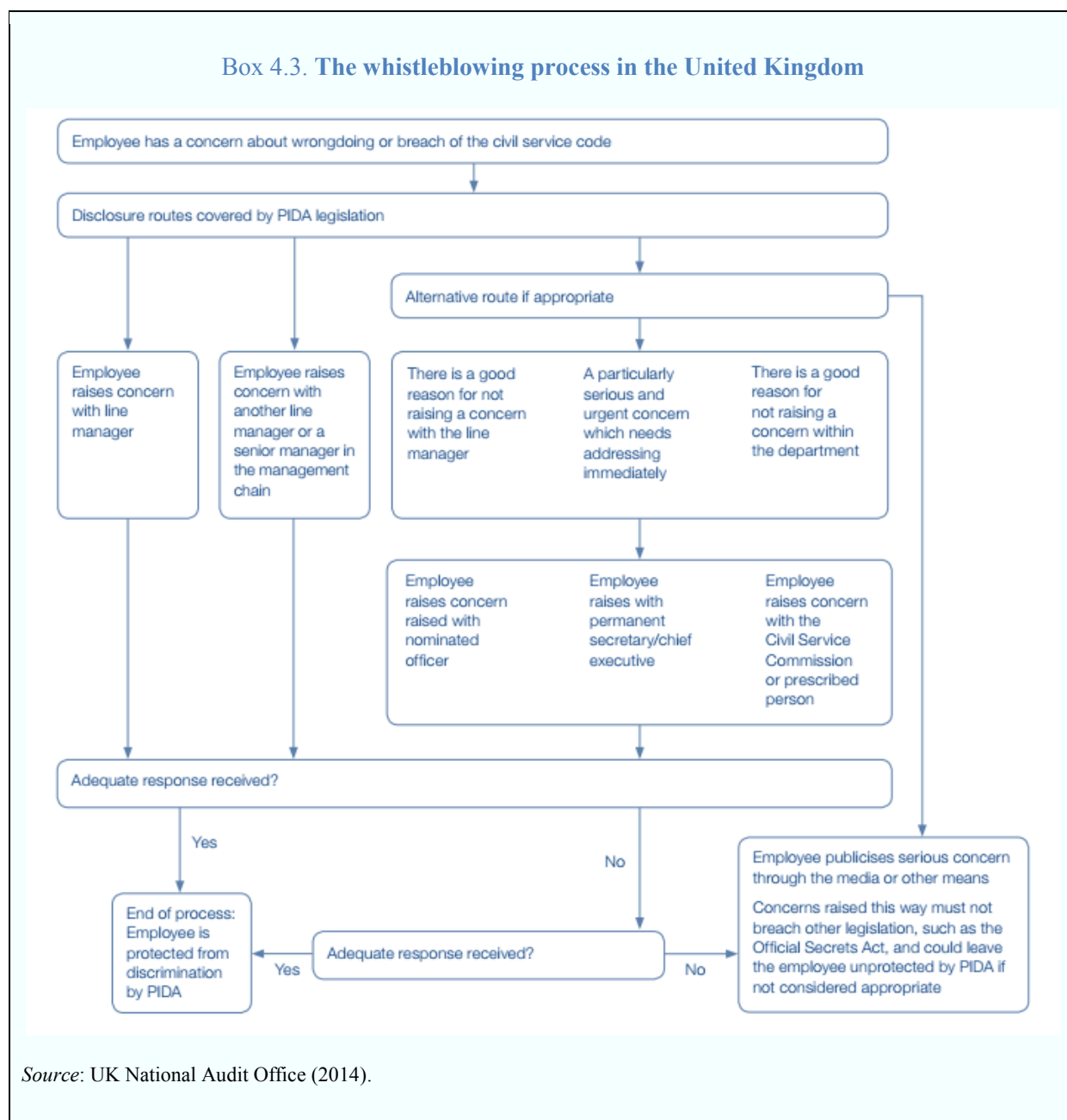
Source: Office of the Public Sector Integrity Commissioner of Canada, <http://psic-ispcc.gc.ca/eng/resources/decision-making-guide>.

Like some OECD countries, Peru could also consider following a tiered approach, whereby each successive tier requires a higher threshold of conditions to satisfy for the whistleblower to be protected. For example, the United Kingdom applies a “tiered” approach whereby disclosures may be made to one of the following “tiers” of persons:

- Tier 1. Internal disclosures to employers or Ministers of the Crown
- Tier 2. Regulatory disclosures to prescribed bodies (e.g. the Financial Services Authority or Inland Revenue)
- Tier 3. Wider disclosures to the police, media, Members of Parliament and non-prescribed regulators (Box 4.3).

Whether Peru considers administering disclosures through a tiered system or not, channels of disclosure need to be clearly demarcated and must facilitate disclosure. Whistleblowers may lack confidence in the system or may not be comfortable or persistent in coming forward. The availability of channels is not sufficient to render a confusing process clear. Instead, this process should be accompanied by an explanation of the steps to follow and the processes to abide by in order to ensure that whistleblowers are not only well informed about which parties to disclose to, but that also they know the potential repercussions of doing so. Repercussions can depend on the party that is disclosed to and the subject matter at hand.

Box 4.3. The whistleblowing process in the United Kingdom



Source: UK National Audit Office (2014).

Increasing accountability of recipients of disclosure by whistleblowers

To promote consistency, avoid bias and optimise the use of internal resources, Peru could establish criteria to guide investigators as to whether whistleblower allegations warrant a full investigation

To help manage the volume of disclosures made through whistleblower systems, to effectively allocate limited analysis and investigation resources and to increase consistency and transparency in decision making, some OECD member countries have

established specific criteria that guide the exercise of their discretion as to whether a formal investigation should be launched following allegations of misconduct.

In the United States, for example, protected disclosures include gross mismanagement and gross waste of funds. To qualify as “gross” there must be something more than a debatable difference in opinion; the agency’s ability to accomplish its mission must be part of the discussion. Similarly, the term “gross mismanagement” is included in the current system in Canada under paragraph 8(c) of the Public Servants Disclosure Protection Act.

Though they are not defined explicitly in the Public Servants Disclosure Protection Act, the elements that the Office of the Public Sector Integrity Commissioner of Canada considers when investigating an allegation of gross mismanagement are:

- matters of significant importance
- serious errors that are not debatable among reasonable people
- more than *de minimis* wrongdoing or negligence
- management action or inaction that create a substantial risk of significant adverse impact on the ability of an organisation, office or unit to carry out its mandate
- the deliberate nature of the wrongdoing
- the systemic nature of the wrongdoing.

Similarly, New Zealand’s system outlines the term “serious wrongdoing” in Section 3(1) of its Protected Disclosures Act 2000. It refers to the term as including the following:

- an unlawful, corrupt, or irregular use of funds or resources of a public sector organisation
- an act, omission, or course of conduct that constitutes a serious risk to public health or public safety or the environment
- an act, omission, or course of conduct that constitutes a serious risk to the maintenance of law, including the prevention, investigation, and detection of offences and the right to a fair trial
- an act, omission, or course of conduct that constitutes an offence
- an act, omission, or course of conduct by a public official that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement,—whether the wrongdoing occurs before or after the commencement of this Act.

For purposes of clarity and legal certainty, criteria upon which a decision to launch an investigation is based should be explicitly and precisely enumerated in the legislation. However, in Peru’s whistleblower protection legislation, the generic nature of the subject matter considered to constitute sufficient ground to launch an investigation does not provide for clarity of thresholds for consideration. Peru should therefore establish more concrete guidance in policy or legislation that would provide decision-making guidance with respect to launching investigations.

In order to keep whistleblowers informed with respect to the outcomes of their disclosure and to promote accountability, Peru could implement follow-up mechanisms and establish communication procedures

Allowing whistleblowers to follow up on the outcome of their disclosure of misconduct promotes the accountability of recipients of whistleblower allegations, who are often the internal audit, compliance, legal or investigation divisions of an organisation. The ability to follow up on disclosures may also lead to better communication between whistleblowers and disclosure recipients in cases of unclear or insufficient information.

For instance, Mexico’s recent Ley General de Responsabilidades Administrativas, which was passed on 18 July 2016 and will come into force on 19 July 2017, elaborates a mechanism through which whistleblowers are kept informed of the qualification of the misconduct they reported. Decisions made with regard to the disclosure must be based on transparent motives. Moreover, such decisions may be appealed, and additional information may be brought forward by whistleblowers.

Raising awareness

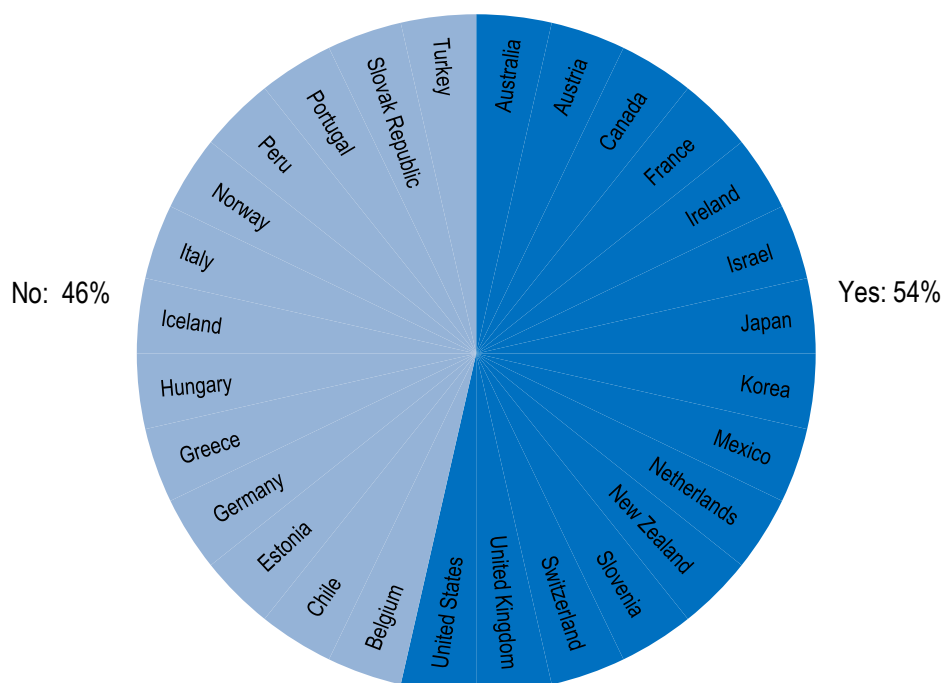
To implement the law effectively, Peru could consider promoting a broad communication strategy and undertaking increased awareness efforts through various channels

An open organisational culture and whistleblower protection legislation should be supported by effective awareness-raising, communication, training and evaluation efforts. Such efforts begin with making public and private sector employees aware of their rights and obligations when exposing wrongdoing as outlined in the 1998 Recommendation on Improving Ethical Conduct in the Public Service. Principle 4 of the Recommendation stresses that “public servants need to know what protection will be available to them in cases of exposing wrongdoing.” More importantly, employees and the public need to understand how whistleblowers contribute to public interest by shedding light on misconduct that harms the effective management and delivery of public services and may ultimately jeopardise the fairness of public service as a whole. An organisational culture of openness is key to reinforcing incentives and protection measures for whistleblowers. Finally, comprehensive awareness-raising campaigns will disabuse persons of the notion that blowing the whistle is a sign of a lack of loyalty to the organisation. Well-targeted campaigns make clear that civil servants’ loyalty belongs first and foremost to the public interest, and not to their managers.

To this end, Peru has followed in the steps of some OECD countries in adopting express provisions within its laws to ensure that awareness measures are in place, as per Article 11 of Law No. 29542. However, such measures do not seem to be in place in practice. Peruvian public servants’ awareness of the law and the SINAD remains minimal.

A number of OECD countries have undertaken broad awareness efforts. However, only 15 have activities such as manager training that aim to change cultural perceptions and public attitude towards whistleblowing (Figure 4.5). In the case of Germany and the Slovak Republic, whistleblower protection is integrated in training on the overarching topic of corruption prevention.

Figure 4.5. Peru indicated that it does not provide activities to raise awareness of whistleblower protection



Notes: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Respondents were asked the following question: “Have any awareness-raising activities, such as manager training, with a view to changing cultural perceptions and public attitude towards whistleblowing been conducted in your country?”

Source: OECD (2014), “OECD Survey on managing Conflict of Interest in the executive branch and Whistleblower Protection” (survey), OECD, Paris.

The United Kingdom’s Civil Service Commission suggests including a statement in staff manuals to assure them that it is safe to raise concerns (Box 4.4). Peru may consider taking advantage of the publicity that the new Civil Service Regime has garnered to facilitate whistleblower protection and raise awareness of these mechanisms through the National Civil Service Authority’s (Autoridad Nacional del Servicio Civil, or SERVIR) materials and initiatives.

Box 4.4. Example of a statement to staff reassuring them to raise concern

“We encourage everyone who works here to raise any concerns they have. We encourage ‘whistleblowing’ within the organisation to help us put things right if they are going wrong. If you think something is wrong please tell us and give us a chance to properly investigate and consider your concerns. We encourage you to raise concerns and will ensure that you do not suffer a detriment for doing so.”

Source: UK Civil Service Commission (2011), *Whistleblowing and the Civil Service Code*, <http://civilservicecommission.independent.gov.uk/wp-content/uploads/2014/02/Whistleblowing-and-the-Civil-Service-Code.pdf>.

By introducing and implementing such measures, Peru can facilitate awareness of whistleblowing and whistleblower protection. Awareness will not only enhance understanding of these mechanisms, but will also serve as a mechanism to improve the often negative cultural connotations of the term “whistleblower”. Communicating the importance of whistleblowing from, for example, a public health and safety perspective can help improve the public view of whistleblowers as important safeguards of public interest. In the United Kingdom, the cultural connotations of the term “whistleblower” have changed considerably (Box 4.5).

Box 4.5. Change of cultural connotations of “whistleblower” and “whistleblowing”: The case of the United Kingdom

In the United Kingdom, a research project commissioned by Public Concern at Work from Cardiff University examined national newspaper reporting on whistleblowing and whistleblowers covering the period from 1st January 1997 to 31st December 2009. This includes the period immediately before the introduction of the Public Interest Disclosure Act and tracks how the culture has changed since then. The study found that whistleblowers were overwhelmingly represented in a positive light in the media. Over half (54%) of the newspaper stories represented whistleblowers in a positive light, with only 5% of stories being negative. The remainder (41%) were neutral. Similarly, a study by YouGov found that 72% of workers view the term ‘whistleblowers’ as neutral or positive.

Sources: PCaW (2010), *Where’s whistleblowing now? 10 years of legal protection for whistleblowers*, Public Concern at Work, London, p. 17, www.pcaw.org.uk/files/PIDA_10year_Final_PDF.pdf. YouGov (2013), *YouGov/PCAW Survey Results: Whistleblowing work concerns*, YouGov, London, p.8, <https://yougov.co.uk/publicopinion/archive/6888/>.

In 2013, the High-level Commission against Corruption (Comisión de Alto Nivel Anticorrupción, or CAN) launched the campaign “*Yo denuncio la corrupción*” (“I report corruption”). In parallel, a Whistleblower Manual was developed. The manual contains clear and accessible information on the specific mechanisms for administrative complaints in government agencies. In addition, a Whistleblower Counseling Center was implemented to facilitate communication with whistleblowers via e-mail, phone or mail. As part of this initiative, individuals may call a free hotline. Leaflets containing basic information and stickers and pins were also disseminated and an advertisement for the campaign was produced. More recently, training talks were held by the CGR at different public entities in 2015 and 2016 in order to publicise the scope of Law No. 29542. The Whistleblower Protection Act with further information is available on the CGR’s website (www.contraloria.gob.pe).

In order to boost awareness of the Whistleblower Protection Act and the mechanisms available in practice, Peru could consider designing a strategic plan to communicate whistleblowing activity and information. This would be similar to the practice of Korea, whose the government has implemented national strategies to raise public awareness of the benefits of whistleblowing and to strengthen protection for whistleblowers (2014 OECD Survey on Whistleblower Protection). At the same time, Peru could tailor its outreach efforts to those of the United States Office of Special Counsel (OSC). Specifically, the OSC’s Certification Programme, developed under Section 2302(c) of the OSC, has made efforts to promote outreach, investigations and training as the three core methods for raising awareness. The OSC offers training to federal agencies and non-

federal organisations in each of the areas within its jurisdiction, including reprisal for whistleblowing. To ensure that federal employees understand their whistleblower rights and how to make protected disclosures, agencies must complete OSC’s programme to certify compliance with the Whistleblower Protection Act’s notification requirements.

In addition, the No Fear Act in the United States requires that agencies provide annual notices and a biannual training to federal employees regarding their rights under employment discrimination and whistleblower laws. Moreover, Title 5 of the United States Code renders the head of each agency responsible for the prevention of prohibited personnel practices, for compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring (in consultation with the OSC) that agency employees are informed of the rights and remedies available to them, including how to make a lawful disclosure of information that is specifically required by law or Executive Order to be kept classified (Box 4.6).

Box 4.6. The United States’ approach to increasing awareness through the Whistleblower Protection Enhancement Act

Under 5 U.S.C. § 2302(c) of the Whistleblower Protection Enhancement Act stipulates that “the head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring (...) that agency employees are informed of the rights and remedies available to them under (...), including how to make a lawful disclosure of information that is specifically required by law or Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs to the Special Counsel, the Inspector General of an agency, Congress, or other agency employee designated to receive such disclosures.”

Furthermore, Section 117 of the Act, “designates a Whistleblower Protection Ombudsman who shall educate agency employees:

- 1) about prohibitions on retaliation for protected disclosures; and
- 2) who have made or are contemplating making a protected disclosure about the rights and remedies against retaliation for protected disclosures.”

Source: American Bar Association, Section of Labor and Employment Law, “Congress Strengthens Whistleblower Protections for Federal Employees,” Issue: November-December 2012.

Similarly, in Japan, the Consumer Affairs Agency (CAA) holds nationwide explanatory meetings and symposiums for business operators, officials, and employees to disseminate knowledge of the Japanese WPA. Additionally, in order to enhance the knowledge of officials who are in charge of dealing with whistleblowing at national and local governments, the CAA organises nation-wide seminars and emphasises the necessity and importance of whistleblowing, and reinforces knowledge of the WPA and the guidelines.

In Korea, the government has implemented national strategies to raise public awareness of the benefits of whistleblowing and to strengthen protection for whistleblowers. For example, the Korean Anti-Corruption and Civil Rights Commission introduced and promoted public interest whistleblower protection systems to CEOs of private companies, conducted promotional activities using story-telling methods through

internet cartoons, and displayed and aired advertisements through TV and subway billboards to promote whistleblower protection systems.

Since Peru's CGR website already provides annual statistics and aggregated data on a series of complaints received by government level or institution or by type of complainant (citizen, public official, etc.) Peru could consider using this information to raise awareness. For example, it could publish an annual report featuring anonymised information on the outcome of cases received and the average time it took to process them.

By using open channels of communication and support, and emphasising civil servants' primary obligation to be loyal to the public interest, employers and managers can raise employee confidence about discussing concerns and alleged wrongdoings, thereby creating a workplace guided by the tenets of integrity. Informing employees about their rights and responsibilities and making them aware of the resources available to them is crucial for creating an environment of trust, professionalism and collegiality. Clear and effective communication can give employees the confidence they need to voice their concerns, and can highlight the importance not only of coming forward about suspected wrongdoing, but also of defending the tenets of integrity in both the workplace and society.

Peru can engage with civil society as an effective way of applying awareness-raising measures.

In addition to awareness-raising conducted by governments within OECD countries, a number of NGOs are active in the field. For example, in the United Kingdom, Public Concern at Work provides independent and confidential advice to workers who are unsure whether or how to raise a public interest concern. Furthermore, they conduct policy and public education work and offer training and consultancy to organisations. In the United States, the Government Accountability Project, primarily an organisation of lawyers, defends whistleblowers against retaliation and actively promotes government and corporate accountability. More globally, Transparency International conducts advocacy, public awareness and research activities in all regions of the world. It has established Advocacy and Legal Advice Centres in around 50 countries through which they offer advice to whistleblowers and work to make sure that disclosures are addressed by appropriate authorities. The Whistleblowing International Network, co-founded by PCaW and GAP, is another example of a cross-country initiative.

Raising awareness about the processes and safeguards in place to report wrongdoing and communicating them effectively within an organisation are important elements, necessary for the workplace culture to evolve into an open and supportive environment. Training management, regular staff meetings, clearly outlines of the steps to follow when disclosing wrongdoing and promotional materials, public campaigns and staff guidelines can assure employees of the measures in place to protect them from reprisal. Furthermore, evaluating the processes in place within whistleblower systems enables necessary modifications, which may help streamline and facilitate these procedures to better promote and uphold the tenets of integrity.

Conducting evaluations and increasing the use of metrics

To evaluate its purpose, implementation and effectiveness, Peru could consider reviewing its whistleblower protection legislation

Five years since the whistleblower protection law No. 29542 was enacted, it is now time for Peru to consider reviewing whether the mechanisms in place are meeting the purposes for which they were introduced. Peru may consider regularly reviewing its whistleblower protection system and the effectiveness of its implementation. If necessary, the legislation, upon which the system is based, can then be amended to reflect the findings of the evaluation. Provisions regarding the review of effectiveness, enforcement and impact of whistleblower protection laws have been introduced by a number of OECD countries such as Australia, Canada, Japan, and the Netherlands. The Japanese Whistleblower Protection Act specifically outlines that the Government must take the necessary measures based on the findings of the review. In both Canada and Australia, the review must be presented before the House of Commons or Parliament.

The effectiveness of Peru’s whistleblowing system could be monitored and evaluated regularly by systematically collecting data and information

In its data collection, Peru could gather information on 1) the number and types of cases received; 2) the entities receiving most disclosures; 3) the outcomes of cases (i.e. if the case was dismissed, accepted, investigated, and validated, and on what grounds); 4) whether the misconduct came to an end as a result of the disclosure; 5) whether the organisation’s policies were changed as a result of the disclosure if gaps were identified; 6) whether sanctions were exercised against wrongdoers; 7) the scope, frequency and target audience of awareness-raising mechanisms; and 8) the time it takes to process cases (Transparency International, 2013b; Apaza and Chang, 2011; and Miceli and Near, 1992).

This data, in particular information on the outcomes of cases, can be used in the review of a country’s whistleblowing framework in order to assess its impact on public sector organisations. Furthermore, public sector organisations can distribute surveys to review staff awareness, trust and confidence in whistleblowing mechanisms. In the United States, for example, the Merit Systems Protection Board has gathered information by conducting surveys with employees about their experiences as whistleblowers (Banisar, 2011). Such efforts play a key role in assessing the progress - or lack thereof - in implementing effective whistleblower protection systems.

To measure the effectiveness of protective measures for whistleblowers, additional data could be collected on cases where whistleblowers claimed experiencing reprisals. Such data could include by whom and how reprisals were exercised, whether and how whistleblowers were compensated, the grounds for these decisions, the time it takes to compensate whistleblowers, and whether they were employed during the judicial process.

Peru may wish to consider integrating the information and data gathered by the CGR with that of the Ministry of Justice (MINJUS), and SERVIR, so as to create a single anti-corruption open data portal to increase transparency and knowledge-sharing; as suggested in Chapter 2, this portal could be hosted by the CAN, in addition to the CGR, MINJUS and SERVIR, which would make available their own data.

Proposals for action

Over the years, focus on whistleblower protection internationally has expanded from initial efforts on enhancing integrity to an overarching view that at the very heart of integrity lie effective mechanisms to disclose wrongdoing without fear of reprisals. Countries are more and more responsive to the idea that protecting whistleblowers encourages the reporting of misconduct, fraud and corruption wherever it occurs, and that a culture of accountability and integrity may thus be promoted. By enacting a dedicated law on whistleblower protection, Peru has made important progress; however, if these measures are not applied in practice and if awareness campaigns remain inexistent or ineffective, then this law will never be more than words on paper.

Openness and integrity must be upheld at the core of Peru's organisations to encourage employees to express their concerns without fear of persecution. Legitimising and structuring the mechanisms under which public officials can disclose actual or perceived wrongdoings is essential to this approach. An organisational culture based on openness, integrity and loyalty to the public interest leads to more effective detection of wrongdoing and contributes to whistleblower protection by decreasing the opportunity for exercising reprisals. To ensure that Peru's whistleblower system is effective in facilitating the reporting of wrongdoing and protecting against reprisals, the following measures could be considered: strengthening protections, increasing the accountability of the recipients of whistleblower allegations, raising awareness, conducting evaluations and increasing the use of metrics.

Strengthening protections

- To mitigate the risk of having whistleblowers come forward with information that may not be seen as warranting a protected disclosure, and to avoid potentially exposing them to unnecessary risks and overburdening the intake system with non-applicable cases, Peru could further clarify the nature of a protected disclosure.
- Peru may consider clarifying that disclosures that do not lead to a full investigation or to prosecution are still eligible for legal protection.
- To avoid prospective professional marginalisation of whistleblowers, Peru could undertake awareness-raising campaigns, allow for fair compensation to whistleblowers suffering prospective losses of revenue, and ensure fair recruitment of civil servants based on merit and on commitment to promoting the public interest.
- The threat of reprisal could be included as an offence in Peruvian law.
- To ensure that potential whistleblowers can choose where they would like to submit their disclosures, Peru could provide alternative formalised channels through which individuals may disclose, with internal and external options operating concurrently.

Increasing accountability of recipients of whistleblower disclosures

- To promote consistency, avoid bias and optimise the use of internal resources, Peru could establish criteria to guide investigators as to whether whistleblower allegations warrant a full investigation.

- In order to keep whistleblowers informed with respect to the outcomes of their disclosure and to promote accountability, Peru could implement follow-up mechanisms and establish communication procedures.

Raising awareness

- In order to implement the law effectively, Peru could consider promoting a broad communication strategy and undertaking increased awareness efforts through various channels.
- Peru could engage with civil society as an effective way of enacting awareness-raising measures.

Conducting evaluations and increasing the use of metrics

- To evaluate its purpose, implementation and effectiveness, Peru could consider reviewing its whistleblower protection legislation.
- The effectiveness of Peru’s whistleblowing system could be monitored and evaluated regularly by systematically collecting data and information.

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Chapter 5

Ensuring a sound internal control and risk-management framework in Peru

This chapter focuses on the role of internal control systems and the key functions of risk management and internal audit in strengthening integrity, transparency and enhancing good and accountable governance. The first part assesses the existing internal control and risk management processes, standards and institutional arrangements in comparison with leading international models and practices. The second part highlights the need to further clarify the roles and allocate responsibilities between the different internal control and audit actors across government and at the entity-wide level focusing on the consulting and assurance attributes of an independent internal audit function. Lastly, the third part emphasises how a sound internal control system can support effective integrity policies and actively contribute to preventing, detecting and responding to fraud and corruption schemes. The analysis supports recommendations that favour an optimal internal control and risk management environment working as a cornerstone and valuable ally to the Peruvian government's commitment to an ambitious and promising integrity and anti-corruption agenda.

A sound and effective internal control system is based on the organisation's commitment to integrity and ethical values, which is the cornerstone of a healthy control environment. In most of the cases where the internal control system within an organisation is not performing well, it is due to a poor control environment. The processes, the tools and the activities underpinning the ethical values of an entity must be constantly communicated and enforced throughout the organisation. The approach should be structured around the senior management's ethical commitment. The right tone should be given at the top for implementing and operating all other components of the internal control system. Though the establishment of a comprehensive control environment is a management responsibility, the actual implementation and integration into daily business needs everyone in the entity to be aware and involved.

Ideally, the internal control system should not be imposed and added on top of existing practices and processes. It should not be a bureaucratic burden which will add complexity and anxiety. Rather, internal control components and activities should be an integral part of daily operations at every level. According to the European Union's Public Internal Control (PIC) approach, internal control is constituted by Financial and Managerial Control (FMC) processes and an independent Internal Audit function. One of the core prerequisites for establishing a robust and effective Financial and Management Control system accompanied by a solid Internal Audit function is to clearly set the entity's objectives across all levels of organisational structure. This allows the responsible actors to identify the risks that may arise in specific operational areas and assess whether the different components of internal control are structured in such a way that they can reduce the risks to an acceptable level.

The basic pillars of the Peruvian National Control System (Sistema Nacional de Control, or SNC) are laws 27.785 (Ley del Sistema Nacional de Control y de la Contraloría General de la Republica y sus modificaciones) and 28.716 (Ley de Control Interno de las Entidades del Estado). The Comptroller General's Office (Contraloría General de la Republica, or CGR) is Peru's Supreme Audit Institution (SAI) and the leading entity of the SNC. According to the Peruvian Political Constitution from 1993 (Art. 82), the CGR is a decentralised public entity enjoying autonomy under its organic law. The other important institutions of the SNC are the Institutional Control Offices (Órganos de Control Institucional, or OCIs), created by Law No 27785, Articles 6-8. These are the offices that are responsible for internal control and audit inside the public entities. The SNC legal framework also provides for the designation by the CGR and the hiring by public entities of independent auditing firms (Sociedades de Auditoria, or SOAS) that are legal entities of private law to provide external control and audit services.

The CGR has issued a series of rules, standards and guidelines to help the public entities to understand and integrate into day-to-day business the provisions of the relevant legal framework. Resolution No. 320-2006 refers to the Internal Control Rules, and Resolution No. 458-2008 encompasses the analytical guide for the implementation of the internal control system in government institutions and entities. The latter document is the backbone of the SNC and provides detailed processes, standards and templates for all the components of the internal control system and the risk management exercise.

Strengthening the Peruvian internal control and risk management framework

By applying internal control functions and activities, including risk management, as an integral part of the governance, management and operations processes (e.g. planning, decision making, monitoring and evaluating), Peru could bridge the gap between the conceptual internal control and risk management framework and the implementation at the entity-level field

Peru has a solid conceptual internal control framework. The CGR’s “Conceptual Internal Control Framework” (2014) is structured according to the relevant international standards (COSO Internal Control-Integrated Framework, COSO Enterprise Risk Model, INTOSAI). This framework followed the 2013 CGR study, based on a self-assessment methodology, on the degree of implementation, maturity and integration of the internal control system’s components and processes into daily management of Peruvian public entities. This was also a chance to incorporate and reflect on the update of the Committee of Sponsoring Organisations of the Treadway Commission’s (COSO) Internal Control-Integrated Framework which was issued in 2013. The result of this evaluation clearly demonstrated that the degree of implementation is quite low, especially in certain entities. Although the Peruvian internal control guidelines and tools are up to international standards, there seem to be certain limits and challenges on how substantially and efficiently the Peruvian public administration owns and implements internal control and risk management policies and processes.

The SNC key actors could address the “implementation gap” related to internal control and risk management activities by contacting audits and evaluations that encourage ownership, accountability and skill development among public sector managers and staff responsible for these functions.

The current focus in Peru is on engaging in control activities to meet the legal and methodological requirements of the SNC. Both risk management and internal control within Peruvian entities are currently rather considered as ad hoc projects, not fully integrated into the overall organisation and not closely linked with the achievement of organisational objectives and the day-to-day functioning of government entities. Internal control functions are only integrated to a limited extent into the strategic planning and operational management processes. They are integrated on a nominal basis as part of meeting the requirements of the relevant methodological exercise.

The Supreme Decree No. 400-2015-EF aims to address this problem by introducing procedures linking the integration and implementation of the internal control measures within local governments with concrete budget allocation incentives for 250 entities. In December 2015, an amendment to the budget law 30372 introduced the obligation of all state entities at all three levels of government to implement its Internal Control System (Sistema de Control Interno, or SCI), according to the provisions of law 28716 on Internal Control of State entities. The amendment stipulates that the SCI must be implemented within a maximum of 36 months after the entry into force of Law 30372. The CGR recently issued a detailed implementation plan with the relevant guidelines (May 2016 Directive no. 013-2016-CG/GPROD). Entities which have already partly implemented an internal control system must deliver progress reports to the OCI or to the CGR in case of absence of an OCI.

In Peru, the risk management function is considered to be a part of the overall internal control system as described in the COSO 2013 Internal Control-Integrated Framework. Internal controls are considered to be an integral part of an organisation’s governance system and its ability to manage risk. They enable the organisation to take advantage of opportunities and to counter threats that may hinder its progress (IFAC 2012). Figure 5.1 depicts the latter approach.

Figure 5.1. **The relationship between public governance, internal control, and risk management**



Source: Adapted from COSO Internal Control-Integrated Framework (2013), https://na.theiia.org/standards-guidance/topics/Documents/Executive_Summary.pdf.

This approach for linking an internal control system with good and accountable governance appears to be better understood and better incorporated into the working culture of the Peruvian administration, which provides for a more solid base upon which to introduce risk management processes and policies. The basic goal is to facilitate maximum involvement of managers and state entity personnel, with the ultimate goal of fully integrating control activities into the business processes and closely linking them to the overall objectives of the entity.

The main challenge identified in Peru is that the internal control and risk management exercise is seen mainly as an administrative routine, a “tick the box” exercise. In most cases, it is done in a fairly restrictive style and is kept as low-profile as possible. Peruvian entities proved weak in their efforts to conduct risk management processes such as risk mapping and risk assessment. Weakness was identified in evaluations based on self-assessments of the effectiveness of the implementation of the internal control system in state entities. The evaluations were carried out in 2013 and 2014 under the supervision of the CGR. The initiative for conducting risk management exercises seems to lie with the OCIs and the administrative units of the entities with rather limited involvement of the operational units. An in-depth implementation would require input and involvement from core business and operational areas. With this input, uncertainties could be better identified. Ideally, risk assessments should be updated as needed throughout the year in order to respond to changing risks.

Management and financial control processes are not meant to make the procedures more bureaucratic and burdensome. Moving away from a culture where persons “outside”

of an entity deal with the issues of control is no short order. The model of public management and internal control is indeed evolving from a fundamental distrust of the skills of public administration’s managers to a model where managers are expected to take initiative and calculated risks and make decisions based on performance rather than rules and regulations. This is especially challenging for Peru, where managerial capacity has been weak and an input rule-based decision making and operating model have prevailed. Another challenge is the unclear definition of roles and responsibilities between the different levels and individuals within the entity in the control and audit field.

Peru therefore needs to translate the principles and the activities described in the conceptual internal control and risk management framework as well as the relevant implementation guidelines into practical steps closely linked to day-to-day business activities. However, the existing guidance, especially on risk management, is not adequate for that purpose. Most of the guidance is high-level and process-oriented and gives scant guidance on how to create an effective risk management and assurance framework.

Furthermore, there are other weaknesses identified within the Peruvian public entities hindering an effective application of the conceptual framework: 1) there is not a clear tone at the top; 2) entity-level objectives tend to be only vaguely defined or are simply copied from previous strategic and operational plans; 3) information systems, including financial information systems, are not mature enough; 4) the setting of relevant indicators and the measurement of performance is limited; 5) the dissemination of information on the implementation tools is not systematic; 6) awareness-raising activities about the benefits of financial control, management control and risk management are at least limited; and 7) capacity-building and relevant training programmes need further update and improvement.

The Peruvian authorities are taking initiatives to address these challenges. They have started to implement an electronic tool to support public entities in undertaking risk mapping and assessment exercises as part of the risk management process. Furthermore, an information package aims to raise awareness amongst public institutions and officials on the importance of implementing internal control processes. The effort to improve the maturity of the internal control components and their implementation is backed by an updated training programme delivered by the National School of Control. This training programme focuses on the practical steps of integrating internal control processes at the operational level.

However, weaknesses can still be clearly identified when focusing on specific control activities such as fiscal reporting. This is an area where Peru needs to improve its performance and requires measures to “strengthen internal controls and external audit functions” (International Monetary Fund 2015).

Concrete actions in this area could include:

- undertaking and publishing internal consistency checks of fiscal data contained in various reports
- developing the internal control function and developing in-year controls on the quality of fiscal accounts at all levels of government
- developing capacities at the comptroller general office and expanding the coverage of the individual financial statements audited

- assessing existing public sector entities and eliminating, merging or downsizing those that no longer fulfil, either partially or entirely, their original mission.

The entities at the regional level also face challenges in their attempt to integrate internal control process into their management cycle. The most important problem is a lack of development of managerial capacity and individual responsibility and accountability at all levels of managerial positions. The OECD Multi-dimensional Review of Peru (2015c) highlighted one of these challenges by pointing out that the system of fiscal transfers from the central government to the regional and local levels has not yet developed the necessary control processes. The current responsibility and accountability attributes at the level of municipalities as well as the unclear relation between the provinces and the regions do not favour the creation of an effective control environment that would guarantee and safeguard the proper use of taxpayer money. The institutional framework governing decentralisation lacks internal controls and checks and balances on decisions taken by mayors. The regional level's difficulty generating robust regional performance data on policy and services delivery and its political and administrative actors' failure to generate strong planning public policies limit the efficiency of sub-national expenditures, particularly those at the provincial level. This affects the planning and prioritisation of policies at subnational level.

Many of these problems largely stem from a weak management culture which is dominated by hierarchical decision making and a lack of delegation and segregation of duties. Raising awareness and training should focus on highlighting that internal control and risk management is ongoing and flows through the entity processes. Everybody has a role and needs to be involved. Internal control and risk management must be dealt with as built-in components, designed as integral parts of decision making and management performance. They should not be treated as additional bureaucratic burdens that are owned by a specific group of people aiming to identify loopholes that will lead to poor individual performance evaluations or even disciplinary sanctions. The benefits of a real and effective internal control and risk management system must be made visible. However, finding the right incentives in an environment which is affected by a range of problems (e.g. heterogeneous recruitment, employment and compensation regimes, high turnover, limited performance monitoring and evaluation capacity, weak interoperability of Information and Communication Technology [ICT] systems) further complicates the attempt to improve and integrate internal control and risk management into the Peruvian administration.

Peru could therefore consider focusing on policies to create awareness and involvement not only among senior and middle management but among staff as well. Public servants must be involved in turning the organisation's vision and mission into concrete sub-objectives further disseminated across all structural organisational levels and ideally linked to individual interests and skills. The inclusion of low-level staff can create motivation and enthusiasm and match individual objectives to management plans. Public servants should own internal control and risk management processes in order to close the gap between nominal and actual implementation.

Some concrete instruments to achieve this could include:

- Using awareness-raising campaigns and events on the importance of integrating internal control and risk management activities into daily business as a tool to influence public perception and enhance accountability and legitimacy of public entities.

- Providing regular feedback about the links between a sound internal control environment and the achievement of the entity’s objectives by using adequate communication channels (e.g. newsletters, videos etc.) with messages from senior management to highlight progress and achievements on improving the actual implementation and integration of the internal control requirements and activities.
- Linking issues such as budget allocation, expenditure limits and staff and payroll ceilings, especially at the regional and municipal level, with the progress made in mainstreaming internal control and risk management into daily operations.

The ongoing CGR pilot project to strengthen internal control arrangements in the public entities seems to be making notable progress. The results have to be carefully assessed in order to identify leading practices at the national level which could serve as models for other public entities.

Internal control and risk management functions could be mainstreamed in broader public management reforms by strengthening and formalising the co-operation between institutions of the National Control System with key public institutions. These functions could be linked to initiatives and policies such as the National Strategic Development Plan, results-based management, public management reforms, medium-term fiscal plans and decentralisation

The international methodological internal control models, standards and guidelines are not meant to be applied detached from the basic characteristics of a national public governance reality. There are several elements that will determine whether internal control and risk management will be owned by public officials and integrated into the public entities, or whether they will be seen as burdensome exercises without added value, limited as such to a pro-forma implementation with no actual impact. The internal control and risk management system has to be closely linked, aligned and structured along the strategic planning and current reform initiatives of the Peruvian Government. Enhancing performance management and strategic planning, strengthening co-operation and identifying synergies amongst government entities are key building blocks for improving the SNC.

Various public entities are involved in such reform processes. In Peru, planning is managed by the Presidency of the Council of Ministers (Presidencia del Consejo de Ministros, or PCM) through the National Centre for Strategic Planning (Centro Nacional de Planeamiento estratégico, or CEPLAN). Co-ordination of the government planning system occurs through the National Strategic Planning System (Sistema Nacional de Planeamiento Estratégico or SINAPLAN), the main tool for designing and updating the National Strategic Development Plan (Plan Estratégico de Desarrollo Nacional, or PEDN). It is crucial that all Peruvian entities participate in the effort to improve the link between budgeting and strategic planning processes. The Ministry of Economy and Finance (Ministerio de Economía y Finanzas, or MEF) produces the annual National Budget, along with a three-year fiscal framework, that allocates State resources to the various budget programmes. The budget is results-based. The MEF has also adopted a system of monitoring and evaluation as a tool to implement performance budgeting.

Although not completely isolated, these two processes, are currently not linked in a meaningful way. They need to be tightly co-ordinated to ensure that National Objectives in the PEDN can be met within set time-frames using the dedicated public resources assigned to them in the budget. Furthermore, performance monitoring and audit seem to

be split in different units (CEPLAN, MEF, CGR), which at present do not provide outputs that can be used systematically in the decision-making process leading to evidence-based policy choices. Co-operation in this field needs to be formalised and strengthened.

Evaluation is not only a tool for administrative control, but an instrument for analysis and feedback for management. In spite of the progress made by Peru in the area of monitoring, evaluation and control, the reports are not as effective and wide-reaching as they could be. Moreover, there is a weak application of the liability regime in relation to public policy outcomes and ineffective accountability processes. Peru might continue to face challenges and could consider investing in additional efforts for enhancing the performance-audit function in terms of volume, relevance and timeliness. It should be outcome- rather than output-oriented, looking for efficiency and savings. In addition, feedback could be better used in the decision making process.

As was already identified, one of the basic problems undermining the Peruvian effort to establish a robust internal control system is the weak planning capacity across hierarchical and organisational levels. In many cases, the overarching mission is not translated into concrete and measurable annual objectives. Sometimes, these are simply duplicated with minor changes from previous planning exercises. Control activities and annual audit plans should be aligned with key processes and objectives at the entity level. In the absence of documented and clear procedures for delivering expected outputs and well-defined objectives it is very difficult to establish a robust and effective internal control and audit system. It is even more challenging to raise issues such as a risk-based audit approach in order to get the most out of the scarce available resources and focus on the most vulnerable areas.

The same constraints also apply to the willingness of the CGR to engage in performance auditing. This is the equivalent term for Value-for-Money (VFM) auditing which is one of the international leading trends in the audit field. Auditing must be seen as a consulting and assurance activity aiming to add value and improve an organisation's operation. As a consequence, the most advanced audit institutions in OECD countries are trying to engage less in financial and compliance audits and increase the share of performance audit missions in their annual planning. This also means that they are moving away from ex-ante audits since performance has to be measured against results. Performance management is one of the reform priorities of the Peruvian administration. However, the reform must not be limited to budget and financial management and reporting issues. Peruvian civil servants should be aware that they are accountable for the performance of their organisation. Of course, there is always the issue of the influence and decisive role of political personnel, but this is a constraint that must be taken into consideration and not an excuse to avoid assigning roles and responsibilities to public officials, particularly those selected for managerial positions.

According to General Law 28411 of the National Budget System, performance budget is a public management strategy that links the allocation of resources to measurable outputs and outcomes in favour of the population. Most of the budget is organised in Programmes and is implemented by the MEF's Director General of the National Budget. In 2013, Peru approved a new macro-fiscal framework incorporating medium-term fiscal objectives and introducing counter cyclicalities into the budget planning process by focusing on structural balance. In addition, fiscal transparency has been enhanced by frequent and efficient fiscal reporting.

As is the case with risk management, it seems that in Peru performance budgeting is rather limited to a theoretical exercise, with little significant impact on budget decision

making. This also indicates that the Peruvian control environment will not be strengthened simply by introducing budget reforms such as programme or performance budgeting. Furthermore, as was previously noted, internal control is much more than financial control. The evolution of the French internal control system and its links with budget reform provide some useful insight as illustrated in the following box (Box 5.1).

Box 5.1. The French internal control system: Basic elements

In 2006, the entry into force of the Organic Law governing Budget Laws (La loi organique relative aux lois de finances – LOLF) of 1 August 2001 provided an opportunity to rethink the management of public expenditure and was accompanied by an evolution in the role of the main actors involved in the control and management of the State’s public finance.

An objective-based public policy management, a results-oriented budget, a new system of responsibility, strengthened accountability and a new accounting system are the key features of the reform implemented in the French public administration.

The Decree of 28 June 2011 on internal audits in the administration is the culmination of a drive to control the risks related to the management of public policies under the responsibility of the ministries. This reform has made it possible to extend the scope of internal control to all “professions” and functions within ministerial departments and to establish an effective internal audit policy in the State administration.

The effective governance of public management

The French system focuses on managerial responsibility. The programme manager is the central link of public management, integrating political responsibility, borne by the minister, and managerial responsibility, borne by the programme manager. Under the minister’s authority, the programme manager is involved in drafting the strategic objectives of the programme under their responsibility: they guarantee operational implementation and undertakes to fulfil the relevant objectives. The minister and the programme manager become accountable for the objectives and indicators specified in the Annual Performance Plans (APP). These national objectives are adapted, if necessary, for each government service. The programme manager delegates the management of the programme by establishing operational programme budgets, placed under the authority of appointed managers.

The French case of budget reform

One of the avowed aims of the LOLF reforms was to “endow the state with a real system of accrual accounting which would permit it to measure its true costs” of service delivery (MINEFI, 2005). To this end, the 2001 LOLF legislation (Article 27) specifically mandated the introduction of management (“analytic”) accounting. However, a study undertaken by the Cour des comptes [supreme audit institution] a decade later found that the use of management accounting across government “remained weak.”

Sources: OECD (2015d), “Budget reform before and after the global financial crisis,” 36th Annual OECD Senior Budget Officials Meeting, [www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/PGC/SBO\(2015\)7&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/PGC/SBO(2015)7&docLanguage=En) ; European Commission (2014), *Compendium of the Public Internal Control Systems in the EU Member States (2nd ed)*, www.ec.europa.eu/budget/pic/lib/book/compendium/HTML/index.html (accessed 23 November 2015).

Another significant constraint is that the Peruvian public administration has not developed appropriate mechanisms to attract, develop, and retain competent individuals

with the right set of skills and ethical commitment to work in the control and audit area. Civil Service management practices that ensure merit, professionalism, stability and continuity in staffing are among the core prerequisites for setting up and maintaining an effective internal control environment generating added value. The new Peruvian law on human resources seems to promise that recruitment, promotion and compensation will be based on merit, skills and performance. This is also important for empowering public officials to assume responsibility and be accountable for their decisions and actions such that they will move away from their current tight osmosis with political personnel, a situation which blurs the lines when assigning roles and responsibilities in a sound internal control system.

ICT systems are also a vital component of an effective internal control system, especially in establishing an effective fraud and corruption risk management function. Control activities and techniques like data mining and matching cannot be efficiently performed without robust ICT systems and regularly updated databases. The key here is to ensure the interoperability of systems. In Peru, there is no central strategy and vision for e-governance and digitisation projects between different public entities. The CGR seems to have in place helpful ICT tools that can add value and provide inputs for a risk-based approach and better prioritisation of control and audit activities during the annual planning exercise. Following up on post-audit recommendations and monitoring disciplinary procedures and sanctions for wrongdoers of the people must occur with the help of platforms and applications. Internal auditors have to rely on data analysis tools and be able to illustrate to stakeholders how data analytics will support the achievement of objectives. In Peru, the use of data analytics can start small and focus on areas where the benefits are clear. Existing tools such as SINAD and INFOBRAS are very promising and need to be evaluated and further upgraded. With the right expertise, significant analysis can be carried out using readily available tools such as Microsoft Excel. To facilitate the implementation of data analytics, the CGR could identify existing competency gaps and frame a knowledge management strategy to address major gaps in expertise (IIA Common Book of Knowledge-CBOK 2015).

The strengthening of the Peruvian internal control culture and arrangements, including the internal audit and risk management functions, could motivate and facilitate greater changes in the Peruvian public governance model. This explains the importance of involving several other public institutions and stakeholders and not limiting the reform process only to the GCR and the OCIs. In this context, sound internal control and risk management processes need to be linked to other core public policies like strategic planning and performance management, HRM policies, public administration reform projects, budget and financial management, as well as ICT systems and applications. Co-ordination and collaboration with institutions such as the Ministry of Finance, the National Authority of Civil Service (Autoridad Nacional del Servicio Civil, or SERVIR) and the Public Administration Office (Secretaría de Gestión Pública, or SGP) are therefore of utmost importance to strengthen the risk management and internal control system of the Peruvian state entities.

The new pilot project plan (Estrategia para el Fortalecimiento del Control Interno en las Entidades Públicas) of the CGR to strengthen internal control in state entities at all three government levels is moving in the right direction and has several useful elements. The basic elements of the “new approach” aim to integrate control processes in the daily management of state entities and align them with the National Policy on Modernisation of Public Management, structured along three transversal axes and five pillars (Table 5.1).

Table 5.1. Linking the CGR’s strategy to strengthen internal control with the National Policy on Modernisation of Public Management

3 Transversal Axes	Five Central Pillars				
Open Government	Public	Performance	Process	Meritocratic	System of
Electronic Government	Policies,	Budgeting	management,	Civil Service	information,
Inter-institutional	Strategic		administrative		monitoring,
Co-ordination	Plans and		simplification and		evaluation and
	Operating		institutional		knowledge
	Plans		organisation		management
INTERNAL CONTROL SYSTEM					

Source: CGR-Strategy to strengthen Internal Control in public entities (2015).

The methodology and the implementation of the self-assessment evaluation of the internal control system could be improved by improving individual awareness and understanding and developing the skills and capacities of all heads of department and directorates as well as employees in key positions

The CGR undertook two major assessment-measurement exercises of the degree of the implementation of the Internal Control System across the government entities. One was carried out in 2013 and assessed 638 public entities, and the most recent one, which assessed 655 entities, was carried out in 2014. These are self-assessment exercises based on the methodological and practical guidelines provided by the relevant CGR’s guidelines and standards. The first assessment was structured around a survey of 293 closed questions. The 2014 exercise was based on the same approach but the questions were reduced to 51 and were consistent and aligned with the Conceptual Framework for Internal Control (Chapter 2: The evaluation of the maturity level of the internal control system), which was published by the CGR in 2014.

The results of these CGR assessment studies are not fully comparable because of their differences in methodology. However, major findings deriving from both studies include:

- There is a significant gap between the maturity levels of central government compared to regional and local institutions. There are also disparities between different regions.
- The weakest component is risk management. Many entities do not seem to understand the significance of this process and they do not identify their risks. When they do, they often fail to implement activities to mitigate those risks.
- Agencies, autonomous bodies and municipal enterprises score better than other government organisations.
- SOEs belonging to the National Fund for State Enterprise Activity (Fondo Nacional de Financiamiento de la Actividad Empresarial del Estado, or FONAFE) scored very well during the evaluation exercise. These entities have to apply the Corporate Governance Code of FONAFE, approved by agreement No 002-2013/003-FONAFE, which introduces elements like the establishment of independent audit committees. Furthermore, Principle 27 of the Code concretely requires that the state-owned enterprises put in place functioning risk management systems.

- Peruvian entities do not easily recognise the importance of internal control as an integrated part of daily management and a valuable tool to attain their objectives, fight corruption, restore trust and provide better services to citizens.

The Guidance on the 8th European Company Law Directive on Statutory Audit (FERMA-ECIIA, 2014) is a good example in that it identifies the key points for establishing and implementing a sound system of monitoring the effectiveness of internal control, internal audit and risk management functions as illustrated in the following box (Box 5.2).

Box 5.2. Q & A for providing guidance to senior management and committees on monitoring the effectiveness of internal control, internal audit and risk management functions

- 1) Who monitors the adequacy of the internal control system? Are there processes to review the adequacy of financial and other key controls for all new systems, projects and activities?
 - A key part of any effective internal control system is a mechanism to provide feedback on how the systems/processes are working so that shortfalls and areas for improvement can be identified and changes implemented. In the first instance, if there is an internal control department, it will help managers implement sound internal controls. The operation of key controls will then be subject to review by internal and external audit along with other review agencies, both internal and external to the organisation. If no internal control department exists, guidance may be sought from risk management or internal audit functions.
- 2) Are arrangements in place to assess periodically the effectiveness of the organisation's internal control framework?
 - A key requirement of many of the internal control requirements encompassed in legislation throughout the EU and the rest of the world is an annual attestation as to the adequacy and effectiveness of the internal control system. Such attestation should be clearly evidenced. The review of the control framework will be the responsibility of the audit committee who will receive information and assurances from internal audit, risk management and the external auditors.
- 3) Who assesses internal audit?
 - The audit committee assesses the performance of the internal audit function by receiving performance information from the function itself and consulting appropriate directors and the external auditors. In addition, the function should be independently reviewed by an external agency such as the Institute of Internal Auditors (IIA), as specified in the International Professional Practices Framework (IPPF), issued by the IIA.
- 4) How are the proposed audit activities prioritised? Is the determination linked to the organisations' risk management plan and internal audit's own risk assessment? Are the internal audit plan and budget challenged when presented?
 - The work of internal audit should be set out in a risk-based plan challenged and approved annually by the audit committee. This plan should be informed by the work of other review agencies such as external audit and risk management and should contain sufficient work for the head of internal audit to be able to form an overall view as to the adequacy of the risk management process operated by the organisation. If there is no formal risk management process or if the process is flawed, then internal audit will need to rely on some other method of assessing the key activities and controls for its review. This could be based on its own risk assessment.

Source: Federation of European Risk Management Associations European Confederation of Institutes of Internal Auditing Guidance on the 8th EU Company Law Directive (2014), www.ferma.eu/about/publications/eciia-ferma-guidance/.

In Peru, a major constraint in undertaking a real assessment of the degree of maturity of internal control and risk management arrangements stems from the fact that political leadership and senior public officials fail to fully understand the link between a sound internal control system and the achievement of the entity's objectives and therefore the effective and efficient delivery of services to citizens. Limited understanding of the true added value of control and risk processes beyond a mere compliance exercise is closely tied to a lack of awareness-raising and training activities tailored to the needs and weaknesses of political personnel, line managers and staff.

Awareness-raising and capacity building training activities could include the following topics:

- increasing political personnel and senior public officials' understanding of the relation between an effective internal control system and the achievement of the entity's objectives
- sharing with political personnel and senior administrative management leading practices that constitute a strong control environment, such as whistleblower hotlines, internal audit processes and ethics programs
- providing concrete examples of how the early identification of risks can help avoid future problems and thus save valuable time and resources
- demonstrating concrete ways to integrate specific integrity policies at the entity-level planning and operations
- highlighting the existing professional standards (e.g. the International Professionals Practices Framework-IPPF from the Institute of Internal Auditors) for reporting and independence
- explaining the assurance as well as the consulting role of the internal audit function and the value of evidence based policy choices consolidating on existing audit reports.

Also, regular communication regarding the internal control system arrangements and procedures across all levels of public organisation can help ensure that internal control principles are fully understood and correctly applied by all. A new CGR directive (Directive No. 013-2016-CG/GPROD, Implementación del Sistema de Control Interno en las Entidades del Estado) calls on public entities to publish all the activities, good practices and achievements related to the implementation of the SNC through the web and other tools such as internal newsletters. The new directive also requires public entities to elaborate awareness campaigns and capacity development plans within the 90 days following the publication of the directive. In addition to the new directive, some specific guidelines for the dissemination of internal control inside the public entity (Lineamientos Sugeridos para la Difusión del Control Interno al Interior de la Entidad) have been developed by the CGR. The guidelines suggest, for example, publishing news on the status of the implementation of the pilot projects.

Assigning roles and responsibilities and segregating duties over the internal control function

Peru could determine and assign the various roles and responsibilities with respect to internal control and risk management by clearly separating financial and managerial control policies and processes from internal audit function

Peru could benefit from clearly defining the roles and the relationships between the different control and audit stakeholders across government in order to enhance and mainstream communication, co-operation and harmonisation in this field. Furthermore, it is crucial to address the “silo” approach and the confusion within public entities in relation to the tasks and the duties of public officials along the lines of international leading practices like the three lines of defence/assurance model (Institute of Internal Auditors’ Position Paper, 2013). This approach could be very useful for dealing with the identified weaknesses of the Peru’s SNC and more specifically with the assignment of roles between the different actors across all hierarchical and operational levels of public organisations.

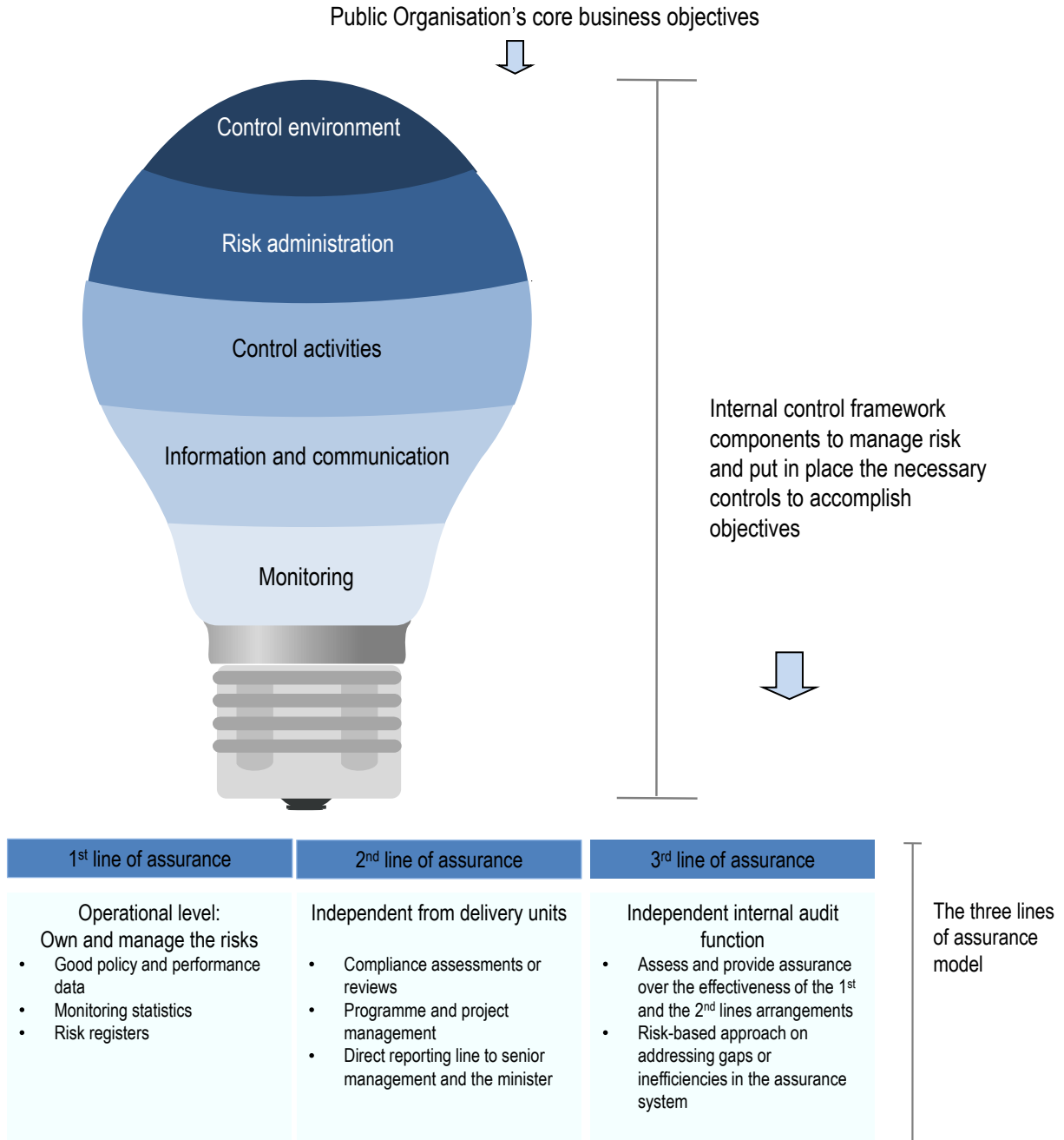
The following figure illustrates the relationship of organisational objectives and internal control framework components and the allocation of roles according to the three lines of defence/assurance model (Figure 5.2).

In the first line, mainly occupied by business operational areas, mid-level managers are responsible for designing and implementing arrangements targeted on deriving assurance on how well risks are managed and objectives are being met. They also supervise the proper execution of these activities by the entity’s staff. Usual activities include good policy and performance data, monitoring statistics, risks registers, identification of inadequate processes, and control breakdowns. The front-line and mid-line managers must take ownership of these tasks.

This does not seem to be the case in the Peruvian administration. The civil servants that should own this level of responsibility do not feel that they are involved in internal control arrangements and they expect the OCI to undertake this role. This is a problem because only the professionals responsible for delivering specific objectives or operations can provide, at this level, assurance that performance is monitored, risks identified and addressed, and objectives achieved. Senior management, on the other hand, should recall that although this type of assurance may lack independence and objectivity, it is a product of people who know the business well and who deal with day-to-day challenges.

In the second line, work is associated with oversight of management activity (COSO-IIA 2015). It is separate from those responsible for delivery, but not independent of the entity’s management chain. The responsibilities of individuals within the second line typically include compliance assessments or reviews and direct reporting to the senior management, Secretary General and the Minister on subjects such as escalating critical issues, emerging risks and outliers. This type of assurance usually benefits from the existence of an Audit Committee or comparable body. Monitoring and oversight activities at this level focus on determining whether policy or quality arrangements are being met in line with expectations for specific areas of risk across the organisation, for example, the purchase to pay systems, health and safety, information security, or the delivery of key strategic objectives. This type of assurance provides valuable insight into how well work is being carried out according to expectations, policies or regulations. It is meant to be distinct from and more objective than the first line activity.

Figure 5.2. Relationship among an organisation’s objectives, the internal control components and the three lines of assurance model



Source: Adapted with inputs from the Committee of Sponsoring Organisations of the Treadway Commission (COSO): Internal Control-Integrated Framework 2013, Institute of Internal Auditors (IIA): Three Lines of Defence Model, Assurance Maps presentation-PIC EU-28 Conference 2015.

In Peru it is very difficult to assign the abovementioned roles to specific individuals who will not also be involved in the first line. This is a challenge for every internal control system, because the composition of the second line and the assignment of responsibilities can vary significantly depending on factors such as the organisation's size, line of work and regulatory framework.

The third line relates to independent and more objective assurance, heavily relying on the role and the capacity of the internal audit function, which aims to provide top management with an independent and objective judgement on the framework of governance, risk management and control. As noted, one of Peru's main challenges is its weak management arrangement. This is why internal audit struggles to define its role inside the internal control framework and make progress in the non-financial area. There is an overwhelming focus on controlling fiscal expenditure and meeting the budget allocation. The lack of accountability for performance and the achievement of objectives mean that management attention is wholly or largely focused on this objective.

Ideally, internal audit should be able to rely upon assurance mechanisms in the first and second line of defence in order to target its resources most efficiently, e.g. on areas of highest risk or where there are gaps or weaknesses in other assurance arrangements. To fulfil its mission, internal audit has to be independent of the first and second lines of assurance. Peru could consider implementing a pilot project in a specific policy field (e.g. health, procurement, infrastructure), clustering more than one organisation (ministry, agencies, state-owned enterprises etc.) to assess the way that Peruvian public entities might practically improve the allocation of roles, responsibilities and functions amongst the three lines of defence so that this model could be more effectively understood and implemented by the Peruvian administration.

Peru could also explore bringing together a dedicated technical working group to focus on the challenges and technical details of piloting a shared audit services unit in a selected policy field. The regional and municipal authorities could provide an interesting case for a pilot project assessing the pros and cons of adopting a model of shared audit services. This could be a way of highlighting the active role of managers and staff in relation to internal control and risk management processes. The CGR and the OCIs provide guidance and promote a robust internal control system, but their role is not to substitute the managers and the staff of public entities. The CGI and the OCIs do not take over manager and staff responsibilities with regard to control and risk management; these are responsibilities which are also linked to the framework of preventive control.

The role and the operations of the OCIs could be redesigned to better focus on advising and supporting senior management, providing assurance over the adequacy of internal control processes to mitigate risks and ensuring that managers and staff of government entities are actively involved in control and risk management activities. The OCIs could be rebranded as Internal Audit and Assurance Offices (IAAOs)

The role of the OCIs in relation to the three lines of defence/assurance model and especially with regard to the first and second line functions raises several challenges. The OCIs are, in most cases, expected to undertake both the roles of control and audit, including the risk management function. The public entities' managers look at the OCIs as the responsible actors for internal control and risk management activities. At the same time, OCI personnel see their role as mostly compliance oversight-oriented, with a tendency to focus on identifying cases where there is room for disciplinary or even

civil/criminal liabilities for the public officials involved. The recent empowerment of the CGR with disciplinary and sanctioning powers in an effort to address the delays and the issue of impunity for cases arising from audits and reports conducted by the CGR most likely strengthens this notion.

The CGR emphasises the fact that internal control is inherent to the management of the entity. Therefore, the OCI is expected to exercise subsequent control (i.e. act as the third line of defence). The OCI's contribution in the work of internal control should focus on 1) evaluating the internal control components and processes as part of testing their effectiveness before an audit, and 2) participating in the preventive control function where risks are identified and communicated to the entity's management in order to develop and implement the right set of mitigating controls.

A plan that redesigns the OCIs focusing on the assurance role while gradually strengthening the first and second lines of defence could include an assessment of the pros and cons of adopting a model of shared audit/assurance units. The units would be shared by more than one entity and would be supervised by the executive branch. In this framework, these internal audit units could be financially and administratively linked to a different institution than the CGR, either the SGP or an institution such as Canada and the United Kingdom's Treasury, or even an institution akin to a General Inspector Office, which currently does not exist in Peru. The function of externally assessing the degree of the maturity level of the internal control components as well as the central harmonisation function for ensuring effective communication, co-ordination and harmonisation across all external and internal oversight mechanisms could remain with the CGR.

In this framework, the GCR would also have to constantly assess the structure, role and performance of the existing OCIs in relation to the broader reforms undertaken by the Peruvian Government in the fields of strategic national planning, public administration, budget and fiscal policies, decentralisation and sectoral initiatives in fields such as health, labour and education. This will provide valuable input and foresight that may call for the creation, suppression or merge of OCIs and reassignment of personnel, thus allowing for a recruitment plan based on actual needs as well as better allocation of the existing financial resources in order to improve the effectiveness and the efficiency of the SNC, especially considering budget constraints.

Indeed, the real challenge for internal audit in the era of limited resources and austerity is how to do more with less; for example by sharing internal audit services across multiple agencies. Audit budgets are being reduced just at a time when political personnel and public senior managers need audit assurance the most. Peru could benefit from the way the Government Internal Audit Agency (GIIA) of the United Kingdom is trying to effectively respond to these challenges and thus safeguard and even improve its ability to deliver high quality audit services to state entities (Box 5.3).

Box 5.3. The United Kingdom's HM Treasury experience

A. The Government Internal Audit Agency (GIAA) was launched on 1 April 2015 as an executive agency of HM Treasury (HMT) to help ensure government and the wider public sector provide services effectively. GIAA aims to expand the agency to become the single internal audit provider to government. The idea is that the GIAA will incorporate all existing Internal Audit units under its auspices. They currently employ 157 people in their office in London (auditors and administrative staff) and they expect to reach a total number of about 750 people according to their action plan. This approach will allow for the agency to benefit from the concentration of expertise, leading practices, and critical mass (e.g. concentration of fraud forensic or cyber security experts), improve the efficiency and quality of service while reducing the financial cost, adapt and evolve the audit expertise and capacity model based on the expectations and needs of the beneficiaries of the services. Furthermore, it creates the vital space for a career path for auditors which results to lower churn rate. The state entities are being charged with the cost of the provided audit services which safeguards independence and create a motive for improved services and performance assessment. It is pointed out that the UK has been working with shared audit services even since 1990.

GIAA offers quality assurance on an organisation's systems and processes, based on an objective assessment of the governance, risk management and control arrangements it has in place. Its internal auditors look at financial risks and wider issues, such as:

- employee relations
- management structure
- relationships with stakeholders

and then offer advice on how to improve those systems and processes, based on their findings.

GIAA is responsible for:

- reviewing the functions and activities of government and public sector organisations, and assessing their efficiencies and risks
- making recommendations for improvement based on our assessments
- adding value to public services and improving how effectively organisations provide them.

GIAA's priorities for 2015 to 2016 were described as follows:

1. Expand their capacity and expertise in areas including:

- counter-fraud and investigations
- information systems
- programme and project management.

2. Introduce a framework agreement for internal audit services that will:

- improve private sector involvement
- make use of the collective purchasing power of government internal audit
- strengthen customer support (e.g. around sharing best practice, and access to specialist skills)
- develop the framework for providing assurance around cross-government and inter-organisational risks.

Box 5.3. The United Kingdom’s HM Treasury experience (continued)

B. The United Kingdom provides an interesting model of providing audit services in the public sector. The current approach follows a long period of working with the model of shared audit services between clusters of organisations acting in the same policy field. A salient example is the organisation called Research Councils United Kingdom (RCUK), which is the strategic partnership of the United Kingdom’s seven Research Councils. The Research Councils’ Internal Audit Service (RCIAS) was formed in 1992 from the separate Internal Audit units previously within each Research Council. In April 2012 the Research Councils’ Internal Audit Service (RCIAS) merged with the RCUK Assurance Programme to form the Audit and Assurance Services Group (AASG) with a principal responsibility to each Council’s Chief Executive in helping them meet their responsibilities and accountabilities to Parliament. To achieve this they undertake an annual programme of work within each Council which is agreed by respective Chief Executives and their Audit Committees. Working to standards set by HM Treasury, the annual programmes include a range of services to help managers meet their objectives and maintain adequate control over resources.

Sources: UK Government Internal Audit Agency (2016), *Annual Report and Account 2015-16*, House of Commons, www.gov.uk/government/organisations/government-internal-audit-agency (accessed 02 December 2015); Audit and Assurance Service Group, www.rcuk.ac.uk/about/aboutrcuk/aims/units/aasg/ (accessed 03 December 2015).

Practical ways could be explored to enhance and standardise the co-ordination among stakeholders, ensure harmonisation of methodological standards and tools, allocate clear roles and responsibilities, segregate duties and safeguard institutional and individual independence and objectivity in the area of external and internal control and audit

One of the main priorities of the CGR in its effort to modernise the SNC has been the project “New operating model of Institutional Control Agencies” (Nuevo Modelo de Operacion de los Organos de Control Institucional). Law No 29.555 provides for the gradual incorporation of allocations and budget of OCIs to the CGR. The GCR has issued the Resolution No 163-2015-CG (Resolución de Contraloría N°163-2015-CG – Directiva de los órganos de control institucional) which regulates the competences and the activities of the OCIs, the duties of the head and the rest of the staff, and the institutional and operational relations among the OCIs and the hosting entity as well as the CGR.

Interviews in Peru revealed that some OCIs have controllers-auditors remunerated either by the “audited” entity or by the CGR. This situation results in the existence of two-gear professionals with different wages and different types of contractual relationships despite performing the same duties. This has an impact on performance. It was mentioned that because of low wages, professionals sometimes request permission to engage in private activities outside working hours in order to find additional income. It was also pointed out that there are few professionals such as civil and sanitary engineers among control and audit experts. Although external private sector expertise may be solicited for certain technical aspects of an audit assignment, it is not always time-effective and efficient to identify and hire the specialist needed to perform certain control activities and audit missions.

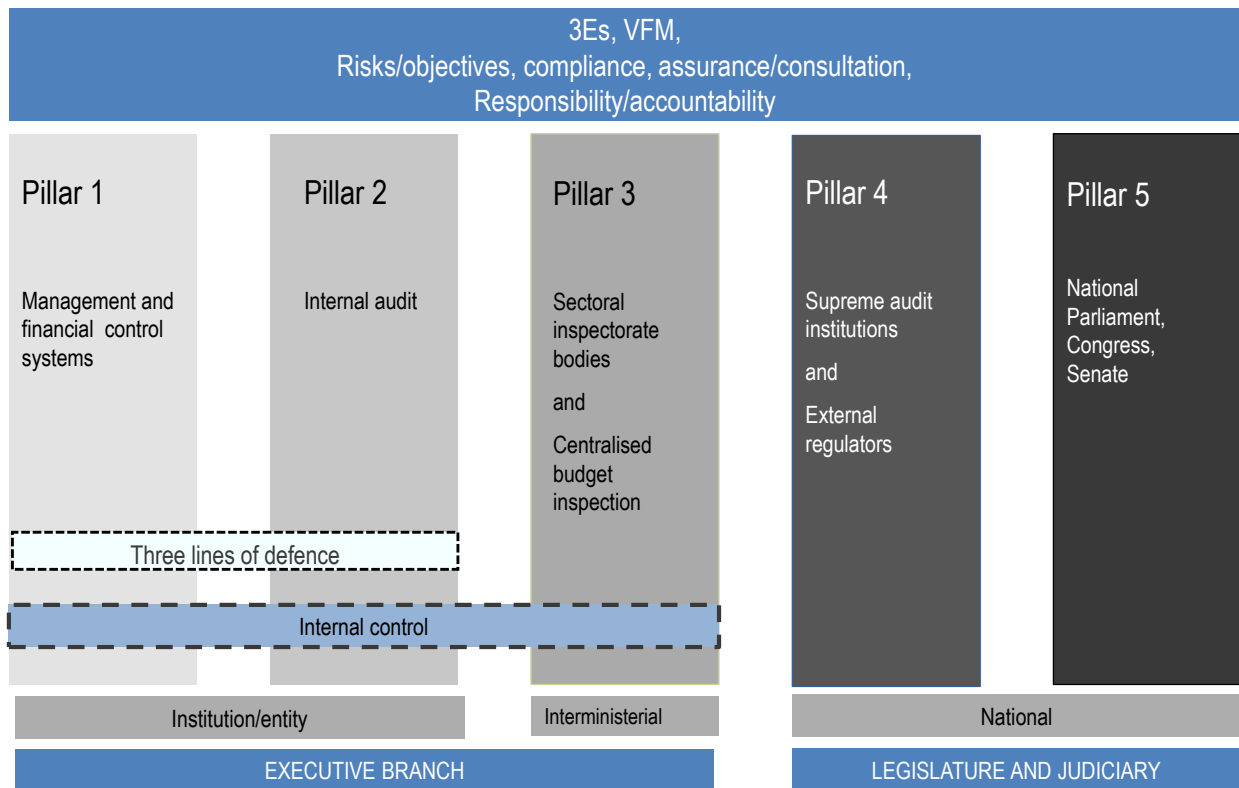
The gradual implementation of the above-mentioned project is mainly due to budget constraints. This is highlighted by the CGR as one of the main obstacles that hinder the modernisation of the SNC. There are several OCI heads and staff that are appointed and

linked administratively and by budget to the hosting entity. In April 2016, only 50.74% of OCI heads (375 in total) were remunerated by the CGR. According to the CGR, this situation breaches the principle of independence of the controller-auditor, limiting the improvement of the control services and the empowerment of the CGR.

This significant modernisation and reform programme leads the internal audit function to be incorporated into the structure of the CGR (the Peruvian SAI). Considering the immature management and financial control processes and culture in Peru, it is key to consider the consequences of this project on the broader set of initiatives to strengthen SNC and enhance its capacities.

The following scheme (Figure 5.3) depicts the different pillars of a robust oversight system involving all potential internal and external control and audit institutions and functions across all three powers of government, i.e. executive, legislature and judiciary. The two first pillars relate to the three lines of defence model. In some countries, we may also encounter centralised government financial inspection and/or sectoral control and audit institutions focusing on high interest and risk areas like health and public works or even inspectorate bodies with audit and investigation powers across public administration. Arrangements between countries can vary significantly based on existing constitutional and legal framework, the administrative culture and the maturity level of national public administration. This means that there is no one-size-fits-all approach and that not all of these components are or should be present in parallel in any given public administration.

Figure 5.3. The basic pillars of a sound internal and external control and audit framework



Source: Adapted from the European Union’s Public Internal Control model (2012), http://ec.europa.eu/budget/library/biblio/publications/2011/compendium_27_countries_en.pdf.

The external auditors, mainly the SAIs, formulate an additional line of assurance, outside of the internal control framework, with a statutory responsibility primarily for certification audit of the financial statements. The emerging trend for SAIs is to broaden their line of work moving from oversight to insight and foresight (OECD, 2016). It is important that the internal and external audit work together to the maximum benefit of government organisations and in line with international standards. In any case, although external auditors and regulators can be valuable sources of information, they are not a substitute for any of the abovementioned three lines of defence/assurance. Every organisation is responsible for managing its own risks without relying on an external actor to undertake this core task.

The Mexican national audit system (Sistema Nacional de Fiscalización, or SNF), with the Superior Audit Office (Auditoría Superior de la Federación, or ASF) and the Ministry of Public Administration (Secretaría de Función Pública, SFP) as the two main stakeholders, provide a concrete example for the distinct roles and links between the SAIs and national institutions falling under the executive branch, responsible for internal control, risk management and audit (Box 5.4).

Box 5.4. Mexico: Basic elements of the National Audit System

In Mexico, the recent creation of the National Anti-Corruption System (Sistema Nacional Anticorrupción, or SNA) provides for the formalisation of the National Auditing System (Sistema Nacional de Fiscalización, or SNF), which has existed since 2010 as a voluntary-based co-ordination scheme between all internal and external audit institutions across levels of government. The following is an overview of the SNF stakeholders:

- Superior Audit Office (Auditoría Superior de la Federación)
- Ministry of Public Administration (Secretaría de Función Pública)
- State Audit Institutions (Entidades Fiscalizadoras Superiores Locales)
- State Ministries responsible for Internal Control and Audit
- Municipal Controllers and internal control units of constitutionally independent entities

In October 2012 the institutions comprising the SNF designed and approved the “General Basis for the Development of a national Auditing System” strategic plan, which spans from 2013 to 2017. The main goals are described as follows:

- setting common professional rules at the national level
- improving the legal framework related to auditing
- focusing on capacity building
- strengthening the impact of the work of the control and auditing institutions in the fight against corruption
- sharing information and performing joint work
- laying down and clarifying the disciplinary responsibilities for public officials.

Box 5.4. Mexico: Basic elements of the National Audit System *(continued)*

The SNF faces several challenges concerning the harmonisation of methodological models and standards concerning internal control, risk management and audit. Issues such as avoiding duplication of audit missions and clarifying the links and interactions amongst various SNF stakeholders are among key priorities. However, the overview of the national audit system's structure seems better aligned with international standards and leading practices than the Peruvian approach. There is a clear distinction between internal and external key stakeholders, and the reform focuses on strengthening co-operation and establishing commonly accepted control, risk management and audit processes and tools that will, hopefully, successfully address the problems already identified and thus make the whole system more effective and efficient.

Source: OECD (2017), *Mexico's National Audit System: Strengthening Accountable Governance*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264264748-en>.

In Latin America, there are usually no centralised budget inspection bodies or sectoral inter-ministerial inspection or audit units falling under the executive branch. This is more common in Europe and the Middle East and North Africa (MENA) region. Poland provides an example of the structure and scope of a centralised financial inspection function and its relations with external and internal audit institutions (Box 5.5).

Box 5.5. Poland: Financial inspection

The Treasury Control (TC) is an inspection service subordinated to the Minister of Finance. The General Inspector for Treasury Control is the Government Plenipotentiary for Combating Fraud in the Republic of Poland or in the European Union.

The main goals and tasks of the TC are the following:

- to protect the interests and property rights of the state treasury
- to ensure effective execution of tax obligations and other dues which constitute the revenue of the state budget or state earmarked funds
- to examine the compliance of the management of assets of other state legal persons with the law
- to prevent and reveal corruption offences against institutions of the state, as well as regional and local government
- to control (inspection) of the purposefulness and legality of the management of public funds and funds from international organisations
- to examine the correctness of the state treasury property privatisation.

Box 5.5. Poland: Financial inspection (continued)

The internal audit and the Treasury Control – separation of duties

The internal audit function is, in general, independent from the Treasury Control. The TC can control purposefulness and manner of use of public funds in the public sector entities where internal audit is performed. This means that the same activities of the units may be audited and controlled in parallel. The difference between the activities is in the methodology used by auditors and inspectors: internal auditors assess the management control system of the unit, whereas the Treasury Control may inspect every organisation, both public and private, where public funds are used.

Internal audit relations with external audit

The duty of co-operation between internal audit and the Supreme Audit Office (NIK) is determined in the Act of 23 December 1994 of the Supreme Audit Office.

The Internal Audit Standards in the Public Finance Sector Entities also determine the duty of co-operation between internal and external audit functions. This is also regulated in the Charter of Internal Audit in Public Finance Sector Entities, which states that the internal auditor cooperates in performance of their tasks with external auditors, including, in particular, the NIK.

The co-ordination of co-operation between the NIK and the Internal Audit Unit is usually carried out by the Head of the Internal Audit Unit (i.e. the Chief Audit Executive). The reports of the internal auditor are made available to the NIK. The NIK's auditors and the Head of the Internal Audit Unit should inform each other of any serious suspicion of bad management or fraud. The Head of the Internal Audit Unit should ensure avoiding duplication of the NIK and Internal Audit Unit activities. The Head of Internal Audit Unit also assesses co-ordination of the NIK and the Internal Audit Unit in terms of costs and effectiveness.

Source: European Commission (2014), *Compendium of the Public Internal Control Systems in the EU Member States*, www.ec.europa.eu/budget/pic/lib/book/compendium/HTML/index.html (accessed 23 November 2015).

There are significant differences between the various models adopted by countries with different managerial, public finance and accountability arrangements and policies. Even if the relevant literature and the leading international practices focus on a widely accepted “optimal” control framework, the best approach for Peru seems to be to phase in the necessary reforms following a detailed action plan with concrete consequent steps based on pilot projects. Within the framework of the SNC and the ongoing incorporation of the OCIs in the structure of the CGR, the task of allocating roles and responsibilities and separating the duties in accordance with international standards raises some very serious challenges.

As already highlighted, performance-based public management gives a new dimension to accountability and this means that public managers are responsible and accountable for implementing and maintaining effective internal control functions. The scope of managerial focus is much wider than just budgetary compliance and another dimension is added to ensure that the budget is firmly linked to achieving objectives and performance standards. In this context, the manager requires a form of support that goes well beyond financial control and the internal auditor should therefore surpass purely financial considerations. In public management systems where performance is used as a

significant management tool with budgets being linked to the achievement of performance, both managers and internal audit should be as much interested in the quality of the performance information as in the quality of the financial information.

In Peru, it is clear that the CGR's approach to internal managerial procedures is a pilot and a leading practice. There is a clear strategic plan and defined quality policy and goals. According to the CGR responses provided to the OECD survey for this Integrity Review, since 2012 there has been an ongoing effort to mainstream and register work flow and related processes, and by early 2015 there were already 79 procedures (12 for strategic processes, 14 for mission processes and 53 for support processes) registered in the CGR's Procedures Manual. Of course, one could argue that the capacity and the expertise of the CGR's personnel as well as the available resources are significantly higher than in the average Peruvian entity. In any case, it is a concrete example that things can change in the Peruvian administration despite the inherent problems and constraints.

The Norma RC No 320-2006-CG and the CG-458-2008 guidelines on internal control, as well as the Conceptual Internal Control Framework (2013), provide for specific roles and responsibilities for the internal auditors. These provisions relate to the incorporation of the OCIs into the CGR structure because of two different but connected problems. The first problem is confusion inside the entities regarding the roles and responsibilities of OCIs and CGR staff in the areas of financial and management control and as risk management. The second problem is confusion over the exact roles of an independent internal audit function and its relation with the external auditors. Overall, it seems that although the incorporation of the OCIs in the structure of CGR raises certain challenges in relation to the distinct roles of the internal and the external auditors, it also provides a way to strengthen the independence and objectivity of the internal audit function with regards to the political and senior administrative personnel of public organisations. Both the INTOSAI GOV 9100: "Guidelines for Internal Control Standards for the Public Sector" and INTOSAI GOV 9120: "Internal Control: Providing a Foundation for Accountability in Government" (which includes a relevant checklist), cite the importance of the internal auditors' independence from an organisation's management: "for an internal audit function to be effective, it is essential that the internal audit staff be independent from management, work in an unbiased, correct and honest way and that they report directly to the highest level of authority within the organisation. This allows the internal auditors to present unbiased opinions on their assessments of internal control and objectively present proposals aimed at correcting the revealed shortcomings."

More specific guidelines with respect to independence are provided in INTOSAI GOV 9140: "Internal Audit Independence in the Public Sector", which adopts principles from ISSAI 1610 (Using the Work of Internal Auditors) in defining independence. Criteria under both documents include whether the internal audit institution is established by legislation or regulation, is accountable and reports directly to top management and has access to those charged with governance, is located organisationally outside the staff and management function and has segregated responsibilities from management, clear and formally defined duties, adequate payment and grading, adequate freedom in developing audit plans, and is involved in the recruitment of its own audit staff.

Furthermore, the Institute of Internal Auditors' (IIA) International Professional Practices Framework (IPPF) also refers, in standards 1130.A1 and A2, to impairments to independence or objectivity as regards the internal audit function. Impairment to

organisational independence and individual objectivity may include, but is not limited to, personal conflict of interest; scope limitations; restrictions on access to records, personnel, and properties; and resource limitations such as funding (IIA-IPPF Implementation Guide 1130, 2016).

Nevertheless, the model seems fairly clearly laid out. The CGR will act as both external auditor, according to its SAI mandate, and internal auditor, after the incorporation of the OCIs, for all government entities. General weak managerial capacity and confusion about the exact division of roles and duties concerning financial and managerial control and risk management functions raise significant integration and monitoring challenges.

International models and practices can provide interesting mitigation strategies for these challenges. For example, in relation to the monitoring and the evaluation of the internal audit function, Peru could explore the benefits of the Quality Assurance and Improvement Programme (QAIP) developed by the IAA. QAIP is a tailored and widely used instrument for assessing the maturity and quality of the internal audit function in the public sector. The CGR could provide methodological support for the development and implementation of the QAIP, which includes both internal and external assessments. In this respect, the OCIs could apply, with the help of the CGR, internal rules and manuals for internal quality assessment procedures, keeping in mind that since ongoing monitoring should be an integral part of day-to-day work, the procedures should be clear, applicable and not over-complex. The external assessment involves a full external assessment by an independent and competent assessor. The QAIP's approach is similar to the monitoring and evaluation system used by Peru for assessing the maturity of the internal control components, but is tailored to the internal audit function. In both evaluations, it is crucial to ensure the independence and “externality” of the CGR as the external assessor of the internal control and audit maturity and integration. Currently, the CGR has a Quality Assurance department, the primary mission of which is to assess the quality of audit reports. The department of Internal Control is responsible for assessing the degree of maturity of the internal control components within public entities.

The effectiveness of the internal control and risk management framework, including raising awareness around the added value of internal control among senior management and strengthening the independence and objectivity of the internal audit function, could benefit from the introduction of independent audit and risk boards or committees

Audit and Risk Committees are established in the vast majority of private sector organisations but they are much less common in public sector organisations such as line ministries and local government authorities. State-Owned Enterprises usually have to introduce an Audit Committee or equivalent body complying with the needs of the market or corporate governance regulations. The G20/OECD Principles for Corporate Governance (July 2015) clearly state that the Board is responsible for “ensuring the integrity of the corporation’s accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.”

It is considered good practice for internal auditors to report to an independent audit committee of the board or an equivalent body which is also responsible for managing the relationship with the external auditor, thereby allowing a co-ordinated response by the

board. In certain OECD member countries, for example the United States and New Zealand, the existence of audit committees has caused top and senior management to focus on internal control and risk management, and has attracted their attention to the role of the internal auditor. Furthermore, in the private sector an audit committee is typically charged with overseeing the internal and external financial reporting processes, risk management, internal control, compliance, ethics, the external audit arrangements and ensuring the independence of internal audit function (IIA, INTOSAI, Treadway Committee-COSO, and the International Federation of Accountants).

Moreover, a truly independent audit/risk committee with solid expertise can harness the political influence on control and audit activities and mitigate the potential bias of auditors assessing the quality of internal control and risk management arrangements. It can also strengthen the impact of these processes inside the organisation, linking them to the achievement of the entity's objectives, thus facilitating the involvement of the middle and line managers and the rest of the personnel.

Peru could engage in a pilot project focusing on selected line ministries or state-owned enterprises with a view to establishing independent and functional audit/risk committees. The core characteristics, structure, composition and role of the proposed committees must not be confused with the existing ones, established by the CGR No. 458- 2008-CG. To this end, it is crucial to ensure the involvement of independent and knowledgeable experts. Expertise from the private sector such as the National Conference of Private Business Institutions (Conferencia Nacional de Instituciones Empresariales Privadas, or CONFIEP), the Lima Chamber of Commerce (Cámara de Comercio de Lima, or CCL), the Sociedad Nacional de Industrias, or civil society representatives could be asked to participate. This approach would provide the framework for better interaction between the government and taxpayers, while improving the transparency and the accountability of public organisation's policies and actions. Public sector auditors must satisfy a wide stakeholder base without always being able to consult with them about their specific needs. Stakeholders can include the party requesting the audit, the audited body, another government body, public officials such as mayors, public interest groups, and taxpayers.

Indeed, the role of risk and audit committees or boards is different from the CGR's role. The CGR plays the role of a central harmonisation unit (CHU). The central harmonisation function lies within the administrative arrangements and is responsible for providing the overall framework, standards and tools for risk management, financial and managerial control and internal audit, as well as for assessing the quality of these arrangements. Setting up independent and functional risk and audit committees is a challenging task. There have to be enough external professionals with the capacity and willingness to get involved and, more significantly, the top management at political and administrative level has to accept the advice and reporting channels provided by the committee in order for it to play a substantive role. If this is not the case, the committee may easily have become superficial and purely political; just another cosmetic bureaucratic burden with no added value (Hepworth and Koning, 2012).

Public sector audit committees usually fall under one of the three following types:

- governance audit committees
- central audit advisory boards
- internal audit management committees.

The choice of the model which directly relates to the roles and the responsibilities assigned to the committee or board depends on a number of factors including the degree of sophistication of financial management and reporting, the management and control arrangements, and the level of development of managerial accountability. The latter includes the separation between the political and the administrative decision making process and the actual application of risk management techniques (Hepworth and Koning, 2012).

One of the main challenges is to ensure the participation of independent members that are external to the relevant organisation. As it is highlighted by the IIA, the public sector has fewer audit committees than other sectors, and the quality and composition of the audit committees can vary greatly. In some cases, this presents significant threats to internal audit independence and objectivity. It has been emphasised that one of internal audit's key roles is to provide objective assurance to its stakeholders. Respecting independence from management and other stakeholders is a way to fulfil this role. Audit committees can enhance and safeguard the independence and the objectivity of internal auditors. According to a recent survey conducted by the Institute of Internal Auditors, only 55% of public sector entities in the Latin America and Caribbean region report on having an audit committee compared to 78% of private sector entities (IIA's Common Book of Knowledge-CBOK, 2015). A good audit committee strategy is the Polish approach, which adopts and implements the European Union's Public Internal Control (PIC) model (Box 5.6).

Box 5.6. Poland: Audit committees

In Poland, the Act of 27 August 2009 on Public Finance implemented in 2010 developed a new concept of management control and accountability at the higher (secondary) level of management, the minister in charge of the government administration branch, and introduced one audit committee for each line ministry. Audit committees are meant to strengthen the internal audit function in its task of assessing management control throughout the entire branch. The audit committee may inform and give advice to the minister about risks connected with implementation of their objectives throughout the entire branch.

Mission

The aim of the audit committee is to provide consulting services with a view to ensuring adequate, efficient and effective management control and providing efficient internal audit services to the minister in charge of the branch. It should be emphasised that the scope of the audit committee guidance covers the functioning of the management control and internal audit in all units supervised by the relevant minister. One joint audit committee may be established for the branches managed by one minister. For example: the Minister of Finance established one joint committee for three branches: Budget, Public Finance and Financial Institutions.

Currently there is no legal obligation to establish audit committees for local government. The goals and tasks of the audit committees, scope of activity, and number of members and requirements for members are described in Articles 288–290 of the Act of 27 August 2009 on Public Finance and in the Regulation of The Minister of Finance of 29 December 2009 on Audit Committee.

Box 5.6. Poland: Audit committees (continued)

The members of the audit committee

The audit committee shall comprise a minimum of three members, including: 1) a person in the rank of the secretary or undersecretary of state designated by the minister as the chairman of the committee; 2) at least two independent members — people not employed in the ministry or in organisations of the branch. In the opinion of the Ministry of Finance, the optimal size of the audit committee is five to nine persons including the chairman. This size of audit committee gives all members a chance to actively participate in the deliberations and effectively perform the tasks of the committee. In practice by the end of 2012, the audit committees ranged from three to seven members. The Ministry of Finance recommends that independent members shall make up at least half of the audit committee. It is also recommended to maintain a constant size of the audit committee. Independent audit committee members should jointly have knowledge, skills and experience to perform their tasks competently and effectively. In the provisions of the Regulation of 29 December 2009 on Audit Committee, the Minister of Finance specified the qualifications of the independent members, the rules of procedure the audit committee should respect and the method of remunerating independent members. The organisation and operation of the audit committee is specified by the rules of procedure stipulated in the internal regulation granted by the minister on request of the chairman of the committee.

Audit committee tasks and annual report

Audit committee tasks shall include the following, in particular:

- indicating material risks
- indicating material weaknesses in the management control of the branch and proposing measures to improve them
- setting priorities for annual and strategic internal audit plans
- reviewing material results of internal audit activity and monitoring the implementation thereof
- reviewing statements on the execution of the internal audit plan and on the assessment of management control
- monitoring the effectiveness of the internal audit, including reviewing results of internal and external assessments of the internal audit activity
- authorising the dissolution of employment contracts and any change in salary and employment conditions of the chief internal audit executives in organisations within the branch.

By the end of February each year, the audit committee shall submit a report on the implementation of tasks in the preceding year to the minister in charge of the branch and the Minister of Finance. The report on the implementation of tasks shall be published in the Public Information Bulletin on the website of the relevant ministry. The first reports were submitted to the Minister of Finance in 2011.

Source: European Commission (2014), *Compendium of the Public Internal Control Systems in the EU Member States*, www.ec.europa.eu/budget/pic/lib/book/compendium/HTML/index.html (accessed 23 November 2015).

As already highlighted, one of the main challenges encountered in OECD countries is how to define and fine-tune the links between internal and external control and audit institutions. In the private sector, internal audit reports to the boards and the audit committee. In the public administration, they usually report to the head of the entity which can be either someone from the political personnel or a senior public official. This can raise serious questions regarding the independence, impartiality and objectivity of the internal audit function. The following table provides an overview of the authorised recipients of audit reports in central government entities (Table 5.2).

Table 5.2. **Internal audit reporting lines in LAC countries**

	Recipient authority of internal audit reports in central government						
	Head of public sector entity	Head of the unit charged with governance	Chief accountant, financial director within public sector entity	Chief internal control, risk management officer within public sector entity	Central authority for internal control/corruption prevention within central government	Board of directors of public sector entity	Other
Argentina	✓						
Barbados		✓					
Brazil	✓	✓	✓	✓	✓		
Chile	✓	✓					
Colombia	✓						
Costa Rica	✓	✓	✓	✓			
Dominican Republic							✓
Ecuador	✓			✓	✓		
El Salvador	✓	✓			✓		
Guatemala	✓						
Haiti
Honduras	✓	✓			✓	✓	
Jamaica	✓	✓				✓	
Mexico	✓	✓	✓	✓	✓	✓	
Panama	✓	✓					
Paraguay					✓		
Peru	✓						
Total	13	9	3	4	6	3	1
.. Not available	1	1	1	1	1	1	1

Note: Data for Haiti are not available. Data for Chile and Mexico refer to 2012.

Source: OECD/IDB (2014b), *Government at a Glance: Latin America and the Caribbean 2014: Towards Innovative Public Financial Management*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264209480-en>.

Supporting integrity and anti-corruption reforms

Solutions for developing an optimal internal control environment based on integrity and transparency could be explored to ensure that ethical values are applied coherently across organisational processes and procedures. The maturity of the internal control environment, including structural and behavioural aspects, could be monitored and evaluated

The integrity, ethical values and competence of an entity's people are crucial elements of a healthy control environment. It also includes the way management assigns authority and responsibility, organises and develops its employees. The internal control environment consists of both formal structural and "soft" behavioural aspects. Formal

rules and procedures such as a code of ethics, Human Resources processes, accountability arrangements and delegation of duties, are mostly well documented. However, as is the case in several OECD countries, it appears that in Peru the real challenge is to ensure that they are accepted and well implemented by all stakeholders inside an organisation, promoting a culture of integrity. This is why the more informal, behavioural dimensions like values, beliefs, attitudes need also to be taken into consideration.

Safekeeping and managing the control environment must be one of the priority objectives of public officials with managerial duties. However, in practice everyone in the entity has to be involved. Adherence to policies and ethical codes depends on human behaviour, perceptions and attitudes. The management has to facilitate activities that help the staff understand and accept corporate values and procedures. Enhancing the control environment also means that the management has to monitor, measure and, in case of undesired conduct by staff, act to remedy the situation. Internal auditors should periodically assess the control environment and inspire and motivate management to act if necessary.

The values and mission of the organisation should be explicitly and clearly stated. A code of conduct is a good instrument for setting out an organisation's values and ethical obligations and for determining what is expected from management and staff behaviour. The problem is that in the Peruvian administration these values seem to be very broadly defined in terms of objectivity, honesty, etc. As a result, civil servants may not always be able to interpret what these abstract principles mean for their behaviour in a given situation, such as potential conflict-of-interest situations. Objectives on every level, strategic, operational and even individual, should reflect and refer to the organisation's values and mission. The same applies to all other procedures, especially those which have a direct influence on the control environment, such as human resources (see Chapter 3).

In the Peruvian public administration there is little experience on linking strategic and operational objectives with concrete integrity goals. Furthermore, the way political personnel and senior administrative officials steer public entities has to be consistent with the predefined values. Civil servants should not be expected to respect limitations on issues such as overtime remuneration and travel expenses when they believe or even know that top managers abide by other rules. If it is perceived that the rules do not apply to all, then a strong incentive is created for rationalised non-compliance. The tone at the top is a crucial component in the promotion of ethics. Tone at the top refers to entity-wide attitudes of integrity and control consciousness as exhibited by the most senior executives of an organisation (Association of Certified Fraud Examiners-ACFE, 2006). A good working environment and a supportive approach to good team spirit undoubtedly have positive effects on values and the commitment to expectations and achieving organisational objectives.

The Institute of Internal Auditors' 2110 Standard (IPPF 2015) specifically refers to the responsibility of internal audit to evaluate the existing situation and submit proposals to improve internal governance in order to promote ethical values and principles inside the entity. Furthermore, there is a practical guide on Evaluating Ethics-related Programs and Activities (IIA 2012). Yet it remains to determine whether the OCIs have the resources and the expertise to engage in such a mission and evaluate an area which is often considered too "soft" and not relevant to the day-to-day business of an entity. Internal audit should assess, at entity level, whether there is a robust ethics programme, including effective oversight, strong tone at the top, senior management involvement, organisation-wide commitment, a customised code of conduct, timely follow-up and

investigation of reported incidents, consistent disciplinary action for offenders, effective ethics training, ongoing monitoring systems, and an anonymous reporting system.

In Peru, it seems that the enforcement of integrity policies has a limited role in identifying and sanctioning people for misconduct. The way senior officials react to compliance and deviation is crucial for the credibility of the control environment. Furthermore, enforcement and disciplinary procedures should be clear and transparent and equally applied to everyone (see Chapter 8). Drawing attention to cases where public officials exhibit desired behaviour could be a step in the right direction.

A dedicated corruption risk management policy, including tailored mapping and assessment activities, could be designed to support government entities in their efforts to implement controls to effectively prevent, detect and respond to corruption schemes and events

In the Peruvian internal control and risk management framework there is currently no dedicated fraud and corruption risk management policy. Introducing anti-fraud and anti-corruption control activities is primarily the responsibility of public officials occupying the management positions within a public organisation. Political personnel must also understand that fraud and corruption is not only a risk to integrity, but it undermines the success of government policies and deteriorates public trust in public institutions.

The development of a corruption risk management policy should be supported by forensic audits and investigations of fraud and corruption, emphasising prevention over detection. The advantage of audit institutions in strengthening integrity is that they review and evaluate the root of problems that can have ramifications for policy design and implementation across a ministry or government as a whole. Audit institutions have the mandate, skills and knowledge to go beyond investigation of individual cases and may serve to complement law enforcement and other investigatory bodies.

According to the widely accepted theory of the fraud triangle, the three components favouring fraud are pressure, opportunity and rationalisation. Opportunity is usually related to the quality of the existing controls. The other two elements can often arise from weaknesses in the control consciousness.

For example, if training is provided only to employees chosen by the senior management, there should be a safeguard mechanism to ensure that employees are selected according to their professional background, skills and specific needs in relation to the duties and tasks assigned to them. Otherwise, professionals may feel that the process is slanted and may find ways to rationalise behaviours. The rationalisation in these cases is that they are compensating for being excluded from training opportunities which are usually connected with career improvement. The third element, pressure, can be a strong influence on the control consciousness of individuals. It can make moral professionals do things that they would not normally do. Pressure can be both internal and external and in many cases it is very hard to avoid or predict. A fourth component was added recently: capability (Fountain, 2015). This aspect focuses on a given person's possession of the right skills to identify and exploit the control gap.

The OCIs can be very valuable during the design and implementation phase of new systems and processes. This does not mean that the controller-auditor writes the process during a re-engineering or simplification exercise, but rather that the control and audit professionals should provide expert consultation on control points in the process that may present opportunities for fraud and corruption if not properly managed. However, one of

the main problems in the Peruvian framework, as already identified, is that the political leadership and the senior administrative management seem to believe that the OCIs will carry out fraud and corruption risk assessments when developing their annual audit plan. This cannot substitute the need for line managers from operational units to get involved and own the process. Internal auditing can play a strong, value-oriented and objective role in fraud and corruption awareness and prevention.

The Institute of Internal Auditors' 2110 Standard (IPPF) specifically refers to the responsibility of internal audit to evaluate the existing situation and submit proposals to improve governance in order to promote ethical values and principles inside the entity. Furthermore, there is a practical guide on Evaluating Ethics-related Programs and Activities (IIA 2012).

According to the IIA's IPPF standards:

- 1210.A2 (Proficiency): “Internal Auditors must have sufficient knowledge to evaluate the risk of fraud and the manner in which it is managed by the organisation, but are not expected to have the expertise of person whose primary responsibility is detecting and investigating fraud”
- 2120.A2 (Risk Assessment): “The internal audit activity must evaluate the potential for the occurrence of fraud and how the organisation manages fraud risk”
- 2210.A2 (Engagement objectives): “Internal Auditors must consider the probability of significant errors, fraud, noncompliance, and other exposures when developing the engagement objectives”
- 2060: “Chief Audit Executives must report periodically to senior management and the board on fraud risks...”.

While conducting audit missions, auditors should identify fraud and corruption indicators that can be recognised in most of the core business processes. In order to be successful in recognising these indicators, auditors must rely on their technical experience, professional judgment and good understanding of how potential fraud and corruption acts can be committed. Audit strategy should be diverted on areas and operations prone to fraud and corruption by developing effective high risk indicators. To enhance auditor fraud detection skill, Peru could consider developing Fraud Auditing Guidelines to standardise and mainstream anti-fraud processes and tools. Box 5.7 below provides an example of the internal audit's role in curbing fraud and corruption.

Box 5.7. Fraud and corruption: Internal audit's role

It is not a primary role of internal audit to detect fraud and corruption. Internal audit's role is to provide an independent opinion based on an objective assessment of the framework of governance, risk management and control. In doing so, internal auditors may:

- Review the organisation's risk assessment seeking evidence on which to base an opinion that fraud and corruption risks have been properly identified and responded to appropriately (i.e. within the risk appetite).
- Provide an independent opinion on the effectiveness of prevention and detection processes put in place to reduce the risk of fraud and/or corruption.

Box 5.7 Fraud and corruption: Internal audit's role (*continued*)

- Review new programmes and policies (and changes in existing policies and programmes) seeking evidence that the risk of fraud and corruption had been considered where appropriate and providing an opinion on the likely effectiveness of controls designed to reduce the risk.
- Consider the potential for fraud and corruption in every audit assignment and identify indicators that crime might have been committed or control weaknesses that might indicate a vulnerability to fraud or corruption.
- Review areas where major fraud or corruption has occurred to identify any system weaknesses that were exploited or controls that did not function properly and make recommendations about strengthening internal controls where appropriate.
- Assist with or carry out investigations on management's behalf. Internal auditors should only investigate suspicious or actual cases of fraud or corruption if they have the appropriate expertise and understanding of relevant laws to allow them to undertake this work effectively. If investigation work is undertaken, management should be made aware that the internal auditor is acting outside of the core internal audit remit and of the likely impact on the audit plan.
- Provide an opinion on the likely effectiveness of the organisation's fraud and corruption risk strategy (e.g. policies, response plans, whistleblowing policy, codes of conduct) and if these have been communicated effectively across the organisation. Management has primary responsibility for ensuring that an appropriate strategy is in place and the role of internal audit is to review the effectiveness of the strategy.

Source: United Kingdom, HM Treasury, Fraud and the Government Internal Auditor (January 2012).

Controls cannot provide absolute assurance that a process will work as intended. They can only provide reasonable assurance. As long as business processes are changing, technology will evolve, economies will intermingle, and fraud and corruption will dynamically adapt to the new environment, thus raising new challenges for control systems and professionals. It is important for control systems to balance the significance of a potential fraud or corruption case against the overall tolerance and risk appetite of the organisation. In order to provide adequate assurance, internal audit must give reasonable consideration to the embedded fraud and corruption risks that may exist in any individual process under review. However, in the context of the Peruvian public administration it is often difficult to understand the role of internal audit as an independent and objective assurance function as well as a consultative activity when situations call for attention.

The CGR has designed a 360° Anti-Corruption strategic political proposal based on seven axes of action. One of these cornerstones is the strengthening of the control capacity of the CGR. In the areas of internal control and risk management, it seems that there are no concrete and tailor-made corruption risk management and control activities specifically aiming at these types of phenomena. The general idea is that by making the whole internal control framework more effective this will also result in mitigating corruption risks.

The significance of enhancing internal control in anti-corruption policies is highlighted in the National Anti-corruption Plan 2012-16 where internal control is one of

the basic pillars supporting the strategic plan. More specifically, internal control supports the objective of effective corruption prevention. This support dynamic is also reproduced in several entity-wide and sectoral anti-corruption plans such as the ones endorsed by public entities like the Government Procurement Supervising Agency (OCSE) and the National Fund for State Enterprise Activity (FONAFE).

Some countries have introduced dedicated fraud and corruption risk management frameworks in order to draw attention to these risks and develop the specialised set of procedures and expertise needed to effectively mitigate the different types of potential fraud and corruption schemes (Box 5.8). This approach stems from the fact that fraud and corruption pose a significant risk to the integrity of public policies and programmes and erode public trust in government. Legislation, guidance, and new internal control standards have increasingly focused on the need for public managers and staff to take a strategic approach to managing improper payments and risks, including fraud and corruption. Several governments in OECD member and partner states have adopted a more strategic, risk-based approach to manage fraud and corruption risks and develop effective controls. Proactive fraud and corruption risk management is meant to facilitate a government's mission and strategic goals by ensuring that taxpayer dollars and government services serve their intended purposes. Dedicated and tailor-made corruption risk management frameworks, such as the one introduced in 2015 by the US General Accountability Office and the Colombian Presidency (joined effort of the Secretariat of Transparency and the Ministry of Public Administration), aim to help public institutions combat corruption and safeguard integrity. These methodological guidelines encompass procedures, standards and tools aiming to prevent, detect and respond effectively to corruption.

Box 5.8. Dedicated fraud and corruption risk management frameworks: the United States and Colombia

US Government Accountability Office: A Framework for managing fraud risks in federal programs

The Framework encompasses specific anti-fraud control activities as well as structures and environmental factors that influence or help managers achieve their objective of mitigating fraud risks. The Framework consists of the following four components for effectively managing fraud risks:

- 1) **Commit:** Demonstrate commitment to combating fraud by creating an organisational culture and structure conducive to fraud risk management.
- 2) **Assess:** Plan regular fraud risk assessments and assess risks to determine a fraud risk profile.
- 3) **Design and Implement:** Develop and apply a strategy with specific control activities to mitigate assessed fraud risks and collaborate to help ensure effective implementation.
- 4) **Evaluate and Adapt:** Assess outcomes using a risk based approach and adapt activities to improve fraud risk management.

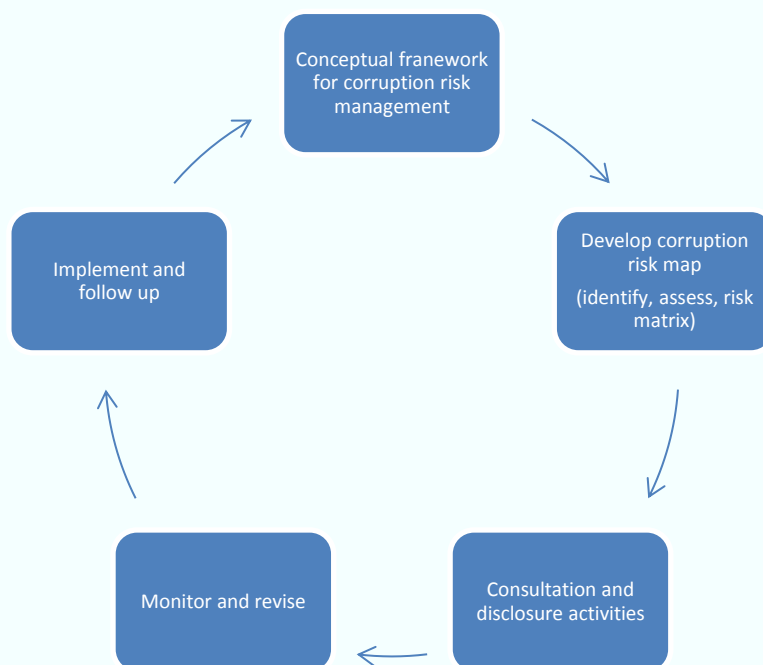
Box 5.8. Dedicated fraud and corruption risk management frameworks: the United States and Colombia (continued)

Colombia: Guide for corruption risk management

The Secretariat of Transparency together with the Ministry of Public Administration (Departamento Administrativo de la Función Pública, DAFP) have developed a corruption risk management methodological framework described in a detailed and comprehensive manual last updated in 2015. The methodological approach is based on the risk management process described in the Colombian internal control framework (Modelo Estándar de Control Interno, MECI) but highlights the inherent characteristic of corruption risks versus the institutional risks of public organisations. This means that Colombian public organisations have to develop two different risk maps following predetermined and standardised steps and templates.

The added value of having two separate risk management exercises based on the same methodological model can have both positive and negative attributes. On one hand it may be seen as burdensome and bureaucratic, duplicating efforts and wasting valuable resources. On the other hand it can be argued that such exercises raise awareness among senior management and staff of the importance of having a sound anti-corruption policy with distinct activities from the mainstream managerial and financial control and risk activities.

The following figure depicts the Colombian methodology for corruption risk management:



Sources: US Government Accountability Office (2015), “A Framework for Managing Fraud Risks in Federal Programs”, Washington, 2015, www.gao.gov/assets/680/671664.pdf, and Colombia-Presidency of the Republic (2015), “Guide for Managing Corruption Risks”, Bogota, 2015, www.funcionpublica.gov.co/ocuments/418537/616038/GUIA+PARA+LA+GESTION+DE+RIESGO+DE+CORRUPCION+%28%29.pdf/e301def2-8218-4205-a320-99c3ef9989f6.

The following box illustrates the role of control and audit functions in safeguarding integrity and supporting effective anti-corruption policies (Box 5.9).

Box 5.9. Mexico's supreme audit institution and government-wide studies for improved integrity systems

Institutional mechanisms, policy interactions, contextual factors and effects are all examples of elements that contribute to policy coherence. External and internal auditors are in a unique position to look across government agencies to assess issues and evaluate the extent to which governments achieve policy and operational coherence. For instance, they offer perspectives of oversight, insight and foresight to reviews of policies and programme planning such as the integration of government-wide objectives into current strategies and planning and the preparedness of government to tackle future goals.

Every year since 2012, Mexico's ASF has conducted at least one government-wide integrity review that touches on elements of coherence, looking specifically at the strategies and mechanisms of federal public institutions to strengthen integrity and prevent corruption. These studies focus on what government is doing in these areas, particularly activities related to internal control systems and risk management functions. Examples of these studies include the following:

- General study of the conditions of the Institutional Internal Control System in the Federal Public Sector: ASF conducted a study of 279 institutions in the executive branch, in addition to a dozen entities from the legislature, judiciary and autonomous constitutional bodies, to compare internal control frameworks based on standards of the Committee of Sponsoring Organisations of the Treadway Commission. The study aimed to compare internal control frameworks in these entities and identify opportunities for improvements (ASF, 2012).
- Continuation of the Studies of Internal Control and the Diffusion of the Study of Integrity in the Public Sector: ASF conducted a study to determine the progress that the Federal Public Sector institutions have made on implementing strategies recommended for strengthening internal control and for continuing to promote the establishment of a culture of integrity (ASF, 2013).
- Study on Strategies for Combating Corruption in the Public Sector: ASF conducted a study to understand the actions federal public sector institutions have taken to tackle corruption, based on applicable standards and international best practices, in order to identify areas of opportunity and to promote the implementation of an integrity programme (ASF, 2014).
- Technical Study for the Promotion of a Culture of Integrity in the Public Sector: ASF analysed and described the best international practices in integrity, as well as implementation of anti-corruption controls, to help government institutions to formulate an integrity programme for strengthening the culture of transparency, probity and accountability (ASF, 2015).

Sources: ASF (2012), *General study of the conditions of the Institutional Internal Control System in the Federal Public Sector*, [www.asf.gob.mx/uploads/180_Estudios/1172_Estudio_General_de_la_Situacion_que_Guarda_el_Sistema_de_Contr ol_Interno_Institucional_en_el_Sector_Publico_Federal.pdf](http://www.asf.gob.mx/uploads/180_Estudios/1172_Estudio_General_de_la_Situacion_que_Guarda_el_Sistema_de_Control_Interno_Institucional_en_el_Sector_Publico_Federal.pdf); ASF (2013), *Continuation to the Studies of Internal Control and the Diffusion of the Study of Integrity in the Public Sector* www.asf.gob.mx/uploads/180_Estudios/1198_Continuidad_a_los_Estudios_de_Control_Interno_y_a_la_Difusion_del_Estudio_de_Integridad_en_el_Sector_Publico.pdf; ASF (2014), *Study about the Strategies for Combating Corruption in the Public Sector*, www.informe.asf.gob.mx/Documentos/Auditorias/2014_1642_a.pdf; ASF (2015), *Technical Study for the Promotion of a Culture of Integrity in the Public Sector*, www.asf.gob.mx/uploads/180_Estudios/1173_Estudio_Tec_para_la_Promocion_de_la_Cultura_de_Integridad_en_el_Sec_Pub.pdf.

Proposals for action

Peru could take the following actions to further strengthen its internal control and risk management framework.

Strengthening the Peruvian internal control and risk management framework

- By applying internal control functions and activities, including risk management, as an integral part of the governance, management and operations processes (e.g. planning, decision making, monitoring and evaluating), Peru could bridge the gap between the conceptual internal control and risk management framework and the implementation at the entity-level field.
- Internal control and risk management functions could be mainstreamed in broader public management reforms by strengthening and formalising the co-operation between institutions of the National Control System with key public institutions. These functions could be linked to initiatives and policies such as the National Strategic Development Plan, results-based management, public management reforms, medium-term fiscal plans and decentralisation.
- The methodology and the implementation of the self-assessment evaluation of the internal control system could be improved by improving individual awareness and understanding, and developing skills and capacity of all heads of departments and directorates as well as employees in key positions.

Assigning roles and responsibilities and segregating duties over the internal control function

- Peru could determine and assign the various roles and responsibilities with respect to internal control and risk management by clearly separating the financial and managerial control policies and processes from the internal audit function.
- The role and the operations of the OCIs could be redesigned to better focus on advising and supporting senior management, providing assurance over the adequacy of internal control processes to mitigate risks and ensuring that managers and staff of government entities are actively involved in control and risk management activities. The OCIs could be rebranded as Internal Audit and Assurance Offices (IAAOs).
- Practical ways could be explored to enhance and standardise co-ordination among stakeholders, ensure harmonisation of methodological standards and tools, allocate clear roles and responsibilities, segregate duties and safeguard institutional and individual independence and objectivity in the areas of external and internal control and audit.
- The effectiveness of the internal control and risk management framework, including raising awareness around the added value of internal control among senior management and strengthening the independence and objectivity of the internal audit function, could benefit from the introduction of independent audit and risk boards or committees.

Supporting integrity and anti-corruption reforms

- Solutions for developing an optimal internal control environment based on integrity and transparency could be explored to ensure that ethical values are applied coherently across organisational processes and procedures. The maturity of the internal control environment, including structural and behavioural aspects, could be monitored and evaluated.
- A dedicated corruption risk management policy, including tailored mapping and assessment activities, could be designed to support government entities in their efforts to implement controls to prevent, detect and respond effectively to corruption schemes and events.

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Chapter 6

Enhancing Peru's political finance framework

This chapter reviews the legal, administrative and institutional framework upon which political campaigns are financed in Peru. It also discusses the challenges to effective oversight of these laws and regulations, and potential means by which to strengthen the system against impropriety. Due to the fact that political parties solely rely on private funding, the risk of policy capture by powerful private interests is high in Peru. Introducing balanced funding of political parties and election campaigns is a key policy lever to mitigate the risk of policy capture and increase integrity in the public sector.

Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

The role of money in politics is contentious. Money can serve as a channel for citizens to support political parties and candidates that representing their interests and ideals. Money can also allow political actors to communicate effectively to their constituencies and shape public debate. However, the legitimacy of the financing of these democratic processes can be threatened by a lack of transparency as regards the source of financial resources. Such a lack of transparency may encourage political actors to respond more actively to the interests of those persons or organisations providing the financial resources. This can threaten the authority and validity of political institutions and inclusiveness of the political process, both of which are keystones in the foundation for sustainable development and growth (Acemoglu and Robinson, 2011).

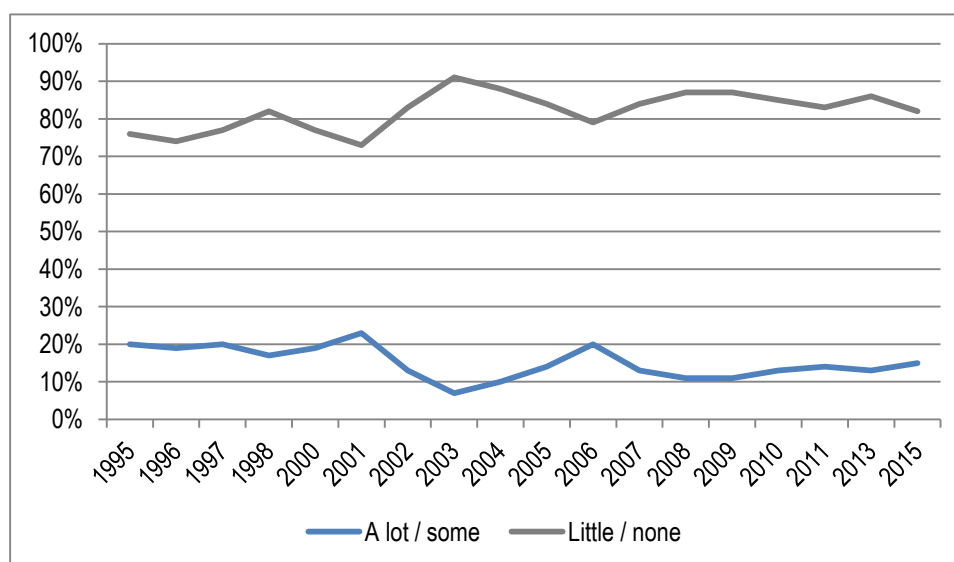
Capture can be defined as the process by which public decisions on laws, regulations or policies are consistently or repeatedly directed away from the public interest and toward the interests of a narrow interest group, by the intent and action of this group. In a democratic context, this involves the exclusion of parties and opinions and violates basic democratic norms. When policy making is captured by a handful of powerful interests, rules may be bent to favour a select few. The consequences include the erosion of democratic governance, the pulling apart of social cohesion, and the vanishing of equal opportunities for all (OECD, forthcoming).

The risk of policy capture through the funding of political parties and election campaigns is perceived as prevalent in Peru. For example, research by a non-governmental organisation suggests that some powerful private sector organisations in the extractive industries have direct access to senior government officials and exert influence over the public decision making process through a number of channels, most notably through the funding of political parties and election campaigns (Peru Support Group 2014).

Peruvian public officials also recognised the challenges posed by private funding, especially in the form of contributions from dubious sources such as persons likely linked to organised crime. This is a shared concern in the Latin American context, and can pose a serious threat to policy capture and political systems (Casas-Zamora, 2013: 3-10). A 2015 report from the Peruvian Legislature revealed the historical links between the political parties of both 2015 candidates for the presidency and drug trafficking and illicit activities (Aguierre, 2015).

Concerns relating to the risk of policy capture through the funding of political parties and election campaigns seem to be reflected in the level of public trust in political parties in Peru. According to the Latinobarometer, over 70% of Peruvian respondents have little or no trust in political parties in 2015 (Figure 6.1). Well-functioning democracies rely on trust and confidence of citizens, which legitimise the decisions taken by the elected officials and creates the conditions for effective policy making and implementation. In turn, trust and confidence in political parties and government depend on transparency and integrity, to the extent that they set high standards of conduct in the public sector.

Figure 6.1. Trust in political parties in Peru, 1995-2015



Source: Based on data from Latinobarometer (1995-2015), www.latinobarometro.org.

There is no easy fix to address these questionable and illicit influences on political processes. Efforts to combat illicit funding and contributions from questionable sources must be tied into a holistic reform effort to strengthen transparency of donors and contributions, compliance and oversight of political party campaigning and spending, and sanctioning of violations. Only when a robust regulatory framework is in place can these issues be efficiently and effectively addressed.

In order to contribute further to the anti-corruption debate and suggest ways to improve the regulation of funding of political parties and election campaigns in Peru, this chapter will review the existing legal framework especially in relation to the provisions of public and private funding, oversight and compliance with reference to the OECD Framework on Financing Democracy: Supporting Better Public Policies and Averting Policy Capture. This framework maps a range of risk areas and provides policy options which can be used to regulate the financing of political parties and electoral campaigns. Examination of these points will allow the opportunity to provide evidence-based guidance to help Peru advance towards implementation of a comprehensive political finance regulation.

The Peruvian legal framework for financing political parties and campaigns

Comprehensive legal and institutional frameworks are in place in Peru

The Political Finance System of Peru is originally set forth in the 2003 Law on Political Parties, (Ley de Partidos Políticos, Ley 28094 (or LPP). On 23 December 2015, Peru further adopted Law 30414 on Political Organisations (Ley de Organizaciones Políticas) that modifies the LPP. The revised Law on Political Organisations (Law 30414) is relatively comprehensive, and addresses major potential areas for policy capture by setting limits on anonymous donations, individual and corporate contributions. There are also specific prohibitions on contributions from religious organisations, and partially or fully-owned state enterprises. Donations from foreign sources, including political parties

from other countries and agencies of foreign governments are generally banned unless used for research or training purposes. It foresees that budget shall be made available starting in 2017 for the public funding mechanism based on the results of the general election 2016. It also clearly prohibits political parties from directly or indirectly distributing or offering money, gifts or goods during the election process. However, the law fails to address the issue of limiting individual contributions and strengthening the existing sanctions (Proyecto de Ley de Organizaciones Políticas, No 140-2011-J/ONPE (2011), Ley 30414 de 2015).

In the current setting, two institutions are charged with overseeing political financing, political parties and candidates: 1) the National Office for Electoral Processes (Oficina Nacional de Procesos Electorales, or ONPE), and in particular the Office for the Supervision of Party Funds (Gerencia de Supervisión de Fondos Partidarios, or GSFP), and 2) the National Jury of Elections (Jurado Nacional de Elecciones, or JNE). Both the ONPE and the JNE are independent and autonomous institutions. The members of the JNE are not appointed by political parties, which contributes to its independence as a body.

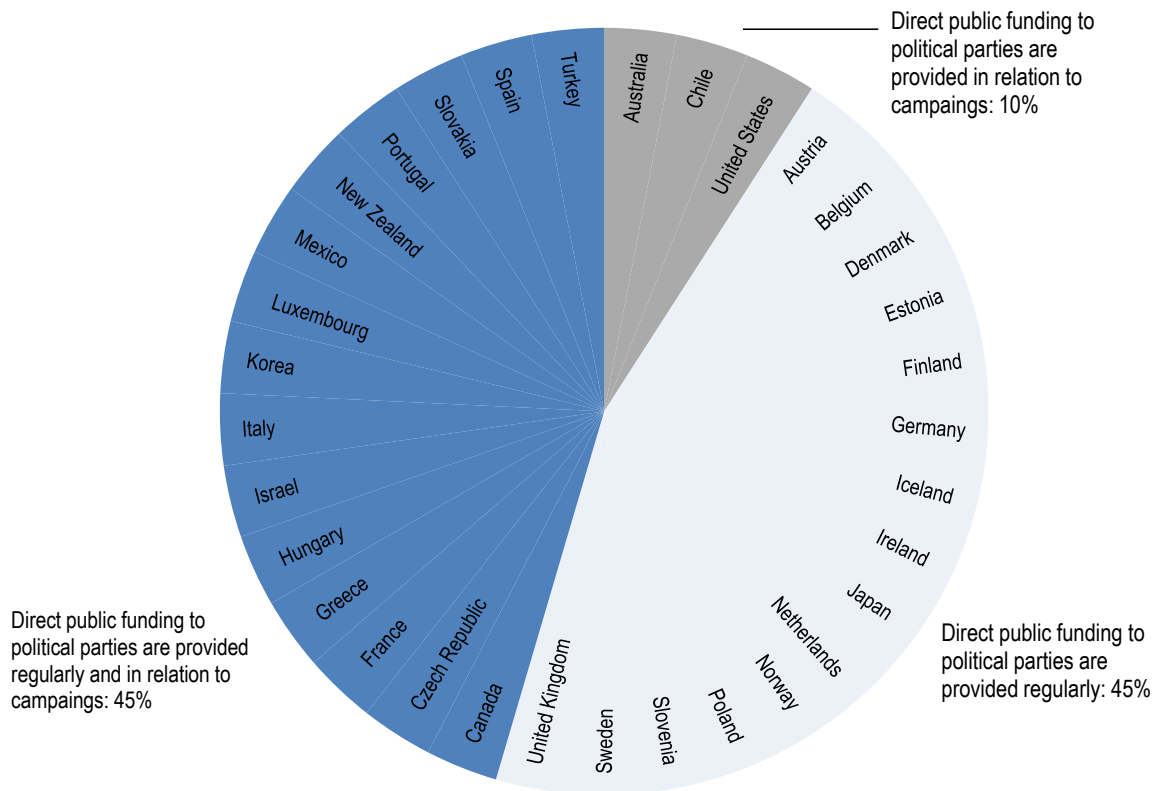
The ONPE is charged with external control of the financial and economic activities of political parties and the application of sanctions in case of violations of the Law. The head of the ONPE is selected by the National Council of Magistracy (Consejo Nacional de la Magistratura, or CNM). The CNM is an autonomous constitutional body whose members are elected by universities (two members), lawyers' bar association (one member), other professional associations (two members), the Board of Supreme Prosecutors (one member) and the judicial branch (one member). According to Article 6 of the Organic Law of the National Judicial Council, members of a political party are prohibited from being elected to the Council. During the four years preceding the nomination, the candidates for the head of the ONPE cannot have been a member of a political party, run in an election for public office, or worked as a head of an entity with national character or ownership.

Political parties are legally established under the Constitution of Peru and the Law on Political Parties. The registration process is overseen by the National Jury of Elections. In order to remain registered as a political party, the party must achieve at least 5% threshold of valid votes at national level in a general election, or achieve at least six seats in Congress in more than one electoral district (Law 30414). The five percent threshold augments by 1 percent for each additional political party in case of alliances between different parties or for political movements. The JNE also serves as the autonomous judicial body on electoral matters, and the registration of candidates is under its responsibility.

Public funding can support a level playing field for parties and candidates

In OECD countries, the balance between public and private funding of political parties and campaigns varies significantly. Nearly all OECD countries provide some form of direct public funding to political parties, with 15 providing regular funding to political parties, and three providing funding only for campaign-related expenses (Figure 6.2).

Figure 6.2. Direct public funding to political parties in OECD countries



Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: Adapted from IDEA (n.d.), Political Finance Database, www.oldsite.idea.int/political-finance/ (accessed 27 October 2015).

Public funding plays a significant role in supporting political parties in democracies across the world and can support a level playing field for parties and candidates in the political process. It can also support other policy goals such as gender equality. Public funding systems can be a means to level the playing field for political parties and can lower barriers to entry for political parties entering the political arena. This can be accomplished, for instance, by setting rules or parameters for the use of public funding for use on training, capacity building and ordinary party administration costs, as in Peru (Box 6.1).

Box 6.1. Restrictions on use of public funding

Forty-three percent of OECD countries set provisions on how political parties should use direct public funding:

- In Greece, direct public funding must be used for campaign spending, ongoing party activities, and research and study centres.
- In Ireland, direct public funding needs to be used for ongoing party activities and for the promotion of women and youth participation.
- In Mexico and the Netherlands, direct public funding must be used for campaign spending, ongoing party activities and intra-party institutions.
- In Slovenia, direct public funding cannot be used for loans, settling fines, donations or to support presidential election campaigns.

Source: OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264249455-en>.

The public funding programme contained within the Law on Political Organisations needs to be sufficiently resourced and effectively enforced

The Law on Political Organisations provides for direct public funding to eligible political parties through transfers of governmental resources, which are previously considered in the national budget. In order to be eligible for direct funding, parties must have achieved representation in Congress. Each vote is eligible to receive 0.1% of Unidad Impositiva Tributaria (UIT) (a tax accounting unit equal to 3 950 Peruvian Nuevos Soles as of 2016) or approximately EUR1 per vote. Law 30414 from 2016 explicitly introduces the objective to distribute these funds starting with the execution of the budget for 2017 based on the results of the general election from 2016.

According to the law, funds shall be divided among eligible parties according to the following method:

- 40% of funds are distributed equally amongst all parties
- the remaining 60% is distributed according to the proportion of votes received in the prior election.

Direct public funds are designated by law to be spent on training, capacity building research and ordinary party expenditures such as administration and party organisation.

Although it was foreseen by the Law on Political Parties, the direct public funding system of Peru has not been implemented since 2007 because funding has been included in the national budget. There is little support among citizens for the funding of political parties. Also, political parties have not undertaken major efforts to change this situation, as the idea of providing public funds to political parties is not well received by public opinion due to the low trust in political parties, and asking for public funding could backfire for political parties in terms of votes (Tuesta Soldevilla, 2011: 447). Therefore, there still seems to be a certain degree of uncertainty amongst actors about whether the funding provision will be effectively implemented and whether this will lead to a constant

and predictable stream of funds for the system, allowing parties to adapt their long-term planning around the system.

In order to ensure the smooth operation of a public funding scheme to level the playing field, public funding must be implemented starting in 2017 under the new Law 30414, and funds must be made available. For that purpose, the ONPE should elaborate a detailed proposal for the distribution of public funds based on the results of the 2016 general election.

In addition to direct public funding, political parties also receive indirect public funding in the form of access to media and exemption from taxation. Political parties receive access to media in both electoral periods (30 days leading up to the election) and non-electoral periods. Only parties that have gained access to Congress are granted access to media during non-electoral periods. In non-election periods, parties are allowed access time of up to five minutes per month on state-owned media, and this time is restricted to the presentation of approaches and proposals. During election time, parties have access to both private and public media. The amount of time granted to a given political party is partially dependant on party representation in the National Congress: 50% is divided equally among all parties, the remainder according to the number of seats held. Political parties participating in elections for the first time have an access time that is equal to the lowest allocation to a pre-existing party (IDEA database). The other form of indirect funding is through preferential tax treatment. Political parties are treated as partnerships for tax purposes, making them exempt from direct taxation on income.

Regulation of private funding can take different forms

The approach to regulating private funding in OECD countries varies. Many countries place maximum donations ceilings (Table 6.1), either at fixed amounts or at amounts tied to minimum wage regulations (in Portugal and Poland) or annual income of the contributor (Brazil). In Latin America, Chile allows individual contributions of up to EUR 73 000 (USD 80 000) to candidates.

In addition, anonymous donations are another source of concern in the private funding sphere, and policy approaches to regulating anonymous donations vary. Anonymous donations present problems for transparency and oversight. Large donations without the possibility of public accountability can facilitate capture of political parties and candidates. A majority of countries have chosen to ban anonymous donations outright (50%), or allow them within certain set ceilings (38%); this is Peru's approach. Only four countries allow unregulated and unrestricted anonymous donations (Figure 6.3).

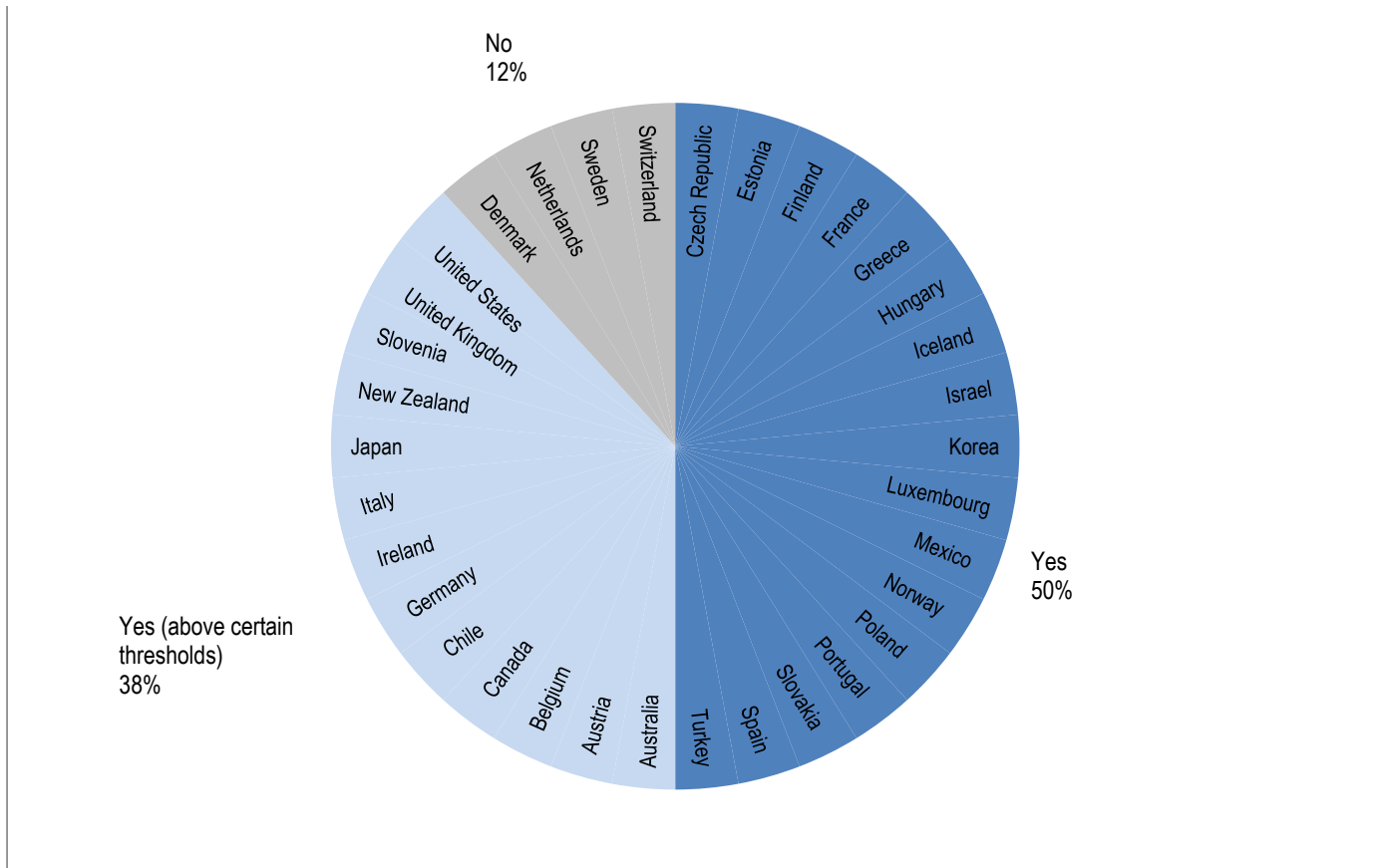
Table 6.1. Maximum donation ceilings for individuals in selected OECD countries

	Party	Candidates
Australia	No limit	No limit
Austria	No limit	No limit
Belgium	EUR 500	N/A
Brazil	Yes ¹	Yes ¹
Canada	CAD 1 200 per party	CAD 1 200
Chile	No limit	USD 80 000
Denmark	No limit	No limit
Finland	EUR 30 000	EUR 5 000
France	EUR 7 500	EUR 4 600
Germany	No limit	No limit
Greece	EUR 15 000	EUR 3 000
Hungary	No Limit	No limit
Iceland	EUR 2 720	EUR 2 720
Ireland	EUR 2 500	EUR 1 000
Japan	EUR 146 300	EUR 11 000
Korea	No limit	USD 20 000/10 000/5 000
Netherlands	No limit	No limit
New Zealand	No limit	No limit
Norway	No limit	No limit
Poland	Yes ² -	Yes
Portugal	Yes ³	Yes ³
Spain	EUR 10 000	EUR 6 000
Sweden	No limit	No limit
United Kingdom	No limit	No limit
United States	USD 33 400	USD 2 700
Peru	USD 64 000	USD 64 000 ⁴

Notes:

1. Individuals may contribute up to 10% of their gross income of preceding year.
2. Membership fees to parties limited to equivalent of minimum monthly wage as set for each year, political donations to parties limited to 15 times the minimum monthly wage
3. Donations from individuals to parties limited to 25 times the minimum monthly wage as set for each year.
4. Donations to candidates must be reported and treated as contributions to parties, and the same contribution limits apply.

Sources: For Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Netherlands, Norway, Poland, Portugal, Spain, Sweden and the United Kingdom: GRECO (n.d.), “Third Evaluation Reports on the Transparency of Party Funding”, Council of Europe, www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3_en.asp (accessed on 27 October 2015). For Japan: www.soumu.go.jp/main_content/000174716.pdf (JPY 20 million for party and JPY 1.5 million for candidates, exchange rate as of 12 October 2015). For Australia and New Zealand: IDEA (n.d.), *Political Finance Database*, www.oldsite.idea.int/political-finance/ (accessed on 27 October 2015). For Brazil, Chile and Korea: case studies in OECD (2016).

Figure 6.3. **Ban on anonymous donations to political parties in OECD countries**

Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: Adapted from IDEA (n.d.), Political Finance Database, www.oldsite.idea.int/political-finance/ (accessed on 27 October 2015).

In order to increase trust in political parties the current threshold for anonymous donations could be banned or lowered

In Peru, the law allows political parties to accept private contributions from individuals and legal entities, including corporations and labour unions. Political contributions from religious organisations, public entities and companies with partial or full state ownership interests are forbidden. Individuals and legal entities may only make donations up to 60 UIT per donor per year (equal to a total of 237 000 Nuevos Soles or approximately 64 000 Euros). Political parties may accept anonymous donations up to 30 UIT (approximately 32 000 Euros) in total, per year. Fifty percent of OECD member countries currently ban anonymous donations to political parties. Since concern about private funding by illicit sources remains high in Peru and seems to be the major cause for the low trust in political parties, the OECD recommends Peru to consider either lowering the currently permitted amount of anonymous donations or banning them altogether.

Candidates may also receive contributions directly, rather than through the political party, provided that the contribution is disclosed to the candidate's respective party and

the amount is within legal limits (Article 3, ONPE Regulations). Foreign political parties and government agencies may not make contributions, unless the contributions are specifically targeted and spent on training and research pursuits.

Enhancing transparency and integrity, and building capacities

Transparency in private funding could be increased to enable public scrutiny of the reports; at the same time, Peru could conduct random spot-checks on campaign activities to better gauge actual campaign activities and expenditures to more effectively detect illicit and undeclared funding

As noted above, the public funding system of Peru has never been funded by way of budget allocations. As a result, political parties derive all of their funding from private contributions. Country officials and citizens cited significant challenges posed by private funding of political parties and campaigns, most notably in the form of illicit funding from crime organisations and the narcotics trade. Undeclared funding used by campaigns was also recognised and routinely observed in the form of campaign events which cost significantly more than would be possible based on actual declared income levels in financial reporting.

In these circumstances, the effective regulation of private funding is crucial to ensure compliance with rules designed to ensure transparency and a level playing field for political parties and candidates. Transparency is a key component in ensuring that citizens and the media can serve as watchdogs to effectively scrutinise political actors. However, transparency alone may not be sufficient if political parties underreport political contributions and spending on a regular basis.

There are no “one-size-fits-all” approaches to limit the problem of illicit or undeclared funding. Some options to promote transparency include the immediate publication of campaign financial reports online, allowing media to monitor campaigns for activity significantly out of line with these reports. In other cases, electoral management bodies have taken a more active role in monitoring campaign activities for wrongdoing (Box 6.2).

Box 6.2. India's compliance teams

In India, a variety of methods support political party compliance with the Election Commission of India's regulations on candidate and political party expenditures. As elections begin, several different specialised teams are formed:

- Flying Squads: Dedicated Flying Squads under each Assembly Constituency/Segment track illegal cash transactions or any distribution of liquor or any other items suspected of being used for bribing voters.
- Static Surveillance Team (SST): These teams set up checkpoints and watch for movement of large quantities of cash, illegal liquor, suspicious items or arms being carried in their area. The checkpoints are video-recorded to prevent harassment or bribery.

Box 6.2. India's compliance teams (continued)

- Video Surveillance Teams: These teams capture all the expenditure-related events and evidence for any future reference as proof. Expenditure-related events and evidence are reviewed by the Video Viewing Teams and Accounting Teams to prepare Shadow Observation Registers for each candidate.

While these teams are often used to monitor for vote-buying activity, they can also be useful in detecting large-expenditure events for later comparison with financial declarations of income and expenses.

Source: OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264249455-en>.

Considering that parties heavily rely on private funding, private donors could be encouraged to share the responsibility to strengthen integrity in political finance

Promoting a culture of integrity in the public sector, i.e. among the recipients and users of financing, is only a part of the equation. A culture of integrity can also be promoted among those who provide the funding.

In Peru, close co-operation with the private sector is particularly important as the parties heavily rely on private funding. Peru could therefore consider encouraging the private sector to adopt internal policies regarding donations. For example, many global companies adopt a policy on making contributions to political parties, which is often set forth in their code of conduct and internal business practices guidelines. These policies prohibit the use of company resources for contributions to any political party or candidate, whether federal, state or local. This prohibition covers not only direct contributions but also indirect assistance or support through buying tickets to political fundraising events or furnishing goods, services or equipment for political fundraising or other campaign purposes. For example, the World Economic Forum Partnering Against Corruption Initiative (PACI) Principles for Countering Bribery aims to promote private sector initiatives to strengthen integrity and recommends companies to consider controls and procedures to ensure that improper political contributions are not made.

It is important to note that effective implementation of a compliance programme requires top-level commitment at the level of the board and CEOs, who must provide appropriate resources. It is not enough to declare and provide procedures and processes. Business leaders must create a climate of understanding among employees and must incorporate these priorities into their behaviour through adequate training. Companies should customise procedures to fight risks that could jeopardise the development of a real culture of integrity in the DNA of the company. Companies also need to communicate efficiently to all business partners on the nature of their programmes. A compliance programme must constantly evolve and be appropriately included in business behaviours. A good compliance programme should not prevent a business from operating but rather should become a competitive added value.

To prevent the abuse of state resources by political parties and campaigns more effectively, Peru could increase the use of education and awareness-raising

The already unequal level between the incumbent and a challenger can be further affected by the misuse of state resources by the incumbent. Abusing government resources to promote re-election of those in power and unilaterally subsidising political parties are practices that jeopardise a level playing field. The abuse of resources includes government officials using official vehicles during campaigns, printing campaign material in national printing offices or holding party meetings and rallies in official precincts. In the case of incumbent officeholders running for re-election, abuse of public resources includes office staff working for the campaign and travel costs being billed as expenses.

The use of state resources is forbidden by the Law on Political Organisations. Interview partners, including public officials and citizens, identified the use of state resources at the local and regional levels as a commonly accepted practice, particularly state transportation resources. This awareness and apparent impunity further reinforces the belief that non-compliance with these rules is acceptable and unimportant.

Much variation also exists in terms of regulatory scope to ban donations from these corporations. Austria prohibits donations from corporations if the state holds a share of at least 25%. In Chile, a ban applies to cases where the amount of the contract represents more than 40% of the annual revenue of the corporation. While the debate on solution for abuse of resources tends to focus on legal measures, it is important to take into account underlying historic and structural factors. In countries where one-party regimes were in place for a long time, the separation between the state and the ruling party is often still blurred. Regulatory measures such as bans and limits on government use of state vehicles, limited mobilisation of public servants or checks on use of public propaganda may fall short of solving the problem. The legal prohibition against the use of state resources in Peru requires adequate support in the form of education and awareness-raising in order to be more effective.

Ensuring compliance

Peru could strengthen the power of the ONPE to demand additional supporting documents, materials or witnesses related to financial report, as well as the necessary human and technical resources to conduct effective investigations

Acknowledging the relatively sound de jure framework and the need to enhance transparency and capacities, the main problem in Peru appears to be a lack of compliance with and enforcement of the existing framework.

The ONPE of Peru is tasked with administering political finance generally, and also with conducting training, developing guidance and regulations, receiving, reviewing and publishing financial reports. According to information provided by Peru, the ONPE has a staff of approximately 48 people at central level dedicated to the supervision and audit of party and campaign financial information. A significant portion of its workload is related to reviewing annual political party reports, campaign financial reports every two months during election periods and end-of-campaign reports within six months of the announcement of results. These reports must also be published online within one day of reception by the ONPE. At regional level, the ONPE clearly lacks the capacities and resources to ensure supervision and oversight.

Experience shows that countries with monitoring entities do not always provide the necessary financial and human resources to effectively undertake its mission. Oversight bodies are often run by public servants with a background in law; economists, auditors and statisticians are rare. Modern auditing of campaign finance reports requires confronting databases on campaign donations with records from the public budget, contracting or public work and services, loans from public banks, licenses and permits. While public interest groups have started exploring this field, oversight bodies are often underequipped for this task. As a result, even where the rules are clear and sanctions are in place, the quality of oversight may remain poor due to limited capacity of the oversight body. Recent reports highlight that capacity and resources need to be matched to workload in order for election management bodies to carry out their mission effectively (OECD, 2015b). In terms of the number of staff and the mandate of the electoral management body, there is variation across countries (Table 6.2).

Table 6.2. **The institutional capacity of electoral management bodies in selected OECD countries**

	Electoral management body	Staff numbers	Mandate and powers	Budget
Canada	Elections Canada www.elections.ca/	500 staff ¹ Up to 235 000 temporary employees to administer elections or referenda	Provide guidance to political parties and candidates Review Investigate suspected violations Issue caution letters, engage in public compliance agreement Commissioner may disqualify candidates or levy fines up to CAD 100 000 Refer criminal matters to public prosecutors	CAD 120 million (2014 ²)
Chile	SERVEL (Electoral Service) www.servel.cl/	276 staff 80 professional 196 technical and administrative	Administrative review of financial statements for compliance with laws and regulations No fine or sanction powers	USD 12.727 million (2014) USD 4.678 million for elections (2014)
Estonia	Estonian Party Funding Supervision Committee www.erjk.ee/	2 staff Administrative manager Legal advisor To support the 9 Committee members	Review party and candidate financial disclosures Investigate suspected violations or complaints Demand additional evidence from parties or third parties Impose civil fines up to EUR 15 000 Refer criminal matters to prosecutors	
France ³	<i>Commission Nationale des Comptes de Campagne et des Financements Politiques</i> (CNCCFP) www.cnccfp.fr/	33 staff Utilises temporary employees to review campaign accounts or undertake investigations	Review financial reports and approve, reject or revise them Rejection of accounts can result in non-reimbursement of expenses Refer suspected criminal violations to the public prosecutor	EUR 6.7 million (2015 case study)
Korea	National Election Commission of Korea (NEC) www.nec.go.kr	330 staff at headquarters 620 staff 17 metropolitan or provincial commissions 1 820 staff in district commissions	Review party financial reports Issue regulations, conduct investigations into suspected violations of the Public Official Election Act or Political Funds Act Issue administrative fines or correction orders ⁴	USD 329 million (2014)

Table 6.2. The institutional capacity of electoral management bodies in selected OECD countries (continued)

	Electoral management body	Staff numbers	Mandate and powers	Budget
United Kingdom	Electoral Commission www.electoralcommission.org.uk/	127 staff ⁶ 14 executives 103 managers/ senior advisers / advisers /officers 10 assistants	Provide guidelines and advice to parties, candidates and the public Review party and candidate financial disclosures Investigate suspected violations and complaints Conduct interviews Issue civil fines or compliance or stop notices ⁶	GBP 20.965 million (2014-15) ⁷
United States	Federal Election Commission www.fec.gov/	350 staff ⁸ Attorneys IT professionals Auditors, administrators	Issue regulations Review party and candidate financial disclosures, and conduct audits of disclosure reports Investigate suspected violations or complaints Compel witness testimony or documents Impose civil fines Refer criminal matters to federal prosecutors	USD 66 million (FY 2011)
Peru ⁹	Oficina Nacional de Procesos Electorales www.web.onpe.gob.pe/	48 staff to supervise and audit campaign financial reports	Review party and candidate financial disclosures Investigate suspected violations or complaints Impose civil fines	S/. 338 220 002 (FY 2016)

Notes:

1. Elections Canada (n.d. a), “The Role and Structure of Elections Canada”, www.elections.ca/content.aspx?section=abo&dir=role&document=index&lang=e (accessed 27 October 2015).
2. Elections Canada (n.d. b), “2013-14 Departmental Performance Report”, www.elections.ca/content.aspx?section=res&dir=rep/est/dpr2014&document=financial&lang=e (accessed on 27 October 2015).
3. CNCCFP (2014), “CNCCFP - France’s National Commission for Campaign Accounts and Political Financing”, www.cnccfp.fr/presse/kit/cnccfp_en.pdf.
4. Ace Electoral Knowledge (n.d.), “South Korea: An Independent and Neutral Electoral Management Body”, www.aceproject.org/ace-en/topics/em/electoral-management-case-studies/south-korea-an-independent-and-neutral-electoral.
5. Electoral Commission (2014), “Corporate plan 2014-15 to 2018-19”, http://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/167091/EC-Corporate-Plan-2014-15-to-2018-19.pdf, p. 33.
6. Electoral Commission (2011), “Enforcement policy, December 2010”, http://www.electoralcommission.org.uk/_data/assets/pdf_file/0003/106743/Enforcement-Policy-30March11.pdf.
7. Electoral Commission (2014), “Corporate plan 2014-15 to 2018-19”, http://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/167091/EC-Corporate-Plan-2014-15-to-2018-19.pdf.
8. GRECO (2011), “Third Evaluation Round: Evaluation Report on the United States of America: Transparency of Party Funding”, Council of Europe, www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282011%29_USA_Two_EN.pdf.
9. Information provided by Peru (OECD Questionnaire for the Integrity Review, October 2015).

Source: OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264249455-en>.

In addition, the use of online technologies could facilitate the effective investigations of political finance and also enable more public scrutiny by the media and the public as seen in Estonia (Box 6.3).

Box 6.3. Estonia's integration of technology in electoral management

The Estonian Party Funding Supervision Committee (EPFSC) oversees the public funding system, financial reporting, investigation, audit and compliance. It is also in charge of sanctioning campaign finance violations. The EPFSC is able to accomplish its work with a staff of nine committee members, a legal advisor and an office manager. This is due in part to its high level of integration of technology. The EPFSC requires all financial reports to be completed in an online electronic spreadsheet, allowing the staff to easily organise, access and review financial documents in a consistent form.

In addition, the financial information can be published quickly in an online database and is easily accessed and searched by the public and media, improving transparency and oversight.

Source: OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264249455-en>.

Another method to support the ONPE's effective oversight of political parties and campaigns would be to provide the ONPE with additional power to demand documents, supporting materials and witnesses in cases of suspected violations. This would strengthen its ability to identify misconduct. As seen above, many electoral management bodies possess these powers, and country practice recognises that they can ensure that an electoral monitoring body conducts effective oversight.

In order to ensure effective deterrence against prohibited activities and improve compliance, Peru could strengthen corresponding sanctions and enforcement mechanisms

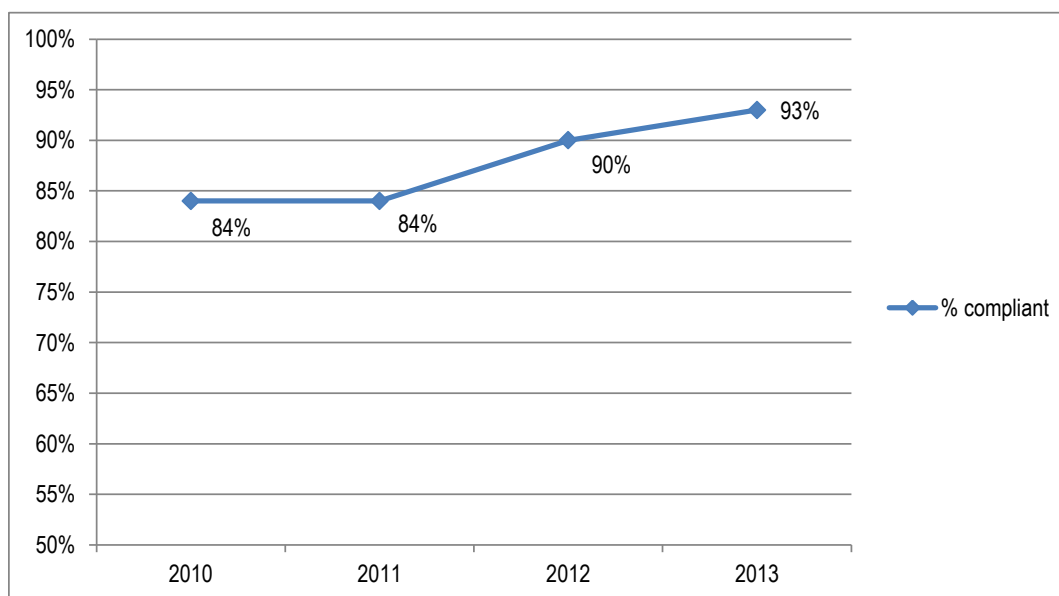
The ONPE is empowered to levy sanctions against political parties and candidates for violations of fundraising rules, or for failure to comply with financial reporting requirements. Political parties not complying with annual reporting requirements, or bi-monthly reporting during campaign periods, may be subject to suspension of public funding. In the case of individual or anonymous contributions exceeding the applicable donation ceilings, the ONPE may fine the party between 10 and 30 times the amount of the contribution received. In the case of a political party receiving a contribution from a prohibited source, or if the party omits or intentionally alters donor or accounting information, the ONPE may fine the offending party between 10 and 50 times the amount of the contribution received, omitted or altered.

Sanctions are the “teeth” of regulations on financing political parties and election campaigns, serving as deterrents for breaches and indirectly promoting compliance. In OECD countries, sanctions range from financial to criminal and political. Parties may have to pay fines (74% of member countries), have their illegal donations or funds confiscated (44%), or lose public subsidies (47%) in cases of violation. More severe sanctions include criminal charges such as imprisonment (71% of member countries), loss of elected office (18%), forfeiting the right to run for election, or even deregistration (21%) or suspension (3%) from a political party.

Sanctions clearly have deterrent effects and promote higher compliance. In the United Kingdom, the Electoral Commission struggled to encourage political parties to submit required quarterly and yearly financial reports in a timely manner. However, in 2009, the

Electoral Commission was given the power to levy civil sanctions in the form of monetary penalties, for violations of the Political Parties Elections and Referendums Act, including failure to submit financial reports by the statutory deadlines. Since 2010, compliance rates have increased to 93%. Figure 6.4 provides examples of compliance rates in the United Kingdom in respect of delivery of yearly statements of accounts and quarterly returns of reportable donations by political parties.

Figure 6.4. Compliance rates in the United Kingdom, 2010-13



Source: UK Electoral Commission / OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264249455-en>.

However, as mentioned above, no public funding has been made available since the public funding programme’s intended launch in 2007. The ONPE therefore has been left with no sanction power to encourage political parties to comply with financial reporting rules. Unfortunately, in the few instances where the ONPE has levied monetary sanctions for improper contributions or contributions in excess of ceilings, penalties were never collected. The new Law 30414 from 2016 foresees to implement the public funding programme in 2017; if this is achieved and maintained over time, the ONPE would once again dispose of this mechanism to sanction political parties.

The current practice in Peru with respect to sanctions and their enforcement sends a message of impunity to political parties. A clear mechanism for enforcement is necessary in Peru to improve compliance and create effective deterrence to all political actors. Many electoral management bodies have the power to enforce their own sanctions, and this could be considered for Peru. It has been noted that the proposal for the Law 30414 originally included a strengthening of the sanctions and the power of the ONPE, but these changes have not been introduced.

Since political parties need support in order to comply with regulations, technical assistance could be strengthened through tailored training and user-friendly guidebooks for party officials

In order to ensure compliance, providing support to political parties to help them comply with regulations is crucial. This is an angle that is often neglected, but very much in need from the point of view of political parties.

Interview partners at the regional level noted that a significant issue regarding political parties' struggle or unwillingness to build necessary internal capacity to comply with campaign finance regulation may result from hesitancy to attend training sessions or a reluctance to approach the ONPE for assistance for fear of extra scrutiny or discovery of existing violations. The ONPE can help strengthen party capacity by providing regular training sessions to local and regional party officials. It could also organise question-and-answer sessions, which could allay fears of reprisal or investigation. In addition, user-friendly guides and explanations of expectations and responsibilities of party officials can support parties in building their own internal capacities. The United Kingdom's Electoral Commission has developed a series of guides for party officials in order to support internal capacity development in political parties (Box 6.4).

Box 6.4. UK Election Commission guidance for political parties

The UK Electoral Commission provides user-friendly step-by-step guidance to political parties and campaign staff in a series of online handbooks available online. Each handbook sets out easy-to-understand instructions on important campaign activity such as:

- responsibilities of a party treasurer
- how to properly account for donations to a party
- rules for spending
- reporting responsibilities and deadlines.

In addition, the website provides sample electronic forms for campaigns to use, as well as more detailed factsheets for more complex situations or dilemmas. A majority of the handbooks are 10-15 pages in length, including diagrams and examples. The handbooks can be found on the Commission's website at www.electoralcommission.org.uk/i-am-a/party-or-campaigner/guidance-for-political-parties.

Source: OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264249455-en>.

An improved internal capacity development strategy could, for example, take the form of some sort of parallel support agency or unit within the monitoring agency focused on supporting compliance. It could also take the form of a space for dialogue between parties and monitoring agencies, which would facilitate adherence to the rules and allow for better understanding of where problems lie and how they could be better addressed. In India, the Election Commission established the India International Institute of Democracy and Election Management in order to provide training on electoral practices to meet domestic and international requirements. The Institute comprised four components: 1) training and capacity development; 2) voter education and civic

participation; 3) research, innovation and documentation; and 4) international projects and technical collaboration.

Citizens should be allowed to register suspected violations of campaign finance regulations through a specific reporting mechanism

In Peru, citizens openly acknowledge blatant violations of campaign finance regulations, particularly at the local and regional levels. These citizen watchdogs can provide additional support to the ONPE in its oversight role by acting as the eyes and ears on the ground. Peru could consider providing a mechanism by which citizens can alert authorities and potentially provide evidentiary support of these suspected wrongdoings.

Citizen complaint mechanisms can also contribute to the identification of political finance malpractices and promote a culture of integrity. Submission of complaints is a way to draw the attention of oversight bodies to problems, and also to increase pressure on them to address these issues. Citizen complaints therefore are sources of knowledge and opportunities for better regulation of political finance in the pursuit of a responsive policy-making process. For example, India set up a 24/7 call centre and complaint monitoring unit in each district. A toll-free telephone number is now widely publicised for the public to report corrupt electoral practices. For example, between 1 March 2011, around the time the elections of the Tamil Nadu assembly was announced, and 15 May 2011, two days after the vote count, the Election Commission of India received a total of 3 159 calls, with vigilant voters themselves reporting malpractices and demanding action (Quraishi, 2014).

Proposals for action

The overall legal and regulatory framework for political finance in Peru is relatively sound. However, challenges remain in effectively implementing parts of the law on political parties, and additional resources and power is needed for the ONPE to ensure adequate compliance with existing rules and regulations. Finally, additional outreach to support political parties' internal capacity-building and citizen knowledge and awareness would complement the holistic approach to building transparency in the political finance system.

To strengthen Peru's political finance system, the OECD therefore recommends the following actions:

The Peruvian legal framework for financing political parties and campaigns

- The public funding programme contained within the Law on Political Organisations needs to be sufficiently resourced and effectively enforced.
- In order to increase trust in political parties the current threshold for anonymous donations could be banned or lowered.

Enhancing transparency and integrity, and building capacities

- Transparency in private funding could be increased to enable public scrutiny of the reports; at the same time, Peru could conduct random spot-checks on campaign activities to better gauge actual campaign activities and expenditures to more effectively detect illicit and undeclared funding.

- Considering that parties heavily rely on private funding, private donors could be encouraged to share the responsibility to strengthen integrity in political finance.
- To prevent the abuse of state resources by political parties and campaigns more effectively, Peru could increase the use of education and awareness-raising.

Ensuring compliance

- Peru could strengthen the power of the ONPE to demand additional supporting documents, materials or witnesses related to financial report, as well as the necessary human and technical resources to conduct effective investigations.
- In order to ensure effective deterrence against prohibited activities and improve compliance, Peru could strengthen corresponding sanctions and enforcement mechanisms.
- Since political parties need support in order to comply with regulations, technical assistance could be strengthened through tailored training and user-friendly guidebooks for party officials.
- Citizens should be allowed to register suspected violations of campaign finance regulations through a specific reporting mechanism.

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Chapter 7

Laying the foundations for transparency and integrity in lobbying in Peru

Increasing transparency in lobbying is a major policy lever to restore public trust in the government. Based on the OECD Recommendation of the Council on Principles for Transparency and Integrity in Lobbying and good practices of OECD member countries, this chapter looks at various aspects of the current Peruvian lobbying regulation with special attention to the existing framework of lobbying rules, transparency in lobbying activities, integrity risks in lobbying, and compliance and enforcement of these rules. Examination of these points allows the opportunity to assess and clarify the validity of existing measures. The chapter provides a set of recommendations to strengthen the system and increase the level of awareness and compliance with lobbying regulations in Peru.

At the core of democracy is the idea of guaranteeing equal access to political participation to all citizens. In Peru, political participation in general is guaranteed by the Constitution from 1993 (Article 2), and regulated in detail through various laws and decrees, especially Law no. 26300 stipulating the rights of citizens to participate and control public matters through referendum, legislative initiatives, removal or revocation of authorities, and the demand for accountability. However, these mechanisms alone are mostly unidirectional in the sense that they usually do not provide a platform for participating in formulating and evaluating public decisions and public policies.

At regional level, the norms are more precise. For instance, the Law no. 27867 of regional governments identifies participation (Art. 8.1) as one of the leading principles; the institution responsible for the development of policies for citizen participation is the Regional Council (Consejo Regional). Also, at regional level a Regional Co-ordination Council (Consejo de Coordinación Regional) ensures co-ordination between a region and its municipalities; 40 % of the Council needs to come from civil society. At municipal level, Law no. 27972 emphasises the importance of promoting participation, in particular in regional planning. Additionally, Law no. 27783 sets the bases for decentralisation and provides for participatory budgeting at regional and local levels. The details of these bases are regulated in Law no. 28056 from 2003 and its regulation through the decree no. 171-2003-EF.

However, the real level of political participation hinges not only upon the formal mechanisms available, but also upon overcoming the dilemma of collective action. If individuals with common interests are not able to join and organise into an interest group, their chance of making their voices heard in political decision-making processes becomes lower. In turn, business and elite interests are usually better organised and dispose of more resources and better connections to public decision makers. This may lead to biased political and administrative decisions. In order to guarantee a level playing field and mitigate the risk of undue influence by interest groups, it is therefore important to promote general participation and regulate lobbying of business and elite interests.

Indeed, lobbying is a fact of public life in all countries and an important aspect of democracy. It has the potential to promote democratic participation and can provide decision makers with valuable insights and information. Lobbying may also facilitate stakeholder access to public policy development and implementation. Yet lobbying is often perceived as an opaque activity of dubious integrity, which may result in undue influence, unfair competition and policy capture to the detriment of fair, impartial and effective policy making.

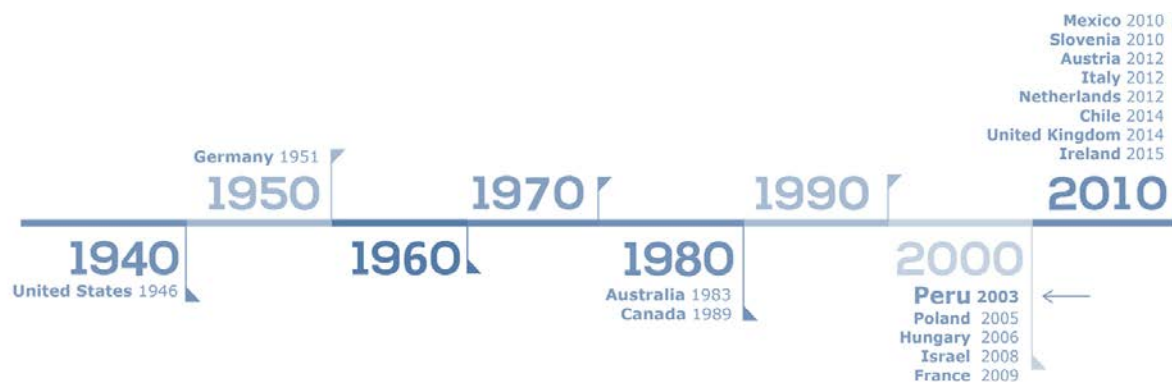
This chapter provides proposals for improving the current Peruvian lobbying regulations. It is important to note that all reform proposals directly related to the Law and its regulations have to be taken with caution, as the lobbying framework is *de facto* not effective. This is not merely the result of the detected legal and institutional weaknesses, but more fundamentally related to a culture of informal lobbying and a negative perception of lobbying activities across the Peruvian society. The following recommendations nevertheless aim at strengthening the existing framework of lobbying rules and the institutional setup. They favour the promotion of transparency in lobbying activities and suggest ways to encourage the compliance and enforcement of lobbying rules. To tackle the deeper issues, the chapter closes with a set of recommendations on education and public awareness-raising in the public sector, the private sector and in society as a whole in view of initiating a change in culture and perception over time and create an environment in which formal lobbying regulations could start making sense.

The Peruvian institutional framework for regulating lobbying

Peru was a Latin American pioneer in introducing a Lobbying Law, but its regulations are currently not effective

Internationally, there is evidence of an emerging consensus on the need for transparency in lobbying. Sixteen OECD member countries have introduced lobbying regulations, and others are considering doing so (Figure 7.1).

Figure 7.1. Lobbying regulation timeline



Source: OECD (2015), *Government at a Glance*, OECD Publishing, Paris, http://dx.doi.org/10.1787/gov_glance-2015-en.

Peru was a pioneer in Latin America when it enacted a law regulating lobbying in 2003. Law no. 28024 established instruments and obligations in an attempt to bring more transparency to the Peruvian public policy-making process. It covers both the executive and legislative branches, and other agencies and levels of government. Lobbying activities are further regulated by decree no. 099-2003-PCM. The Law and its regulation provide a broad definition of a lobbyist, called “managers of interests” in the Law, as any natural or legal person that develops actions to promote own or third party interests in relation with the public decisions adopted by public officials. Public officials are defined broadly as any public official whose decisions have an economic, social or political impact of individual or collective nature (Box 7.1).

The Law foresees that lobbyists representing third party interests must officially register at the National Superintendence of Public Registries (Superintendencia Nacional de Registros Públicos, or SUNARP) in order to be allowed to undertake lobbying activities. The registration has a validity of two years and must be available in electronic form to facilitate its accessibility. At a minimum, the Law requires the registration of names of the person or persons, the legal relationship between the lobbyist and the person for whom he is undertaking the lobbying activity, a general description of the lobbying activities, the public officials to which these activities will be directed, a declaration stating that the lobbyist has no conflict of interest or incompatibility that would impede him from carrying out the lobbying activities, and other requirement stipulated in the regulation of the Law.

Box 7.1. Some key elements of the current law on lobbying in Peru

In Peru, Law No. 28024 regulates lobbying in the public administration.

Article 7 of the Law defines a lobbyist as “a national or foreign individual or legal entity, duly registered in the corresponding register, who performs lobbying efforts for their own interests or for the interests of third parties, in connection with public decisions made by public officials covered by Article 5 of this Law...”

Articles 2 and 4 of the Law define lobbying efforts and detail the definition of lobbying as “oral or written communication, regardless of the means used, led by the lobbyists to an official of the public administration, in order to influence a public decision”. In the terms of the Law, “lobbying means the activity whereby national or foreign individuals or legal entities promote in a transparent manner their views in the public decision-making process to guide decisions in the direction desired by them. Lobbying is done through lobbying efforts. Public officials are prohibited from making lobbying efforts seeking anything other than institutional or state interests”.

For the purpose of this Law, the following are not considered lobbying:

- statements, expressions, comments or similar acts made in speeches, articles or publications
- the dissemination of news or other material distributed to the general public or disseminated through any means of social communication
- information, written or through any other means susceptible of being recorded, provided to the public administration in response to a request made thereby
- information provided in any social media in the exercise of freedom of expression
- claims, statements, comments made in public meetings, in the exercise of the right of freedom of expression, opinion and assembly
- the free exercise of a legal defence and counselling, within the provisions of law
- other similar efforts which do not lead to decision making by the public administration.

Source: Law no. 28024 (2003), Lima, Peru, http://idehpucp.pucp.edu.pe/images/documentos/anticorrupcion/normativa/ds_099-2003-pcm_actual.pdf.

According to this Law, the registered lobbyist has to provide a report every six months on the lobbying activities carried out during that period. At a minimum, the report must state the object of the lobbying, the means employed and the public officials contacted. Public officials who have been in contact with lobbyists also have to report on the information and content of these lobbying activities directed at them. The Law forbids public officials from receiving gifts or any other type of favours, donations, services or job proposals in relation with lobbying activities. This is in line with the Peruvian Ethics Code (Ley 27815 del Código de Ética de la Función Pública, see Chapter 3).

The Law also contains a range of provisions concerning conflict-of-interest situations and incompatibilities that prohibit lobbyist activity. Public officials are not allowed to undertake lobbying activities while in office and during the 12 months after leaving office. Other exclusions include individuals and legal persons who participate in collegial

bodies of the public administration, owners and directors of national or international media, and relatives of public officials if the lobbying activity concerns an area of competence of the public official. Furthermore, the law contains lobbyist obligations which include observing ethical principles, informing the responsible entities about their activities, denouncing any violation of the Law, and maintaining secret the information classified as such.

Despite a relatively strong formal regulation, Peru obviously struggles with its implementation. To date, only five natural and one legal person have actually registered as lobbyists according to the Law (SUNARP website, accessed on 9 June 2016). The law is thus not effective and is unable to reach its stated objective. Shortcomings in both the legal framework and its implementation are known and have already led to a reform proposal (Proyecto de Ley no. 1269/2011-CR). However, as already mentioned, it is unlikely that the problems in this area can be resolved with a legal reform only.

The responsibilities of the lobbying registry and policy could be shifted to a strengthened Authority for Transparency and Access to Information (ANTA)

Currently, the SUNARP is in charge of the registration process and the reception of the biannual reports on lobbying activities. These reports have to be sent by the SUNARP to the Comptroller General's Office (Contraloría General de la República, or CGR) for external control.

However, the interviews conducted in Peru emphasised that the SUNARP does not appear to be the adequate institution to deal with the lobbying registry. It was reported that in 2003, the legislator decided to vest the responsibility of the register to the SUNARP because no other institution had experience with the management of registers at the time. The SUNARP, according to its Law 26366, has the mandate to dictate the policies and technical and administrative standards related to public records, and is responsible for the planning, organisation, regulation, directing, co-ordinating and supervision of the registration and publicity of the acts and contracts in the public records.

According to Article 2 of the Law, the SUNARP's core business is the registry of natural and legal persons and the registry of movable and immovable assets. These activities require knowledge and skills other than those needed for the management and control of a lobbying registry. A lobbying register is the visible instrument of a policy that tackles complex issues related to the behaviour of public officials, lobbyists, and the private sector. It also deals with legislation processes, the making of technical regulations and public ethics in general. It seems symptomatic that the transparency portal of the SUNARP (accessed on 20 May 2016) does not refer to the Lobbying Law or to the following resolutions (013-2004-SUNARP/SN, 025-2013-SUNARP/SN).

In OECD member countries, the bodies responsible for co-ordinating lobbying strategies and mechanisms differ across countries (see Table 7.1). The general trend, though, is to assign the task either to a specialised, dedicated body, as in Canada, or to one that oversees a broader range of integrity standards, as in Slovenia. Indeed, because lobbying is generally an issue in the overall transparency and anti-corruption agenda, a number of countries assign the task to institutions with a wide-ranging integrity brief (OECD, 2014). Clearly, however, no country in the sample covered by the OECD 2013 Survey on Lobbying Rules and Guidelines chose to entrust its public registry entity with this task.

Table 7.1. Oversight bodies for monitoring lobbying rules and guidelines

	Oversight Body
Australia	Department of the Prime Minister and Cabinet
Austria	Ministry of Justice and regional administration offices
Canada	The Office of the Commissioner of Lobbying
France	Ethics officer of the Assemblée Nationale and Senate
Germany	Administrative authorities or the Public Prosecutor's Offices
Hungary	The integrity advisors in each administrative agency/Ministry
Italy	The Transparency Unit at the Ministry of Agriculture
Mexico	The Board of the House of Representatives (<i>la Mesa Directiva de la Cámara de Diputados</i>), the Chairman of the Senate and the Internal Comptroller.
Poland	Ministry of the Digitalization and Administration
Slovenia	Commission for the Prevention of Corruption of the Republic of Slovenia
United States	Office of the Clerk of the House of Representatives and the Secretary of the US Senate implement and administer the law. The United States Attorney's Office enforces the law.
European Parliament and European Commission	EU Transparency Register Secretariat

Source: OECD Survey on Lobbying Rules and Guidelines (2013).

The above-mentioned reform proposal (Proyecto de Ley no. 1269/2011-CR) considers transferring the registry to the Presidency of the Council of Ministers (Presidencia del Consejo de Ministros, or PCM). However, Legislative Decree 1353 from 2017 vested the Authority for Transparency and Access to Information (Autoridad Nacional de Transparencia y Acceso a la Información, or ANTAI) with the mandate to regulate lobbying. However, the draft Decree is unclear on the exact functions, and the Decree should be revised in light of the recommendations in this chapter. In particular, a strengthened ANTAI, as recommended in chapter 2, should be responsible to host, supervise and control the lobbying registry, should have the power to sanction violations of the Law, as well as developing policies for implementing the lobbying framework. Indeed a previous draft law foresaw the ANTAI as an autonomous body, which would have the advantage of placing the registry at arm's length from political interference and contribute to augmenting the credibility of the lobbying registry. The external control of the registry would remain with the CGR.

The process of strengthening the independency and power of the ANTAI as recommended in chapter 2 would thus offer the opportunity to coherently incorporate this specific mandate and the required responsibilities and powers. It would also provide the opportunity to discuss challenges and opportunities for lobbying in general as well as how to move forward with the other OECD recommendations provided in this chapter.

Additionally, as emphasised in Chapter 2, Peru could use the mechanism of the CAN to ensure co-ordination between a strengthened ANTAI and the CGR and in order to facilitate embedding the lobbying regulation into a wider integrity framework and co-operation with other anti-corruption initiatives in the country. Integrity measures such as better management of conflict of interest (see Chapter 3), balanced funding of political parties and election campaigns (see Chapter 6), and whistleblower protection (see Chapter 4) complement the lobbying regulations and require co-ordination amongst the responsible entities.

Implementing and enforcing the Lobbying Regulations

Considering that there are no clear benefits for lobbyists to register, Peru could introduce positive incentives by reducing the administrative burden of compliance with the registration and reporting, and by eliminating the need of providing proof (constancia) of the lobbying activity

A lobbying register can only be functional if lobbyists actually register. That so few lobbyists have registered shows that there is a deeper, more fundamental problem with the Peruvian lobbying framework. Indeed, in Peru lobbying activities are conducted informally (Mujica, 2014). This informal system functions despite limited transparency and susceptibility to corrupt practices. In turn, according to interviews conducted with the private sector, the formal way as proposed by the current Peruvian regulatory framework only comes with disadvantages and costs, without any clear benefit.

Reducing the costs of compliance by easing the registration and reporting process or by providing benefits to registered lobbyists could be an option for Peru to consider. While such positive incentives alone are unlikely to prevent unethical practices and undue influence, they may nevertheless set incentives for “good” lobbyists to formally declare their activity and contribute to encouraging a culture of transparent and official lobbying over time.

On one hand, Peru could strive to lessen the burden of registration and reporting. While the private sector in Peru has complained about red tape, Peruvian regulation does not seem to be particularly cumbersome when compared to with international practices (OECD, 2014). Nevertheless, an online registration process and an electronic report submission system, as in Austria, Canada, Slovenia and the United States, could facilitate the administrative process for lobbyists. Also, the registry asks for the names of public officials to which the lobbying activities will be directed (Art. 13, d). This requisite seems difficult to meet in practice given the high turnover rate in the Peruvian public administration, and might, for that reason, not be met with great caution. Peru may consider changing this requisite and ask for the name of the department or government agencies likely to be contacted, as is the case in Canada, Slovenia and the United States.

Also, the regulation of the Law in decree no. 099-2003-PCM specifies the procedure of providing proof of the Lobbying act as stipulated in the Law under Article 5 (*constancia*). This proof contains details about the public official, lobbyist and other persons present during the meeting, date and time of the meeting, the motive and objective of the lobbying act, and has to be signed by both the public official and the lobbyist. The proof applies to both professional lobbyists and lobbyists acting in their own interest, but do not need to be signed. Also, the lobbyist has to request that the proof be incorporated into the registry within ten working days after the meeting. While the requirement of the proof is understandable as it tries to leave concrete evidence of each single lobbying act on paper, it seems unrealistic given the Peruvian context, easy to circumvent, and duplicates the lobbying reports and the idea of the Online Register of Visits that will be described below. Peru may therefore wish to consider eliminating this requirement, as it may be perceived as highly formal and bureaucratic, deterring compliance by both the public official and the lobbyist without adding an effective means of control.

On the other hand, certain systems offer lobbyists practical advantages for complying with the rules. In France, for example, lobbyists gain access to the National Assembly and

the Senate only if registered. The Dutch, German and European Parliaments have established similar practices (OECD, 2014). It should be noted, however, that such incentives are of little value in a context where meetings take place outside government buildings, as is likely to be the case in the Peruvian context of widespread informal lobbying. Also, over half of the lobbyists surveyed in nine countries by the OECD (51%) answered that rewards or incentives are not effective in furthering compliance with lobbying rules or codes of conduct (OECD, 2014). Given the sensibility of the issue and the wide-spread negative perception of lobbyism in Peru, particular care must be taken in any attempt to provide benefits to lobbyists, as this could be perceived as unduly favouring business interests over the public interest.

The power to sanction could be given to a strengthened ANTAI, which should ensure its applicability for all public officials; at the same time, the unimplemented Special Administrative Court foreseen in the Lobbying Law could be incorporated into the Administrative Court for Transparency and Access to Information (Tribunal de Transparencia y Acceso a la Información Pública)

Beyond positive incentives provided for compliance with the regulations, effective sanctions must be foreseen. Breaches of the Law and its regulations are mainly related to the procedures of the registration, proof of the lobbying act (*constancia*), and the lobbying reports and can apply to both the lobbyist and the public officials involved.

With respect to sanctions applicable to a lobbyist, Article 41 of the regulation enumerates a set of infractions, characterised as severe, very serious, serious, or minor, and the corresponding sanctions. According to the severity of the infraction incurred, sanctions range from written warnings, monetary fines and suspensions of the lobbying licence, to cancellation of the licence and permanent disqualification. The SUNARP also transfers the lobbying reports to the CGR in charge of the external control of auditing the operations or actions undertaken by public officials in relation to the information provided in the submitted lobbying reports. All sanctions foreseen by the Law have to be imposed even if the infraction involved a civil or penal responsibility; then, the case will also be transmitted to the responsible authorities.

When an infraction is related to the process of registration, the SUNARP has to apply the indicated sanction. Other infractions are applied by the authority of the institution to which the public official involved in the lobbying activity belongs. However, delegating the task to sanction a lobbyist or a public official to the minister of environment, for example, means that if the lobbying activity has been directed to the minister himself, the minister would have to sanction the lobbyist with whom he interacted. Since lobbying activities are often if not usually directed to the highest levels of authority in order to effectively influence the decision-making process, this procedure seems difficult to implement in practice. A Special Administrative Court (Tribunal Administrativo Especial, or TAE), a body created by the Law but never implemented, is the second and last instance of appeal.

It seems symptomatic that while there is a severe sanction for “acting as a lobbyist without being registered”, the interviews with a number of Peruvian stakeholders indicated that most of the lobbying activities take place informally by unregistered lobbyists. According to the data compiled for this review, no sanction has ever been applied. Again, for sanctions to be effectively deterrent and have preventive effects, there

must be registered and active lobbyists in the first place, which is not yet the case in Peru and reflects deeper problems, as mentioned before.

In turn, Article 22 of the Law stipulates that public officials are sanctioned according to the recommendations issued by the organs of the National System of Control (Sistema Nacional de Control, or SNC, see Chapter 8), i.e. in this case the CGR. Article 5 of the Law enumerates the public officials to which the Lobbying Law applies, and the list includes all levels of officials with decision-making power, including the President of the Republic, congressmen, ministers and elected local public officials.

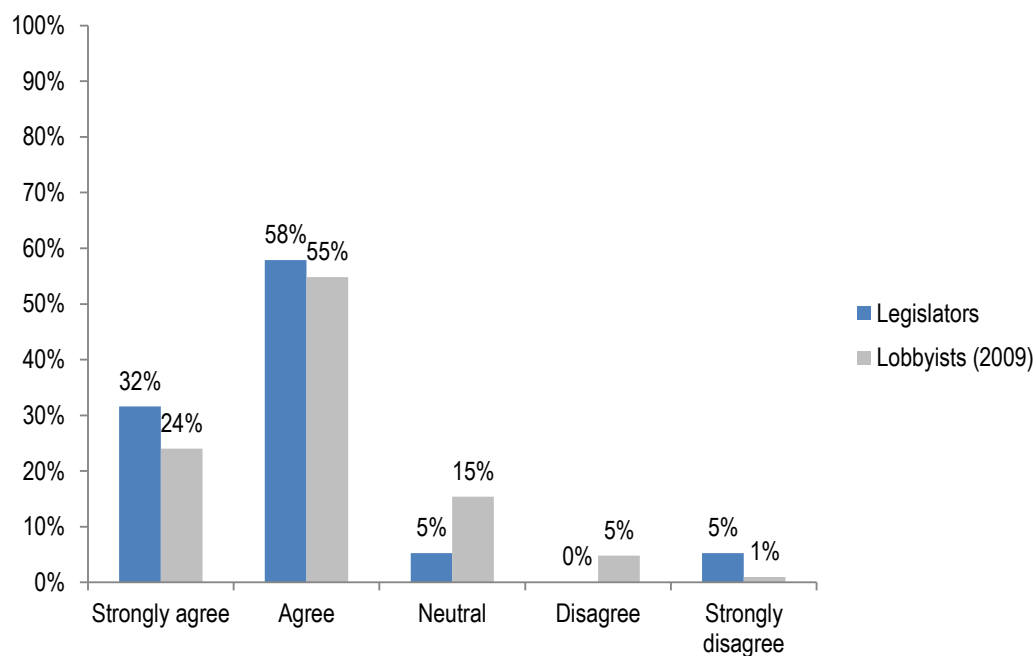
In order to guarantee a viable system of sanctions in the lobbying framework, Peru could thus consider reviewing Title VI of the Law 28024 in order to ensure coherence with the current disciplinary regimes for all public officials, including ministers and elected officials at local and central level. As already recommended above, the power to apply the sanctions could be vested with a strengthened, independent ANTAI. The ANTAI would need to co-ordinate closely with the Office of the Comptroller General and the Congress.

Promoting transparency in lobbying

Easy and transparent access to the registry and to the abstracts of the reports should be ensured to reduce the actual or perceived problems of influence peddling by lobbyists; Peru will need to find an operable level of public disclosure to balance privacy and access to information rights

According to interviews conducted in Peru, lobbying is widely perceived as corruption, if not equated with it. At least in part, citizens do not trust the activities carried out by lobbyists because of the lack of transparency in these processes. Indeed, there is consensus among lobbyists and legislators surveyed by the OECD in 2013 about the need for transparency (Figure 7.2); 55 % of lobbyists agreed, and 24% strongly agreed, that transparency in lobbying would help reduce the actual or perceived problems of influence peddling by lobbyists (OECD, 2014).

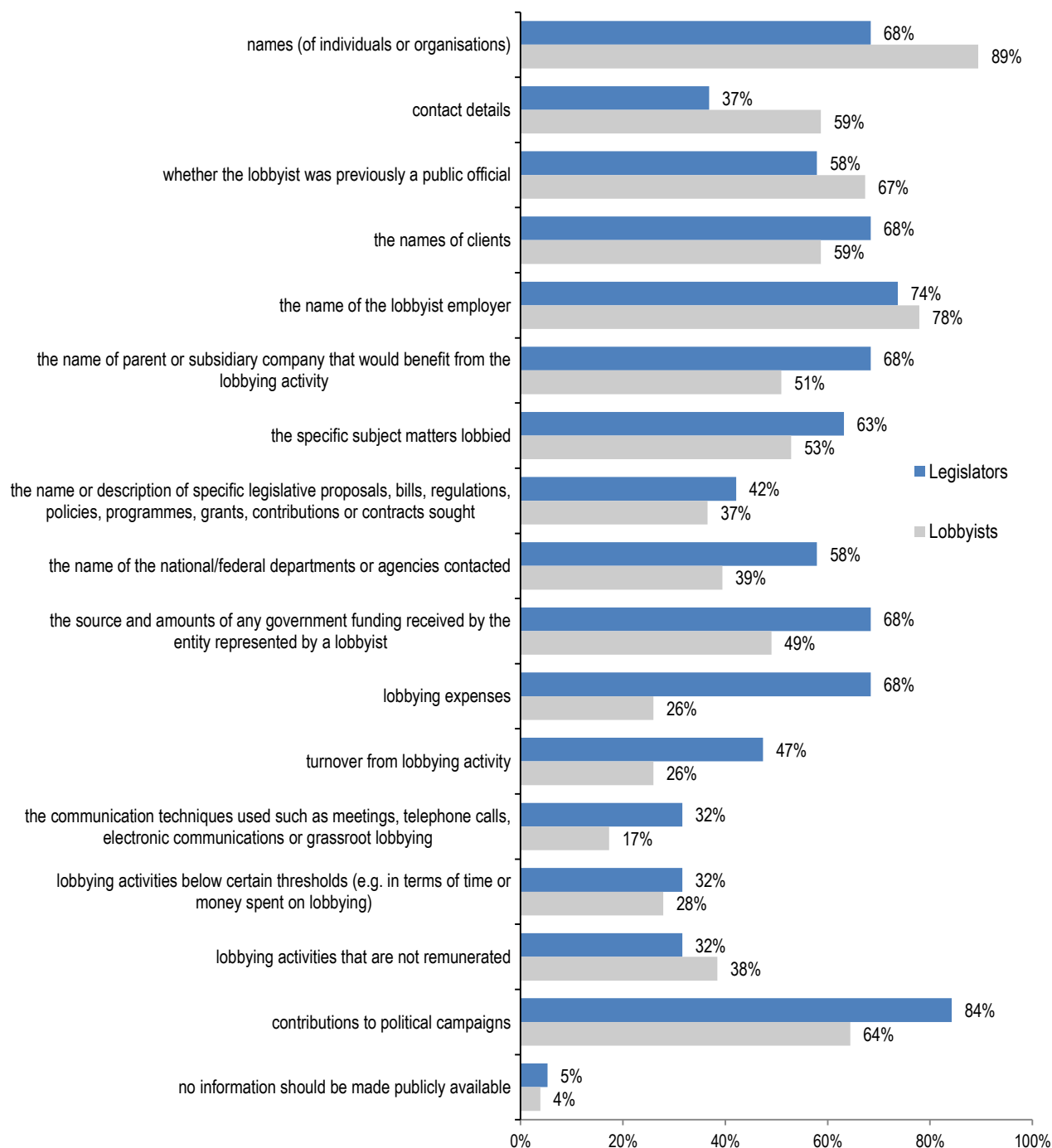
Figure 7.2. **Transparency in lobbying activities would help alleviate actual or perceived problems of influence peddling by lobbyists**



Sources: OECD Survey on Lobbying for Lobbyists (2013); OECD Survey on Lobbying (2009); OECD Survey on Lobbying for Legislators (2013).

In theory, the SUNARP is required to publish the following information on its website: the list of registered lobbyists, summaries of the biannual reports submitted to the SUNARP, the regulation concerning registration and other relevant legislation. However, once the registry is operational, Peru needs to find a viable level of public disclosure; some statistics on lobbyists and a link to the reports could also be part of the information platform recommended in Chapter 2. Figure 7.3 shows views of legislators and lobbyists on the types of information they consider should be publicly available. It is interesting to note that legislators consider that lobbying expenses should be publicly disclosed, while lobbyists seem to dislike this idea. From the survey, it seems that there is more or less consensus amongst lobbyists and legislators that information regarding the name of the lobbyists, the name of the lobbyist employer, and contributions to political campaigns should be publicly disclosed.

Figure 7.3. Types of information that stakeholders believe should be made publicly available



Note: Respondents were asked the following question “Which of the following types of information, if any, do you think should be made publicly available, for example through a register?”

Source: OECD Survey on Lobbying for Lobbyists (2013); OECD Survey on Lobbying for Legislators (2013).

Finally, Peru should aim at ensuring that whatever information is made public in the future should be easily accessible. Vesting the institution whose core mandate will be to secure compliance with the Peruvian Law on Transparency and Access to Public Information from 2003 (Law no. 27806) could be a step in the right direction.

Peru has made progress in increasing transparency in the interaction between the public and private sector actors through other complementary rules and could continue on this path by optimising the Transparency Portals and their use

While Article 7 of the Law on lobbying in Peru provides a broad definition of the lobbyist as exposed above, Article 8 introduces a distinction between lobbyists acting on behalf of their own personal interests, and lobbyists acting on behalf of a third party's interest in exchange for some kind of compensation. The latter are called “professional lobbyists” in the Law.

This distinction is important as only the professional lobbyists representing third party interests have to register (Art. 12) and to submit biannual reports of their activities (Art. 14). This is in line with OECD practices (see Box 7.2). However, 62% of lobbyists surveyed in the 2013 OECD Survey responded that lobbying activities that are not remunerated should be covered by lobbying rules and guidelines.

Box 7.2. Lobbying rules generally apply only to paid lobbyists

OECD member countries take two main approaches to defining the scope of lobbying rules and guidelines. They define either “lobbyist” or “lobbying”. Where countries define lobbying but not lobbyist, a lobbyist is often considered in law as an entity or individual that conducts an activity that matches the statutory definition of “lobbying”.

The Canadian, French, German and Polish lobbying regulations do not contain any specific definition of lobbyist. Instead, as in Canada's Lobbying Act, they require individuals to register as lobbyists if they are paid to communicate with public office holders on behalf of a client or employer in respect of a number of listed matters. In other words, they define behaviours and actions, but not lobbyists per se.

Article 4 (15) of Slovenia's Integrity and Prevention of Corruption Act¹ defines a “lobbyist” as 1) any person engaged in lobbying and entered in the register of lobbyists; 2) a person who is engaged in lobbying and is employed in an interest group and lobbies on its behalf; or 3) a person who is an elected or otherwise legitimate representative of that interest group.

In the United States, Section 3 (10) of the Lobbying Disclosure Act (1995)² defines a lobbyist as: “[A]ny individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 per cent of the time engaged in the services provided by such individual to that client over a six-month period.” The definition differs at the United States state level. In California, for example, Section 82039 (1) of the Political Reform Act (2013)⁴ defines a lobbyist as: “Any individual who receives two thousand USD or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action.”

In Austria, Paragraph 4 of the Lobbying and Interest Representation Transparency Act of 2013 (Lobbying- und Interessenvertretungs-Transparenz-Gesetz – LobbyG) defines a lobbyist as a person who pursues a lobbying activity as a body, employee or contractor of a lobbying firm. A lobbying company is defined as a company whose corporate purpose includes the acquisition and performance of a lobbying job, even if not intended to be permanent.

Source: OECD (2014), *Lobbyists, Governments and Public Trust, Volume 3: Implementing the OECD Principles for Transparency and Integrity in Lobbying*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264214224-en>.

Indeed, as reported during the OECD fact-finding mission, public officials in Peru are most likely to be approached by investors or business owners. But these non-remunerated “lobbyists acting on behalf of their own interests”, although part of the general definition provided by the Law, are not covered by the regulation in the sense that they do not need to register or provide reports on their lobbying activities. Therefore, even in the case of an effective current Law on lobbyist registration, a large part of lobbying activities would remain outside the view of public scrutiny.

This gap, as well as the low level of enforcement and the limited effectiveness of the Law overall, could be compensated partly by increasing transparency in the public administration in general. For instance, the 2012 ministerial resolution no. 203-2012-PCM introduced the Online Register of Visits (Registro en línea de las visitas) as part of the Online Standard Transparency Portals (Portal de Transparencia Estandar) established by Decree no. 063-2010-PCM. The aim of this Resolution was to increase transparency and to facilitate public scrutiny with respect to the visitors of public administration offices. The register must record the number of the visit, the time of entry, the name and ID number of the visitor, the motive of the visit, the name, position and office of the public official visited, as well as the time of exit.

Although not explicitly related to the Law of lobbying, this provision helps to level the playing field between registered “professional” lobbyists and the lobbyists representing their own interests by increasing the transparency of the relations of the public administration with outsiders. Peru could consider further promoting the Online Standard Transparency Portals as a means to enable public scrutiny over interactions between public officials, interest groups, and private individuals. To do so, the instrument could be fine-tuned and more information could be provided on the existence of this tool and how to use it effectively for social control.

Finally, it is worth mentioning that no guidance beyond the Ethics Code for public officials currently exists on how to deal with meetings with both professional and private lobbyists. The issue could therefore be an integral part of training on public ethics and conflict of interest management as generally discussed in Chapter 3; the next section provides a set of practices and recommendations on awareness-raising and specific training for the public and private sector, and for citizens.

Raising awareness and developing capacities

In order to start changing the negative public perception of lobbying, Peru could conduct public campaigns explaining the role of transparent lobbying and the value of its regulation

Though they are officially called “managers of interests”, lobbyists are generally perceived as corrupt by the population at large. As long as this remains true, it is unlikely that the Peruvian lobbying regulation will become effective, even if all the recommendations put forward in the previous sections are implemented. Lobbyists, even ones working ethically, will not want to fall under generalised suspicion of corruption and will therefore continue working informally.

One of the major challenges in enforcing lobbying regulations in Peru is thus to change the perception of lobbying. Efforts must be made to ensure that it takes place in a transparent manner and with integrity. Measures must be taken to change the Peruvian perception of lobbyists; this may be accomplished with a functioning oversight

mechanism. Efforts must also be made to raise awareness with respect to the law and its relevance for ensuring a democratic process of decision making. Citizens will then see that regulated official lobbying is preferable to the status quo, where all lobbying activities are informal and highly prone to unethical practices.

A public campaign to counter the negative image of lobbying could be launched to promote the idea of lobbying that is controlled but not forbidden. The average citizen needs to be able to distinguish lobbyists who rely on corruption and influence trafficking from those who advocate professionally for private interests and use proper and legitimate procedures that preserve the impartiality and autonomy of government. Measures such as a dedicated website, YouTube videos or targeted newsletters could be adopted to encourage members of Peruvian society to accept lobbying as an important element of democracy.

Ireland enacted The Regulation of Lobbying Act in September 2015, which lays out rules for lobbyist registration and activities reporting. Prior to the commencement of the Act, the Standards in Public Office Commission of Ireland had taken a number of steps to raise awareness for the regulation of lobbying (Box 7.3). As of November 2015, there are 556 registered lobbying organisations/individuals.

Box 7.3. Supporting a cultural shift towards the regulation of lobbying in Ireland

The Standards in Public Office Commission established an advisory group of stakeholders in both the public and private sectors to help ensure effective planning and implementation of the Act. This forum has served to inform communications, information products and the development of the online registry itself.

A competitive recruitment process was held to appoint a Head of Lobbying Regulation. The Head of Lobbying Regulation is responsible for overseeing Ireland's new system for registering and making public lobbying activities. In case of Ireland, a senior Director from Canada's Office of the Conflict of Interest and Ethics Commissioner has been appointed as Ireland's first Head of Lobbying Regulation.

The Commission also developed a communications and outreach strategy to raise awareness and understanding of the regime. It developed and published guidelines and information resources on the website to make sure the system is understood. These materials include an information leaflet, general guidelines on the Act and guidelines specific to designated public officials and elected officials.

The Commission launched a more targeted outreach campaign through letter mail, and issued a letter and information leaflet to over 2 000 bodies identified as potentially carrying out lobbying activities.

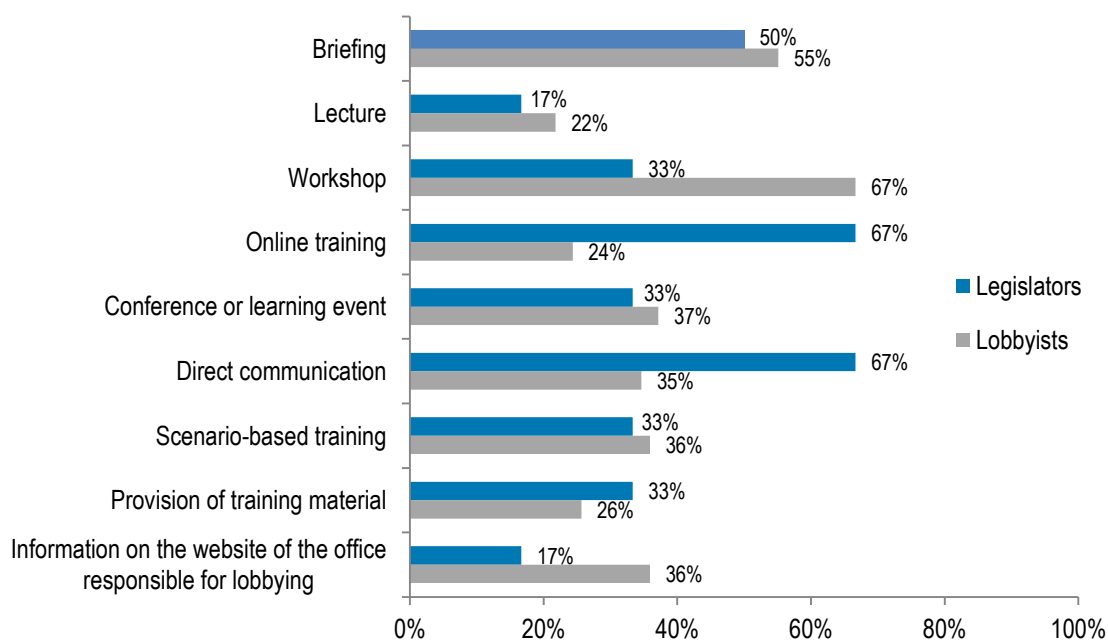
The website was developed to contain helpful information on how to determine whether an activity constitutes lobbying for the purposes of the Act. (Three Step Test: www.lobbying.ie/help-resources/information-for-lobbyists/am-i-lobbying/) Instructional videos were added to the site as well (www.youtube.com/watch?v=cLZ7nwTI5rM).

Source: Lobbying.ie, www.lobbying.ie/.

Awareness-raising activities and specific training on lobbying could be provided to both public officials and the private sector

Beyond the need of raising awareness amongst citizens as a whole, public officials and the private sector should receive training with respect to the lobbying regulations and their respective responsibilities. When lobbyists and legislators were asked in the OECD 2013 Survey on Lobbying what they believed to be the most efficient ways of learning about lobbying rules and guidelines, integrity standards and transparency tools, their responses varied (Figure 7.4). Lobbyists believed workshops and briefings to be the most efficient. Legislators opted for direct communication, online training and briefings.

Figure 7.4. Perceived effectiveness of various awareness-raising measures



Source: OECD Survey on Lobbying for Lobbyists (2013), OECD Survey on Lobbying for Legislators (2013)

Most countries with lobbying rules and guidelines seek to educate public officials on how to improve their understanding and further compliance. Although educational tools include awareness-raising activities and training that vary across countries, they generally include the basic practices of distributing rules to public officials when they take office, making them available online, or providing advice in response to doubts or questions (Table 7.2).

Table 7.2. Practices in OECD member countries to promote awareness and develop the capacities of public officials on lobbying rules and guidelines

	Initial dissemination of rules/guidelines to public officials upon taking office		Proactive updates regarding changes to rules/guidelines		Ensuring online availability of rules/guidelines for access by public officials		Provision of training to public officials, including examples of concrete situations and how they were addressed		Provision of official advice when public officials have doubts or questions regarding the rules/guidelines		The government is not promoting awareness or educating public officials on the lobbying rules/guidelines	
	Officials in the executive branch	Officials in the legislative branch	Officials in the executive branch	Officials in the legislative branch	Officials in the executive branch	Officials in the legislative branch	Officials in the executive branch	Officials in the legislative branch	Officials in the executive branch	Officials in the legislative branch	Officials in the executive branch	Officials in the legislative branch
Austria	○	○	●	●	●	●	○	○	●	●	○	○
Canada	●	●	●	●	●	●	○	○	●	●	○	○
France	○	○	○	○	○	○	○	○	○	○	●	●
Germany	●	●	●	●	●	●	●	●	●	●	○	○
Hungary	○	○	○	○	●	○	○	○	●	○	○	●
Italy	○	○	○	○	○	○	○	○	○	○	●	●
Mexico	○	○	○	○	○	○	○	○	○	○	●	●
Poland	○	●	○	●	○	●	○	○	○	○	●	○
Slovenia	●	●	●	●	●	●	●	●	●	●	○	○
United States	●	●	●	●	●	●	●	●	●	●	○	○
Total OECD10												
● Yes	4	5	5	6	6	6	4	3	6	5	4	4
○ No	6	5	5	4	4	4	6	7	4	5	6	6

Note: For Italy, the responses refer to the system put in place by the Ministry of Agriculture.

Source: OECD Survey on Lobbying Rules and Guidelines (2013).

In Peru, with respect to public officials, there is currently no specific training in place on how to deal with lobbying. Interviews showed that awareness amongst public officials about the existence of the lobbying Law is quite low. While every new public employee in Peru is entitled to be provided with an initial induction, necessary guidance on institutional policy, a presentation of their rights, obligations and duties under the Public Employment Framework Law (Law no. 28175) and the new Public Service Law (Law no. 30057), Chapter 3 outlined a general lack of systematic training and guidance on public ethics and management of conflict of interest in general. Peru could therefore consider starting to raise awareness on lobbying and political participation in general amongst public officials, and integrate explicit guidelines and training modules on how to deal with meetings with lobbyists. Such training could be specifically targeted to high-level public officials with relevant decision power likely to be approached by lobbyists.

Additionally, Peru could consider organising briefings and workshops for the private sector and business associations in order to raise awareness on the benefits of formal lobbying and the regulations in place. Since the private sector is an integral part of the High-level Commission against Corruption (CAN), this platform would be suited to start discussions on how to effectively reach out to the private sector.

Specifically, Peru could raise awareness on the value of complementary self-regulation within the private sector, and could encourage businesses to take their share of the responsibility in strengthening integrity

While governments have prime responsibility for setting out clear standards of conduct for public officials who may be lobbied, lobbyists and their clients also share a duty not to exert illicit influence and to comply with professional standards of conduct when they go about their business.

Peru could therefore consider promoting awareness that the private sector is co-responsible in promoting principles of good governance. To do so, it could behave with integrity and honesty towards public officials and could provide reliable, accurate information. In particular, lobbyists should avoid conflict of interest in relation to the public officials and the clients they represent. For example, they should refuse to represent conflicting or competing interests.

Again, the CAN could be used to promote discussions about the importance of additional self-regulation of the private sector with respect to lobbying. The important elements of self-regulation of lobbying for individual private firms are to ensure that 1) relevant staff assigned to conduct advocacy activities have a good understanding of transparent, responsible and thus professional interaction; and 2) accurate and consistent processes and procedures for transparent interaction with authorities and organisations are implemented in order to reassure the public that lobbying is done professionally and with high standards. One example is the French bank, BNP Paribas, which has adopted a “charter for responsible representation with respect to public authorities” (Box 7.4).

Box 7.4. BNP Paribas’ charter for responsible representation with respect to public authorities

In December 2012, BNP Paribas published its charter for responsible representation with respect to public authorities. The charter applies to all employees in all countries, and to all activities carried out in all countries in which BNP Paribas operates. BNP Paribas was the first European bank to have adopted an internal charter for its lobbying activities.

The charter contains a number of commitments to integrity, transparency, and social responsibility. Under the terms of the integrity commitment, the charter establishes that:

“The BNP Paribas Group shall:

- comply with the codes of conduct and charters of institutions and organisations with respect to which it carries out public representation activities
- act with integrity and honesty with institutions and organisations with respect to which it carries out public representation activities
- forbid itself to exert illegal influence and obtain information or influence decisions in a fraudulent manner
- not encourage members of institutions and organisations with respect to which it carries out public representation activities to infringe the rules of conduct that apply to them, particularly regarding conflict of interest, confidentiality and compliance with their ethical obligations

Box 7.4. BNP Paribas’ charter for responsible representation with respect to public authorities (continued)

- ensure that the behaviour of employees concerned by the Charter is in accordance with its code of Conduct and internal rules regarding the prevention of corruption, gifts and invitations.”

In addition, BNP Paribas employees and any external consultants who may be engaged must inform the institutions and organisations with which they are in contact who they are and whom they represent. The bank has also undertaken to publish its main public positions on its website. BNP Paribas provides employees concerned with regular training in best practices in public representation activities.

Sources: BNP Paribas (2012a), *Annual Report 2012*, <http://annualreport.bnpparibas.com/2012/ra/index.html/#/0>; BNP Paribas (2012b), *BNP Paribas charter for responsible representation with respect to the public authorities*, www.bnpparibas.com/sites/default/files/ckeditor-upload/files/PDF/Nous%20Connaitre/Banque%20Responsable/Charter%20representation%20BNPP_UK.pdf.

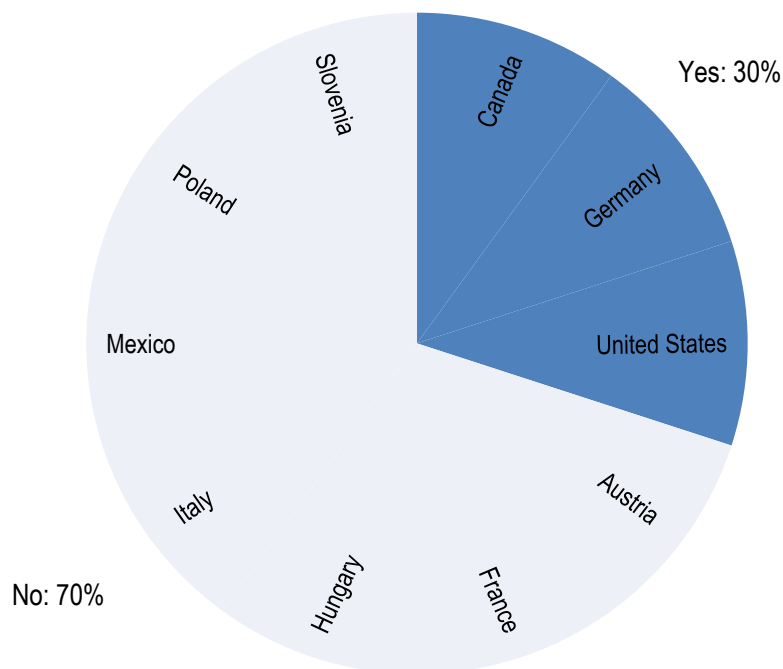
Moreover, a visible and credible commitment by the private sector to integrity and transparency in lobbying could be a very important contribution in triggering a change in the general negative public perception of lobbyists.

Reviewing the effectiveness of the lobbying framework

Mechanisms could be put in place for regular reviews of Peru’s lobbying rules and guidelines in order to identify implementation gaps and opportunities for improvements; one avenue for evaluating the framework could be public consultation

Regularly re-examining the rules and guidelines in place and how they are implemented, which includes compliance and enforcement, affords opportunities to strengthen and improve the system. While such practice is still relatively limited in the OECD countries (Figure 7.5), Peru could take the opportunity to consider conducting such reviews from the beginning on. Peru could identify relevant indicators and feedback loops that could provide opportunities to learn from experience and make necessary adjustments. This task should be taken into account when deciding which institutions should have the responsibility to implement and enforce lobbying regulations, for instance the strengthened ANTAI, as proposed above.

Figure 7.5. OECD countries with a review mechanism of their lobbying rules and guidelines



Source: OECD Survey on Lobbying Rules and Guidelines (2013).

Note: For Italy, the responses refer to the system put in place by the Ministry of Agriculture.

In the United States, the Attorney General reports every six months to Congress on how the Lobbying Disclosure Act is administered, which includes the filing of registrations. In Canada, Article 14.1 of the Lobbying Act establishes a mandatory review of the legislation every five years by a committee of the Senate and/or House of Commons. Within a year of a review, the committee must submit a report and recommend any changes to the Act. Similarly, the European Union's Transparency Register was reviewed in 2013, two years after it was instituted (OECD, 2014).

Public consultation can be a useful means to collect information and review the system. The Office of the Registrar of Consultant Lobbyists of the United Kingdom (ORCL) is an independent statutory office, responsible for publishing the statutory Register of Consultant Lobbyists. The ORCL works with the Cabinet Office. Since the introduction of Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, the ORCL has conducted two online public consultations in order to review the scope of the guidance for the register and compliance policy (Box 7.5). The findings were analysed and guidance was published. Peru may wish to consider conducting similar public consultation on lobbying to explore and identify more information that would guide its efforts to improve compliance with the Law.

Box 7.5. Public consultation on the scope of guidance for the register of consultant lobbyists in the United Kingdom

Since the enactment of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act in 2014, there have been many questions about the circumstances under which those who conduct the business of consultant lobbying will be required to join the Register. The objective of this consultation was to explore the information that would be provided both in the process of registration and in the quarterly updates and to answer questions that had been asked in order to help potential registrants understand whether or not they were required to register.

Some questions up for public consultation included:

- Do you agree that registration could happen ahead of an organisation carrying out specific lobbying activity?
- Do you think organisations would be willing to register ahead of having carried out any specific lobbying activities?
- Do you agree with the principle behind disclosing the identity of the Minister with whom a particular communication was made?
- Based on your understanding of the requirement to register, how many organisations or individuals do you estimate would be required to register?

The consultation was open between 21 November 2014 and 12 December 2014, and 17 responses were received from individual organisations and representative bodies. Details of the outcome were published with a number of points in response to frequently asked questions and set out next steps for the publication of guidance.

Sources: Office of the Registrar of Consultant Lobbyists (2014), *Consultation on the Scope of Guidance for the Register of Consultant Lobbyists*, www.gov.uk/government/uploads/system/uploads/attachment_data/file/377210/Scope_of_Guidance_Consultation_-_ORCL.pdf, Office of the Registrar of Consultant Lobbyists (2014), *Conclusions on the Consultation on the Scope of Guidance for the Register of Consultant Lobbyists*, www.gov.uk/government/uploads/system/uploads/attachment_data/file/390445/Consultation_Conclusion_Dec_2014.pdf.

Proposals for action

Safeguarding integrity and transparency in lobbying is an important condition for the effective functioning of the state, for ensuring public trust in the government, and for sustainable social and economic development. This chapter highlighted key aspects for reform and recommendations to help Peru advance towards the adoption of more practical lobbying regulation. Issues and themes that need special attention include:

The Peruvian institutional framework for regulating lobbying

- Peru was a Latin American and worldwide pioneer in introducing a Lobbying Law, but its regulations are currently not effective.
- The responsibilities of the lobbying registry and policy could be shifted to a strengthened Authority for Transparency and Access to Information (ANTAI).

Implementing and enforcing the lobbying regulations

- Considering that there are no clear benefits for lobbyists to register, Peru could introduce positive incentives by reducing the administrative burden of compliance with the registration and reporting, and by eliminating the need of providing proof (*constancia*) of the lobbying activity.
- The power to sanction could be given to a strengthened ANTAI, which should ensure its applicability for all public officials; at the same time, the unimplemented Special Administrative Court foreseen in the Lobbying Law could be incorporated into the Administrative Court for Transparency and Access to Information (Tribunal de Transparencia y Acceso a la Información Pública).

Promoting transparency in lobbying

- Easy and transparent access to the registry and to the abstracts of the reports should be ensured to reduce the actual or perceived problems of influence peddling by lobbyists. Peru will need to find an operable level of public disclosure to balance privacy and access to information rights.
- Peru has made progress in increasing transparency in the interaction between the public and private sector actors through complementary rules and could continue on this path by optimising the Transparency Portals and their use.

Training and awareness-raising

- In order to start changing the negative public perception of lobbying, Peru could conduct public campaigns explaining the role of transparent lobbying and the value of its regulation.
- Awareness-raising activities and specific training on lobbying could be provided to both public officials and the private sector.
- Specifically, Peru could raise awareness on the value of complementary self-regulation within the private sector, and encourage businesses to take their share of the responsibility in strengthening integrity.

Reviewing the effectiveness of the lobbying framework

- Mechanisms could be put in place for regular reviews of Peru's lobbying rules and guidelines in order to identify implementation gaps and opportunities for improvements; one avenue for evaluating the framework could be public consultation.

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- Standards in Public Office Commission of Ireland (n.d.), www.lobbying.ie/.

Chapter 8

Simplifying and strengthening Peru's administrative disciplinary regime for public officials

This chapter examines the role of Peru's administrative disciplinary regimes as essential mechanisms for enforcing the country's public sector integrity system. The chapter assesses the strengths and weaknesses of current systems in contrast to those of selected OECD member and partner countries. Recommendations are put forward for consideration by Peruvian authorities with a view to improve overall effectiveness by avoiding fragmentation and duplication between co-existing regimes and institutions; strengthening capacities, particularly in the civil service; and increasing performance evaluation and transparency.

Effective, comprehensive public sector integrity frameworks include not only pillars for defining, supporting and monitoring integrity, but also for the enforcement of integrity rules and standards. Enforcement measures, namely disciplinary systems and, when applicable, mechanisms for the recovery of economic losses and damages, are the necessary “teeth” to any country’s integrity system and are a principal means by which governments can deter misconduct. If applied in a transparent, timely and fair manner, they can also legitimise the existence of governments’ integrity rules and frameworks over time, serving to strengthen them and help instil integrity values in individuals and organisations as cultural norms.

While the message that disciplinary regimes send to public officials is certainly important, enforcement measures help signal to citizens that government is serious about upholding the public’s best interests and is worthy of their confidence and trust. Indeed, strong enforcement demonstrates that the rule of law applies to all and that public officials cannot act with impunity. This is a particularly important principle to uphold given the strong relationship between citizens’ perceptions of corruption and their trust in government leaders and institutions. Governments must take action to avoid a vicious cycle whereby continually decreasing levels of trust in institutions lead, in turn, to greater incentives for (and tolerance of) integrity breaches such as corruption over time. In Peru, this is particularly relevant as the government aims to restore public confidence in institutions.

Towards a coherent administrative disciplinary regime

In the medium to long term, in order to further reduce impunity and protect the rights of the accused, Peru could consider moving towards an administrative disciplinary regime with a single inventory of offences and corresponding sanctions and a clearer delineation of jurisdictions and institutional responsibilities.

Public officials in Peru are subject to disciplinary proceedings under several regimes depending on their specific position, the alleged offence, and the means by which the potential misconduct was identified (Table 8.1).

Elected and appointed officials such as the President, parliamentarians, Ministers, the President of the Council of Ministers, the heads of judicial institutions (the Constitutional and Supreme Courts and the Judicial Council), the Ombudsman and the Comptroller General are sanctioned under the Constitutional regime (also referred to as the political regime in some countries). In Peru, under the Constitutional regime, the President can be impeached for serious political crimes such as high treason or impeding legislative elections (Article 117 of the Constitution). The remainder of elected and appointed officials (see Table 8.1 for detailed listing) are subject to Constitutional disciplinary proceedings for “breaches of the Constitution and any criminal offence committed during their service or up to five years after service” as per Article 99 and the Standing Orders of Congress (Reglamento del Congreso de la República). Specifically, the Permanent Commission (Comisión Permanente) within Congress is responsible for charging these officials and initiating proceedings.

In addition, specialised disciplinary regimes exist for officials in the military, foreign affairs, law enforcement, and justice sectors (judges, public prosecutors and defenders not included in the abovementioned constitutional regime). Such officials are bound to the disciplinary proceedings unique to their organisations and regulated by specific laws. The

justification for specialised regimes, which are common across all OECD member countries, is that they allow such institutions to maintain their independence and avoid undue political influence or retaliation for effectively carrying out their duties. For instance, judges must be able to uphold the rule of law and, if necessary, sanction government officials. Therefore, a separate regime is needed in order to remove the risk that they may be sanctioned or removed from office by those same officials they are meant to hold accountable. Perhaps most importantly, it can be argued that officials under specialised regimes also carry out activities with greater potential to impinge upon the fundamental rights of citizens or national interests (i.e. law enforcement, military, intelligence). Therefore, more demanding behavioural standards should be imposed on them by regulations, along with harsher corrective sanctions for violations (OECD, 2003). On the other hand, however, others have argued that separate proceedings necessitate adequate oversight to ensure they are effectively applied according to law and are free from undue influence from within the institution.

In parallel to these regimes, it is important to note that relevant provisions of the criminal and civil codes also apply to all public officials. Articles 376-401 of the Criminal Code of Peru punish crimes committed by public officials including extortion, embezzlement, and bribery. A few exceptions concern the President of the Republic, who can only be held liable for serious political crimes during his or her mandate (Article 117 of the Constitution), and parliamentarians, who can be criminally prosecuted or arrested only upon the authorisation of Congress itself (Article 93 of the Constitution). In both cases, these exceptions ensure the principle of checks and balances by protecting elected officials from politically-founded or biased accusations and proceedings which could alter the State's democratic functioning. These exceptions do not concern Book VII of the Civil Code of Peru, which holds public officials liable for civil responsibilities if/when an official has caused an economic damage to their entity or to the State.

This review is intended to evaluate the administrative disciplinary regime applicable to the majority of civil servants and public employees, which currently consists of two co-existing systems: the administrative disciplinary regime and the administrative functional regime (Table 8.1). The former is under the jurisdiction of the Civil Service Tribunal (Tribunal del Servicio Civil) and is regulated by the Civil Service Law no. 30057 of 2013 (Ley del Servicio Civil) and the implementing Regulation no. 040-2014-PCM (Reglamento General de la Ley no. 30057, Ley del Servicio Civil). These instruments, together with the Internal Regulation of Civil Servants (Reglamento Interno de los Servidores Civiles, or RIS), contain the offences which can potentially lead to administrative sanctions.

Table 8.1. Overview of the main disciplinary regimes for public officials in Peru

Category of Public Officials	Constitutional/Political Regime	Administrative Disciplinary Regimes (scope of chapter's analysis)		Specialised Regimes	Criminal and Civil Responsibility
		Administrative Disciplinary Regime	Administrative Functional Regime		
	President of the Republic, President of the Council of Ministers, ministers, parliamentarians,	The majority of appointed public officials (excluding ministers and select other positions bound by other regimes indicated here)	The majority of appointed public officials (excluding ministers and select other positions bound by other regimes indicated here)	Mayors and Councilmen; Regional Governors and Councillors;	All public officials
	Constitutional Court Judges, Councilmen of the National Council of the Judiciary, Supreme Court Judges, Appellate Prosecutors,	Civil Servants	Civil Servants	Head of the Civil Registry Office – RENIEC;	
	Ombudsman, Comptroller General.		Public employees outside the civil service general employment framework (employed by government under different labour contract than for civil servants)	Chairman of the General Elections Board; Head of the National Election Processes Office; National Police; Armed Forces; Prosecutors; Judges; Diplomatic Officials	

Note: The columns presented in grey represent the scope of analysis of this review.

Source: Comptroller General's Office (Contraloría General de la República, CGR) - Responses to OECD Questionnaire; Constitution of Peru; Criminal and Civil Codes; Civil Service Law no. 30057 of 2013; Law no. 27785 of 2002.

The administrative disciplinary procedure itself starts by addressing the civil servant's alleged facts and offence (Article 107 of the Regulation no. 040-2014-PCM), and terminates with a report suggesting the appropriate sanction, if found justified/warranted. Sanctions may comprise an oral or written reprimand, temporary suspension up to 12 months without the benefit of remuneration, or dismissal (see also Box 8.1). Appeals on the initial sanctioning decision can be filed before the Head of Human resources in cases of reprimands. More serious sanctions may be appealed to the Civil Service Tribunal (Tribunal del Servicio Civil). When enforced, sanctions are issued either by the immediate supervisor of the offending public official, the Head of Human Resources or a delegated substitute, the Head of the relevant entity, or the Civil Service Tribunal (in case of appeals). The National Civil Service Authority (Autoridad Nacional del Servicio Civil, or SERVIR) cannot currently intervene in individual disciplinary cases, but rather plays a role in policy design and capacity-building, in providing guidance and advice as well as monitoring and evaluation of the application of the regime.

On the other hand, the functional administrative disciplinary regime applies, more broadly, to both civil servants and government employees, that is, those working for the public sector under any form of labour contract (contractors, consultants/advisors, etc.) Unlike the administrative regime, the functional regime is instituted by the Comptroller General of the Republic (Contraloría General de la República, or CGR) as per the Organic Law of the National System of Control and of the Comptroller General – Law no. 27785 of 2002 (as modified by Law no. 29622) and the related regulation (Supreme

Decree No. 023-2011-PCM, Directive No. 010-2016-CG/GPROD, Comptroller General's Resolution No. 129-2016-CG).

As for the procedure of the CGR-led regime, an initial investigation may be launched following an audit. If warranted, it will be followed by a sanctioning phase. Two types of outcomes may apply in this kind of proceeding (see also Box 8.1): while public officials committing serious offences may be temporarily suspended for 30 to 360 days without remuneration, those who incur a very serious violation are sanctioned with disqualification for one to five years. Specific sanctioning bodies carry out investigations and sanctions (Órganos Instructores and Órganos Sancionadores), and appeals of their decisions may be issued before the Superior Tribunal of Administrative Responsibilities (Tribunal Superior de las Responsabilidades Administrativas). This Tribunal is different from that of the aforementioned regime, wherein appeals are directed to the Civil Service Tribunal.

The recent civil service reform in Peru improved the disciplinary system insofar as it harmonised the numerous disciplinary regimes which were previously in place, consolidating them to regimes (Ministerio de Justicia y Derechos Humanos, 2015). The current system is based on two separate regimes, disciplinary and functional responsibilities. However, there are still several risks to the effectiveness and procedural fairness of the overall enforcement mechanism for misconduct and corruption. Indeed, due to some potential overlap between the sanctionable offences of the two systems, a single offence committed by a civil servant may be addressed theoretically under both regimes. For example, as shown in Box 8.2, “negligence of the performance of duties” or “abuse of authority” may, depending on how they are interpreted, apply to almost all of the offences of the administrative functional regime.

The risk of violating the principle of *non bis in idem* (i.e. a single offence being processed under both regimes) is minimised due to Article 5 of D.S. N° 023-2011-PCM (Reglamento de Infracciones y Sanciones para la Responsabilidad Administrativa Funcional Derivada de los Informes Emitidos por los Órganos del Sistema Nacional de Control). This regulation states that once the CGR has taken on a case, public entities may not pursue the same case via the administrative disciplinary regime. That is, the CGR's processing under the functional regime would automatically take precedent over the administrative regime. In practice, however, the application of this principle was called in to question. In such cases, legal certainty and consistency can therefore be compromised given that different sanctioning decisions (by different regimes) may be reached and imposed for similar offences. This potential lack of consistency between the two regimes compromises procedural fairness for public officials. Given the different sanctions that can be applied by the two regimes, it also creates potential incentives for managers to process disciplinary matters under the administrative disciplinary regime where arguably lighter consequences (i.e. reprimands) can be given.

Box 8.1. Administrative disciplinary sanctions in Peru and selected OECD member and partner countries

Two administrative disciplinary regimes co-exist in Peru at the moment for the majority of public officials, and namely civil servants: the administrative and functional systems. The table below represents the possible sanctions under both, some of which overlap (suspension and dismissal).

Regime	Sanctions	Sanctioning and Appeal Bodies	
Administrative Regime	Disciplinary	Verbal reprimand	Immediate Supervisor (no appeal)
		Written reprimand	Immediate Supervisor / Head of Human Resources
		Temporary suspension without pay from one day to 12 months	Head of Human Resources / Civil Service Tribunal
		Dismissal	Head of the public entity / Civil Service Tribunal
Administrative Regime	Functional	Temporary suspension without pay for no less than 30 calendar days and no more than 360 calendar days.	Sanctioning organs (Órganos instructores and Órganos sancionadores) / Superior Tribunal of Administrative Responsibilities
		Disqualification from the civil service for one to five years.	

OECD member and partner countries provide for these and additional types of sanctions including:

- fines
- demotion in rank (France, Germany and the United States)
- salary reduction (Germany, the Netherlands) or withholding of future periodic salary increases (the Netherlands, United Kingdom)
- compulsory transfer with obligation to change residence (France, Spain, United Kingdom)
- compulsory retirement (France)
- reduction or loss of pension rights (Germany – for retired officials, and Brazil)
- reduction in right to holiday or personal leave (the Netherlands).

Source: Civil Service Law no. 30057 of 2013; Organic Law of the National System of Control and of the Comptroller General – Law no. 27785 of 2002 (as modified by Law no. 29622); OECD (2003), *Liabilities and disciplines of civil servants*, OECD Publishing, Paris.; www.sigmaweb.org/publicationsdocuments/37890790.pdf.

Box 8.2. Sanctionable offences under the administrative and functional regimes of SERVIR and CGR

The legislation and regulation underlying both administrative disciplinary systems lay out the types of offences for which civil servants and public employees could be subject to disciplinary action. Some overlap can be found, thereby creating the possibility that the different sanctions be applied for the same type of offence.

Administrative Disciplinary Regime	Administrative Functional Regime
<ul style="list-style-type: none"> • persistent resistance to compliance with the supervisor's orders • violence, insubordination and insolence (<i>faltamiento de palabra</i>) • negligence in the performance of the duties • impeding the function of the public service • use or disposal of public assets for personal or third party benefit • working under the effect of alcohol or narcotic substances • abuse of authority, perversion of justice (<i>prevaricación</i>) or use of the function for profit purposes • damaging intentionally public assets and premises • unjustified absence for 3 consecutive or 5 non-consecutive days in a 30-day period or for 15 non-consecutive days in a 180-day period • sexual harassment; • political proselytism during working hours • discrimination • non-compliance with working hours • affecting the merit principle and career progression in the civil service • acting or influencing on another civil servants for personal or third party interests • receiving double economic compensation • misuse of authorisations (<i>licencias</i>) whose conferral is mandatory • acting against union liberties • acts of nepotism • verbal and/or physical aggression of customers of the public service • moral or sexual harassment • using the public function for personal profit • breaching confidentiality • impeding the access to work to civil servants who do not exercise their right to strike • acting negligently in the management and maintenance of the computer and technological tools affecting the services provided. 	<ul style="list-style-type: none"> • breaching norms on access to the public function • breaching the prohibition of double sources of income in the public sector • breaching rules and procedures on public contracts, or gaining personal profit from them • using public resources without the strict observance of relevant norms • breaching norms related to waste, pollution, protected areas and species, or archaeological sites • disposing of public goods for prices which are below market values • transferring assets and goods for personal benefit • seriously breaching the following principles and duties: <ul style="list-style-type: none"> ○ adequacy (<i>idoneidad</i>) ○ veracity (<i>veracidad</i>) ○ loyalty and obedience (<i>lealtad y obediencia</i>) ○ neutrality (<i>neutralidad</i>) ○ adequate exercise of the duty (<i>ejercicio adecuado del cargo</i>) ○ adequate use of the State's assets and resources (<i>uso adecuado de los bienes y recursos del Estado</i>) ○ responsibility (<i>responsabilidad</i>) ○ undue advantages (<i>obtener ventajas indebidas</i>) ○ misuse of privileged information (<i>hacer mal uso de información privilegiada</i>); • performing acts which are prohibited by any law or regulation in relation to the award of contracts and nepotism • committing any action or omission which implies negligence in the performances of the functions or the use of the latter for purposes which are not aligned with the public interest.

Source: OECD elaboration of Article 85 of Law 30057; Articles 98-100 of Regulation 040-2014-PCM; Article 46 of Law 27785; Articles 6-9 and Annex of Supreme Decree 023-2011-PCM.

To avoid such circumstances, the government of Peru may wish to consider the examples of OECD member and partner countries such as Brazil, Germany and the Netherlands (Table 8.2 and Box 8.3), which have more streamlined and unified regimes, and move toward the creation of a single administrative regime. This could entail specifically the creation of a single inventory of offences and sanctions which distinguishes between serious and less serious offences. Furthermore, this reform would need to be accompanied by a clear delineation of institutional responsibilities as per the type offence involved. For instance, the implicated organisations or entities (as overseen by SERVIR) could maintain competencies on less serious offences, with appeals falling under the jurisdiction of the Civil Service Tribunal, while Controllers, the CGR and the Superior Tribunal of Administrative Responsibilities could undertake jurisdiction over more serious offences. In such an arrangement, the jurisdiction over government employees (i.e. non-civil servants such as consultants or those in state-owned enterprises) would need to be considered to ensure adequate legal coverage of the inventory/regimes, as well as allowing controllers to pursue investigations identified outside of audits. Furthermore, as the more serious offences are most likely to also be criminal offences (which take precedent), stronger co-ordination with law enforcement bodies (see Chapter 9) would need to be considered as part of the reform.

Table 8.2. **Comparative overview of administrative procedures in Peru and selected countries**

Country	Investigations and hearings	Sanctioning decisions	Enforcing sanctions	First-instance appeal	Second-instance appeal	Monitoring and providing guidance
Brazil	1) Simplified TCA procedure for minor cases (including admission of guilt); 2) formal inquiry (<i>sindicancias</i>) by line ministries for less serious offences. 3) Temporary PAD commission of three civil servants (administrative disciplinary process, PAD) for serious offences	1, 2) Line ministries for TCA and inquiries. 3) For serious offences, a PAD commission can propose the application of a sanction (including dismissal) to the line ministry and the National Disciplinary Board. These enforcing authorities cannot dissent from the PAD's proposition without proper justification	Line ministries and the National Disciplinary Board	1) Not possible to appeal the TCA procedure. 2,3) First-instance appeal submitted to the authority that applied the sanction, whether it is a line minister or the National Disciplinary Board. This first-instance appeal is called "request for reconsideration".	Appeals submitted to the superior authority to that of whose act is appealed. This second-instance appeal is called a "hierarchical appeal". It should be noted that the convicted civil servant can appeal to the judiciary at any time.	Line ministries and the National Disciplinary Board
Germany	Individual line ministries	Individual line ministries	Individual line ministries	Individual line ministries	For civil servants, the Administrative Court; for those outside of the general employment framework, employment tribunals	Federal Ministry of the Interior

Table 8.2. **Comparative overview of administrative procedures in Peru and selected countries** (*continued*)

Country	Investigations and hearings	Sanctioning decisions	Enforcing sanctions	First-instance appeal	Second-instance appeal	Monitoring and providing guidance
Mexico (under recent reforms under the National Anti-corruption System, secondary implementing legislation pending)	1) Internal control bodies (SFP, Ministry of Public Administration) for minor offences. 2) Administrative Fiscal Tribunal (Tribunal Federal de Justicia Administrativa) for serious cases	1) Internal control bodies (SFP, Ministry of Public Administration) for minor offences. 2) the Administrative Fiscal Tribunal for serious cases	Individual line ministries	1) Ministry of Public Administration (SFP) the Administrative Fiscal Tribunal for serious cases (potentially separate upper chamber different from that which originally heard the case)	1) Fiscal Tribunal for minor offences 2) Pending secondary legislation (higher appellate national Court)	Ministry of Public Administration and committees created under the Anti-Corruption System
Netherlands	Individual line ministries	Individual line ministries	Individual line ministries	Internal Appeals Board in each line ministry	Administrative courts; District Court; Administrative High Court	Individual line ministries and the Ministry of Interior
Peru (proposed unified regime in the medium to long term)	Minor offences 1) Implicated organisations (i.e. immediate Supervisor, Head of Human Resources, Head of entity Serious offences: 2) CGR (for serious offences)	1) Immediate Supervisor, Head of Human Resources, Head of entity (for minor offences); 2) CGR (for serious offences)	1) Immediate Supervisor, Head of Human Resources, Head of entity (for minor offences); 2) CGR (for serious offences)	1) Civil Service Tribunal (for minor offences); 2) Superior Tribunal of Administrative Responsibilities (for serious offences).	Appellate administrative court	SERVIR with oversight from CGR

Source: Based on the current Peruvian legislation at the time of writing and OECD (2016), *Enforcing Integrity: Mexico's Administrative Disciplinary Regime for Federal Public Officials*.

Box 8.3. Brazil's National Disciplinary Board and SisCor

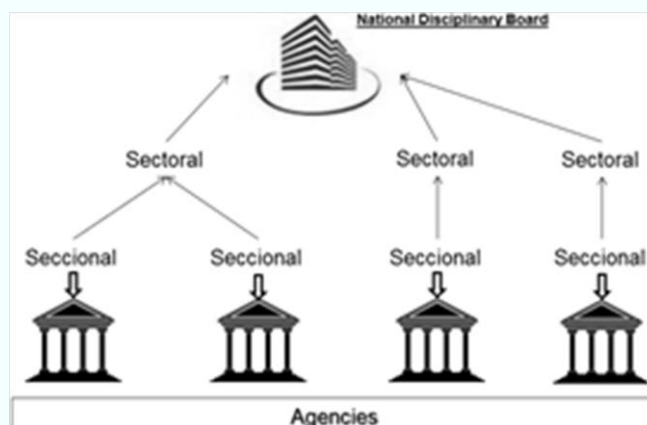
The disciplinary arrangements for public civil servants of Brazil fall under the remit of the Office of the Comptroller General of the Union (CGU), established in 2003 under the Single Judicial Regime of Federal Law 8.112/90. The CGU aims to enhance transparency and defend public assets through both preventative and punitive measures. With its jurisdiction limited to the federal executive branch, the CGU houses the Internal Control Secretariat, Transparency and Corruption Prevention Secretariat, the Ombudsman Office and the National Disciplinary Board.

Prior to the establishment of the National Disciplinary Board in 2005, the responsibility of disciplinary and integrity-related activities were fragmented across federal government agencies, subject to variation in their application and impact. The lack of central co-ordination and trained staff needed for consistent disciplinary action were the main culprits contributing to costly and lengthy processes and public distrust in the objectivity and effectiveness of disciplinary measures.

The National Disciplinary Board was established with the responsibility of overseeing the implementation of the centralised federal executive branch's disciplinary system – the SisCor. Under the SisCor are activities related to investigation of irregularities by civil servants and enforcement of applicable penalties. The SisCor is endowed with legal powers to supervise and correct any ongoing disciplinary procedures and to apply sanctions through its 150 employees across the central department, 20 sectoral units and 47 sectional units located within federal agencies (*corregedorias seccionais*).

Box 8.3. Brazil's National Disciplinary Board and SisCor (continued)

The structure of Brazil's federal disciplinary system (SisCor)



The centralisation of oversight under SisCor has been deemed as one driver in improving the effectiveness of the disciplinary regime as well as consistency in the application of sanctions. Indeed, the SisCor has trained almost 12 000 civil servants, which has been mirrored by a substantial increase in investigative capacity and the number of civil servants currently under investigation, an increase in the number of expulsive sanctions applied and a reduction in the annulment and reinstatement rates. Further, the automation of the Administrative Disciplinary Process (CGU-PAD) has reduced processing times by 20%. The success of the National Disciplinary Board has been, to a large extent, due to the existence of effective sectional units within agencies, which have helped to supervise, raise awareness around the role of the National Disciplinary Board, and balance entity-level responsibility with that of the National Disciplinary Board. Under the SisCor, Brazil has seen the creation of an Anti-Nepotism Act, a simplified procedure for minor offenses and online disclosures for national policies on transparency and integrity that are upheld through the Right of Access to Information Act.

The National Disciplinary Board is currently supporting further reforms to Law 8.112/90 to address gaps in legislation around issues not included in the scope or insufficiently addressed originally, such as cybercrimes, moral hazard (bullying), sexual harassment, racial segregation and administrative transactions.

Source: Information provided by the National Disciplinary Board of Brazil.

Achieving a more coherent and simplified administrative regime in the long term will require immediate steps in the short term. As a priority, stronger co-ordination and communication under the auspices of the CAN and more ambitious capacity-building efforts are needed to pave the way for future reforms

The aforementioned proposal to move towards a more coherent and simplified regime would need to take place over the medium to long term. Before Human Resource Management (HRM) bodies were to theoretically undertake responsibility for all lesser offences, capacities would first need to be in place. Stakeholders currently agree that the capacity of public institutions and their respective HRM units/bodies with respect to disciplinary matters is nascent and in need of further strengthening. For instance, a CGR study found that, between 2001 and 2010, only 23% of potential disciplinary cases identified by the CGR received sanctions from public institutions. While further research would be needed to ascertain whether potential disciplinary cases identified by CGR

were, in fact, liable for disciplinary action, interviews would suggest that issues such as turnover, implementing performance assessments, instilling high integrity standards, and procedures for merit-based recruitment must first be solidified to guarantee the independence and proper functioning of the disciplinary regime. This could indicate a need to first implement civil service reforms and strengthen basic capacities around disciplinary procedures. An early transition of disciplinary responsibilities to HRM bodies/public institutions could prove to be counter-productive.

Indeed, having sufficient, appropriate institutional capacities in place is a clear requirement for an effective disciplinary regime. Without the sufficient resources allocated to enforcement and recovery, even the best intended and planned integrity policies can fall short of their targets. Low capacities may not only lead to reduced effectiveness through fragmentation or unnecessary delays, but also to greater procedural errors that can taint cases and lead to higher rates of appeals, overturned decisions and lawsuits.

Improving capacities in this field can be a particularly important challenge given the complex nature of the disciplinary matters. Several skill sets are needed and recruitment and training efforts should target human resources experts, internal control and audit staff, investigators, subject matter experts (for particularly complex cases), financial experts, IT specialists and support staff. Acquiring the right number and mix of staff is a challenge, particularly in times of budget constraints, but should be weighed against the costs of non-compliance (i.e. higher losses due to integrity breaches and other offences). Moreover, sufficient financial resources allocated to disciplinary regimes (including for the competitive remuneration of staff necessary with the right skills in place) facilitate better recruitment, retention and help maintain the independence/objectivity of staff.

The High-level Commission against Corruption (Comisión de Alto Nivel Anticorrupción, or CAN) therefore could provide an effective platform to promote stronger co-ordination and facilitate an eventual transition towards a more coherent regime. It would also allow such important reforms to garner greater political backing and resources necessary for successful implementation. A specific working group on enforcement could serve as the forum for designing the legal reforms required for the inventory and associated legal and procedural reforms, as well as the vehicle for designing and implementing the much needed capacity-building initiatives for HRM bodies in public institutions. Indeed, the scope and scale of capacity-building and training efforts need to be appropriate given the magnitude of the challenge faced. The case of Brazil (see Box 8.3) underscores the importance of capacity-building efforts as a core pillar of successful disciplinary reforms. Over 12 000 civil servants were trained as part of the movement toward the National Disciplinary Board. A working group could take on the design of the curriculum and monitor progress. The group could also facilitate data collection efforts, which are currently fragmented and do not facilitate comprehensive reporting and evaluation. Both of these issues are discussed in more detail further on in the chapter.

A specific strategy should also be in place to raise awareness of managers, who are at the “front line” of daily activities and are key in bringing forward potential faults and offences. Several OECD member countries have developed guidelines for line ministries and managers aimed at helping them to interpret the law or laws concerning disciplinary procedures and sanctions. The guidelines also aim to help them ensure that procedures are timely and that they are fair and respect the rights of the accused (Box 8.4). Peru could use such materials as potential examples going forward.

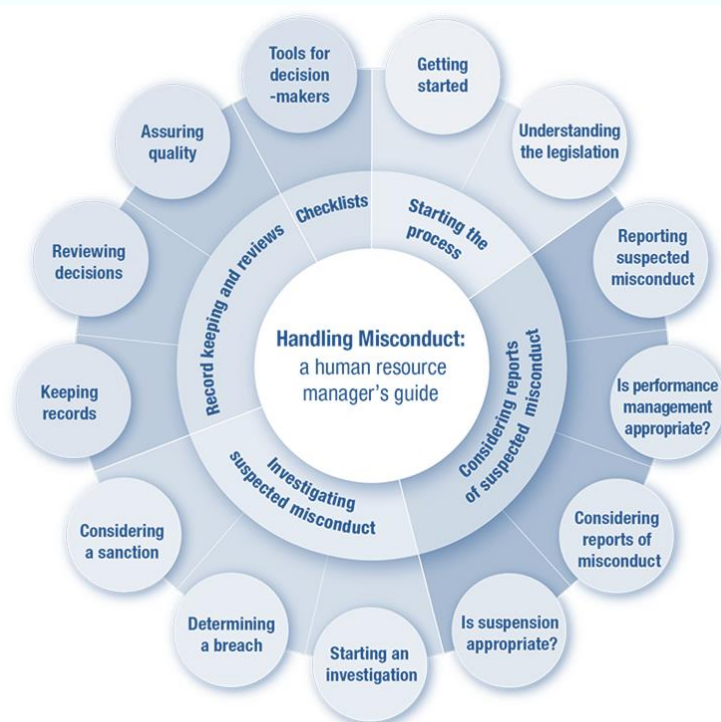
Box 8.4. Strengthening capacities: Providing guidance on disciplinary matters

The **United Kingdom's Civil Service Management Code** recommends compliance with the Advisory, Conciliation and Arbitration Service's Code of Practice on Disciplinary and Grievance Procedures (ACAS, 2015) and notifies departments and agencies that it is given significant weight in employment tribunal cases and will be taken into account when considering relevant cases. The ACAS, an independent body, issued the code in March 2015, which encourages:

- clear, written disciplinary procedures developed in consultation with stakeholders
- prompt, timely action
- consistency in proceedings and decisions across cases
- evidence-based decisions
- respect for rights of the accused: right to information, legal counsel, hearing and appeal.

The code also contains guidance on how to interact with employees under investigation (i.e. providing information, evidence, allowing a companion to the hearing, role of the companion at hearings), which institutions to contact during the process to ensure due diligence and that the employees' rights are respected, how to apply sanctions fairly (i.e. consistently, progressively and proportionately), how to handle special cases (i.e. cases of misconduct by trade union members), and what proceedings to follow in relation to potential criminal offences.

Australia's Public Service Commission has also published a very comprehensive *Guide to Handling Misconduct*, which provides clarifications of the main concepts and definitions found in the civil service code of conduct and other applicable policies/legislation as well as detailed instructions to managers on proceedings (see workflow below). The guide also contains various checklist tools to facilitate proceedings for managers such as: Checklist for Initial Consideration of Suspected Misconduct; Checklist for Employee Suspension; Checklist for Making a Decision about a Breach of the Code of Conduct; Checklist for Sanction Decision Making.



Source: United Kingdom's Advisory, Conciliation and Arbitration Service's Code of Practice on Disciplinary and Grievance Procedures and Australian Public Service Commission's Guide to Handling Misconduct, www.apsc.gov.au/publications-and-media/current-publications/handling-misconduct-a-human-resource-managers-guide-2015.

Closing gaps to prevent impunity

In the short term, current legislation and procedures could be clarified and aligned to ensure better co-ordination between authorities responsible for criminal and administrative proceedings concerning public officials

The legal principle of *non bis in idem* signifies that an official may not be sanctioned twice for the same fault. Yet this principle does not always preclude an official from being sanctioned or punished under several different legal regimes for misconduct. In fact, in the majority of cases a penal liability, incurred while performing public service functions, also entails an administrative liability, with the latter range of possible faults being broader than the former. Indeed, it is essential that clear legal and procedural frameworks exist in such circumstances to avoid that public officials with a criminal conviction which could affect the performance of their public duties remain in their position.

In the majority of OECD member countries, it is often mandatory for the affected government agencies to notify law enforcement of an alleged criminal offence immediately, and this is also the case in Peru. If a case is taken up by law authorities, administrative proceedings can then be suspended until a verdict under the criminal regime is reached, and an administrative decision taken after on the basis of the criminal one. While the criminal verdict is pending, and depending on the severity of the offence, public officials may either be temporarily suspended without pay, or may be relocated to another post. If a temporary suspension is instituted, and should the public official be found innocent, they most often have the right to be awarded back-pay. The risks of further damages to public interests and potential detrimental effects to the government's reputation during the criminal trial must be weighed against the possibility of a lawsuit from the employee for wrongful treatment (OECD, 2003).

In Peru, the current legal framework formally ensures the independence of both regimes. In this sense, under the SERVIR administrative disciplinary regime, any proceeding or decision about the administrative responsibility of officials does not negate the possibility of civil and/or criminal consequences if applicable under the respective codes (Article 91 of Regulation no. 040-2014-PCM; Articles 376-401 of the Peruvian Criminal Code of Peru; Book VII of the Peru's Civil Code of Peru). The same principle is established in relation to the functional administrative regime under Article 49 of Law 29622 with the exception that administrative proceedings can be terminated following a specific judicial order.

However, despite the legal text upholding the independence of administrative, criminal and civil regimes, there is a lack of clarity in practice regarding concurrency between the regimes, particularly amongst HRM bodies in public institutions. The result could be either fragmentation (i.e. cases are not taken forward under any regime), and/or uneven action (i.e. actions taken in one regime are not reflected or recognised by another.)

It is critical that procedures be clarified and communicated, and that formal co-ordination mechanisms among relevant administrative and criminal authorities be established in line with the other collaboration measures proposed in Chapter 9. Reforms should ideally be centred around critical milestones including:

- 1) **The outset of the investigation:** a joint decision between government and law enforcement authorities concerning the case and the possibility of temporary

suspension. If law enforcement does not pursue a case, government authorities should be made immediately aware so as to weigh a potential independent disciplinary action. On the other hand, should law enforcement decide to take the case forward, greater inter-institutional co-operation is needed in the exchange of information as potential evidence.

- 2) **Verdict concerning conviction/exoneration:** again, government authorities should be made aware in a timely manner in order to consider implications for administrative disciplinary sanctions. In Germany, for example, civil servants are immediately suspended from service once the judgement of a German criminal court sentences them to imprisonment of at least one year on charges of a deliberate crime. The same holds true for a sentence of imprisonment of at least six months on charges of a deliberate act punishable under the provisions of crimes against peace; high treason; endangering the democratic state, rule of law or national security; or if the crime involves an official act in the civil servant's position (including corruption). In such instances, disciplinary proceedings are not needed as sanctions are automatic under the criminal regime.

In the short term, the statute of limitations on disciplinary offences could be evaluated with a view to strengthen deterrence against misconduct.

A statute of limitations restricts the amount of time an official may be held liable for a sanction. This is to ensure legal certainty and the validity of evidence, which may deteriorate over time, thereby protecting the fundamental rights of the accused. However, such statutes must allow also sufficient time for offences to be discovered and properly investigated. If the statute of limitations does not permit this, then the deterring power of the disciplinary regime is also limited. In the public sector this is particularly important, since many offences are often discovered, not from individual reports or whistle-blowing, but rather following comprehensive audit controls which at times do not even begin until the following fiscal year (OECD, 2003).

Currently, in the case of the administrative regime, authorities have three years starting from the commission of the act to impose sanctions, or one year from the date the human resources office was apprised of the act (Article 97 of Regulation no. 040-2014-PCM). For proceedings overseen by the CGR (functional regime), the relevant authorities have up to four years to impose their sanction from the day the offence was committed (Article 40 of Supreme Decree No. 023-2011-PCM). The same provision establishes that the overall length of the proceedings cannot last more than two years. The statute of limitations is particularly important for the functional regime, since these offences are mainly identified and initiated following an audit. Audits may take place several months after the alleged offence has occurred, further limiting the time available for controllers to investigate and proceeds with sanctions.

These factors increase the risk that administrative cases be dropped without proper investigations or due diligence, and that deterrence for potential offenders is greatly diminished. They also imply a potential waste of resources and time if proceedings are indeed initiated but never concluded. In order to avoid these risks and to favour a broader harmonisation process between disciplinary regimes, SERVIR and CGR may consider jointly reassessing and aligning their statute of limitations on disciplinary offences to the practices of several OECD member and partner countries, including Brazil, Mexico and Germany. Brazil and Germany pose no formal statute of limitations, while in Mexico the statute of limitations is three or seven years depending on the seriousness of the crime

(Table 8.3). A step toward the latter approach could be to set the relevant date from which the statute of limitations is set to begin to when the proceedings are initiated rather than when act is committed. In the case of the functional regime, it may be relevant to consider that the time period began from the initiation of the audit. Additionally, or alternatively, Peruvian authorities may consider allowing for statutes of limitations to be suspended/interrupted in exceptional circumstances (such as to allow for the conclusion of criminal proceedings).

Table 8.3. **Statute of limitations in Peru's disciplinary regimes and other countries**

Peru		Brazil	Germany	Mexico
Administrative Disciplinary Regime	Administrative Functional Regime			
Three years (or one year from knowledge from HR Office)	Four years (maximum length of proceedings: two years)	No limit	No limit	three to seven years according to the seriousness of the offence
No maximum length of proceedings				

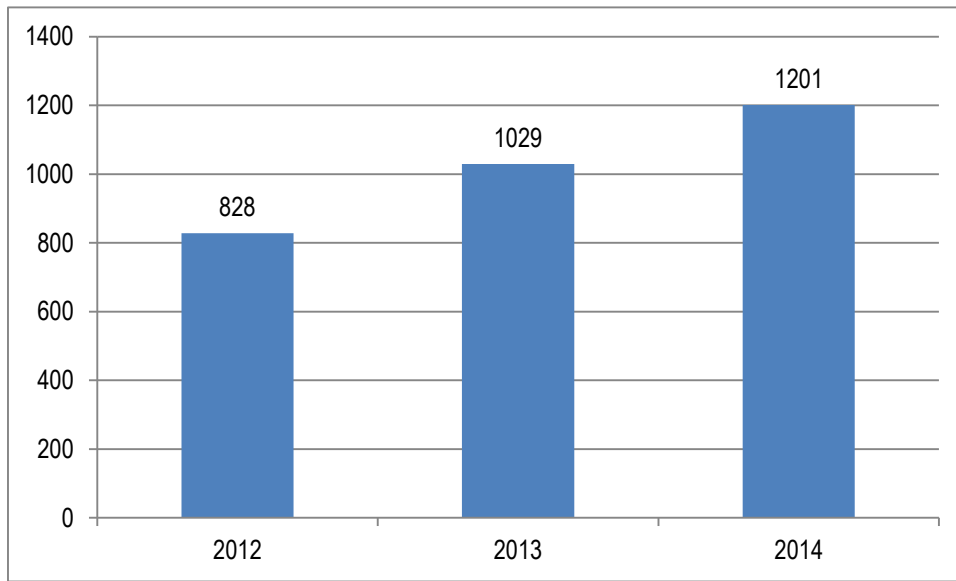
Source: Regulation no. 040-2014-PCM; Supreme Decree No. 023-2011-PCM; OECD (2016), *Enforcing Integrity: Mexico's Administrative Disciplinary Regime for Federal Public Officials*.

Measuring performance to better inform enforcement and integrity strategies

In the short term, publicly available and standardised key performance indicators on the functioning of the unified regime (or on both regimes) would provide valuable evidence to evaluate the system, report to civil society and improve not only enforcement mechanisms, but also the broader integrity strategy

Peruvian authorities collect some data on imposed disciplinary sanctions which they publish via the National Registry of Sanctions and Dismissals (Registro Nacional de Sanciones de Destitución y Despido, or RNSDD), a database maintained by SERVIR (Chapter V of Regulation no. 040-2014-PCM). According to information provided by the Peruvian authorities, the Registry's data includes all functional sanctions, but only a subset of the sanctions pertaining to the administrative disciplinary regime (i.e. dismissals). As a consequence, the information provided in the RNSDD does not permit the elaboration of comprehensive assessment of both systems. For the sanctions included, one observes that registered sanctions increased 45% between 2012 and 2014 (Figure 8.1), of which the majority were dismissals (47%) and suspensions (41%) (Figure 8.2). Such data, which would ideally be consolidated for both regimes, are an essential first step in assessing the performance of regimes. However, performance evaluation requires a shift towards the development, monitoring and publication of key performance indicators that can help assess dimensions such as effectiveness, efficiency and timeliness.

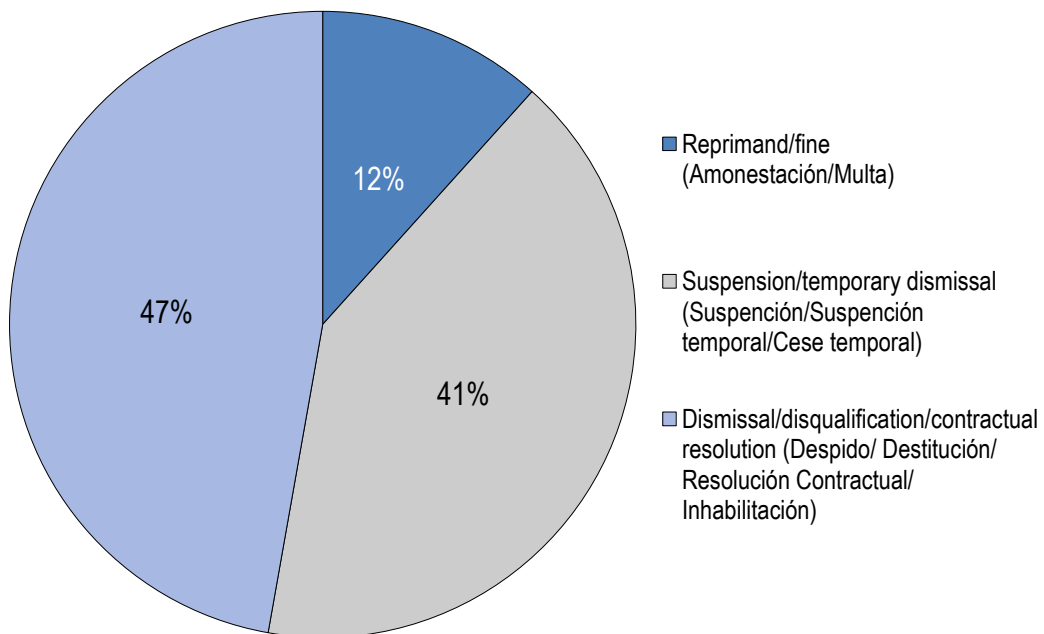
Figure 8.1. Total sanctions (disciplinary and functional regimes), 2012-14



Note: For the disciplinary regime only dismissals are included.

Source: Peru's National Registry of Sanctions and Dismissals. Data provided by SERVIR.

Figure 8.2 Types of sanctions issued (disciplinary and functional regimes), 2014



Note: For the disciplinary regime only dismissals are included.

Source: Peru's National Registry of Sanctions and Dismissals. Data provided by SERVIR.

Defining the performance measurement framework and collecting the necessary data/evidence for assessing the performance of administrative disciplinary regimes can be challenging. Particularly as 1) different institutions and branches of government may be responsible for different types of cases, (depending on severity and whether or not appealed) making case tracking and compilation of data across time difficult; and 2) there may be overlap in jurisdictions even for the same types of cases, further complicating efforts to streamline and centralise data. Selecting and applying a set of standard key performance indicators (KPIs) that can be applied in this institutional context is a complex task. Nevertheless it is a worthwhile exercise in order to promote accountability and demonstrate commitment to integrity values by communicating to the public about the performance of enforcement mechanisms. Ways to improve the design and implementation of integrity policies themselves may be also communicated (i.e. permitting profiling, testing risk parameters, identifying unaddressed risks).

No single indicator can be useful in isolation, but rather, a set of indicators must be assessed as a whole, accompanied by contextual information. Box 38 below highlights some commonly used performance indicators from the field of justice which could be considered by SERVIR, CGR and the Civil Service and Administrative Tribunals. Indeed, few data are currently available on the timeliness of procedures, the reasons for dismissed or overturned cases, the share of complaints taken forward for disciplinary action, etc. The existing National Registry of Sanctions and Dismissals (Registro Nacional de Sanciones de Destitución y Despido, or RNSDD) could be further enriched with this information, providing not only a better picture of the functioning of the regime but also supporting SERVIR in identifying weaknesses in broader integrity policies. Furthermore, as mentioned above, the RNSDD should contain all the sanctions pertaining to disciplinary proceedings, including the less serious sanctions imposed by the CGR, which currently are not accounted for in such a registry.

The CGR also publishes information on the functional regime in a database called the Administrative Sanctioning Procedure (Procedimiento Administrativo Sancionador, or PAS). While there is relatively more performance information available on this website (decisions reached, cases brought forward, appeals, status of appeals, etc.), data for the Tribunal, as well as disaggregation of selected data by region, performance indicators such as those indicated in Box 8.5 are not presented and are difficult to construct given the availability of data and format in which data are released.

In order to ensure that transparency results in accountability, the information provided must be timely and user-friendly. Indeed, the OECD Open Government Data Index benchmarks central governments' open data portals on the extent to which data is open, useful and reusable (that data may be modified since they are provided in open software, machine-readable form; Ubaldi, 2013). Currently, the Peruvian authorities have provided a tool that releases data on individual cases. However, the tool does not permit analysis of time trends or aggregated data by categories (i.e. by sector or offence). Currently, for example, the RNSDD tool requires a search by exact name without allowing citizens to examine aggregate data by sector, offence, date, etc. The CGR's PAS database provides data in PDF format. Furthermore, the OECD guidelines encourage consultation with citizens and civil society to both produce and release the information and data found most useful by users. This could be considered also by the Peruvian authorities in both institutions in the design of the databases.

Box 8.5. Potential key performance indicators for evaluating administrative disciplinary regimes

KPIs on effectiveness

- Share of reported alleged offences ultimately taken forward for formal disciplinary proceedings: Not all reported offences may be taken forward following a preliminary investigation of hearing; however, the share of cases not taken forward, especially when analysed by area of government or type of offence, may shed light on whether valid cases are successfully entering the disciplinary system in the first place.
- Appeals incidences and rates: A measure of the quality of sanctioning decisions and the predictability of the regime. Common metrics include the number of appeals per population (or civil servants liable under the disciplinary law) and cases appealed before the second instance as a percentage of cases resolved in first instance.
- Inadmissible or discharged cases: The share of cases declared inadmissible (as well as a disaggregation for what grounds were provided for dismissal) can be considered as an indication of the quality and effectiveness of procedures and government compliance with disciplinary procedures.
- Overturned decisions: A second common measure on the quality of sanctioning decisions is the share of appealed cases where initial decisions were overturned. This can signify, in addition to failure to follow proper disciplinary procedures, the sufficient proportionality of sanctions.
- Clearance rates: Another common indicator of effectiveness, clearance rates refer to the sanctions issued over the cases initially reported. Clearance rates serve as a proxy for identifying “leaky” systems, whereby cases reported are not brought forward and/or to conclusion.

KPIs on efficiency

- Pending cases: The share of total cases which are unresolved at a given point in time can be a useful indicator of case management.
- Average/median length of proceedings (days): The average length of proceedings for cases is estimated with a formula commonly used in the literature: $[(\text{Pending}_{t-1} + \text{Pending}_t) / (\text{Incoming}_t + \text{Resolved}_t)] * 365$.
- Average spending per case: Proxies for financial efficiency can include total resources allocated to the investigation and processing of administrative disciplinary procedures divided by the number of formal cases. Other methodologies include total spending on disciplinary proceedings per civil servant liable under proceedings.

KPIs on quality and fairness

- In addition to some of the aforementioned indicators (i.e. high appeals rates or admissible/dismissed cases could suggest poor procedural fairness), the following qualitative data could also prove useful. The Council of Europe has produced a “Handbook for conducting satisfaction surveys aimed at court users” that could offer insights for similar exercises on administrative disciplinary regimes:
- Perception survey data on government employees (including managers) on their perceptions of the fairness regime, the availability of training opportunities for them, etc.
- Perception survey data from public unions, internal auditors/court staff (for serious cases), etc.

Source: Council of Europe, CEPEJ (2015); Palumbo, G., et al. (2013), "Judicial Performance and its Determinants: A Cross-Country Perspective", OECD Economic Policy Papers, No.5, OECD Publishing, Paris, <http://dx.doi.org/10.1787/5k44x00md5g8-en>.

To support such evaluation efforts, integrated or linked-up IT systems are helpful in case tracking and standardising data across institutions. In the context of the broader harmonisation efforts, over the longer term, a working group composed of members from SERVIR, the CGR and administrative courts could align efforts to standardise systems and extract administrative information in a co-ordinated manner for joint analysis. IT integration may not necessarily be possible currently between the two regimes, but could be carried out within the same regime, at a minimum between the first-instance and second-instance (i.e. Tribunals) institutions. The CGR PAS database indeed does currently present data for the Administrative Tribunal.

Perhaps most importantly, however, more data would need to be made available and presented in the context of performance indicators, such as those suggested in Box 7.5 for easier analysis and to allow for more critical review by stakeholders, including civil society. An annual or biennial report could be considered as a useful reporting tool as well as a catalyst to facilitate greater collaboration and communication between institutions of the two regimes. As suggested previously, this task could be undertaken by a dedicated CAN working group on sanctions.

Proposals for action

Disciplinary rules and procedures are essential components of countries' policy frameworks for public sector integrity. They are the “teeth” needed to deter misconduct and, perhaps most importantly, demonstrate to citizens and public servants alike that government commitments to upholding integrity values are not merely empty promises. They legitimise the existence of integrity policies and help win citizens' trust in their governments. In order to improve its current disciplinary system and attain the latter objectives, Peru may consider taking the following actions, some of which are priorities for the short term and others which would be more successful if implemented in the medium to long term:

Towards a more coherent administrative disciplinary regime

- In the medium to long term, in order to further reduce impunity and protect the rights of accused, Peru could consider moving towards an administrative disciplinary regime with a single inventory of offences and corresponding sanctions and a clearer delineation of the jurisdictions and institutional responsibilities.
- Achieving a more coherent administrative regime in the long term will require immediate steps in the short term. As a priority, stronger co-ordination and communication under the auspices of the CAN, as well as more ambitious capacity-building efforts, are needed to pave the way for future reforms.

Closing gaps to prevent impunity

- In the short term, current legislation and procedures could be clarified and aligned to ensure better co-ordination between authorities responsible for criminal and administrative proceedings concerning public officials.
- In the short term, the statute of limitations on disciplinary offences could be evaluated with a view to strengthen deterrence against misconduct.

Measuring performance to better inform enforcement and integrity strategies

- In the short term, publicly available and standardised key performance indicators on the functioning of the unified regime (or in the short term, on both regimes) would provide invaluable evidence to evaluate the system, report to civil society, and improve not only enforcement mechanisms, but also the broader integrity strategy.

Annex 8.A1

Overview of the main disciplinary regimes for public officials in Peru (Detailed Table 8.1)

	Constitutional/Political Regime	Administrative Disciplinary Regimes (scope of analysis)		Specialised Regimes	Criminal and Civil Responsibility
		Administrative Disciplinary Regime	Administrative Functional Regime		
Category of Public Officials	President of the Republic, President of the Council of Ministers, ministers, parliamentarians, Constitutional Court Judges, Councilmen of the National Council of the Judiciary, Supreme Court Judges, Appellate Prosecutors, Ombudsman, Comptroller General.	The majority of appointed public officials (excluding ministers and select other positions bound by other regimes indicated here) Civil Servants	The majority of appointed public officials (excluding ministers and select other positions bound by other regimes indicated here) Civil Servants Public employees outside the civil service general employment framework (employed by government under different labour contract than for civil servants)	Mayors and Councilmen; Regional Governors and Councillors; Head of the Civil Registry Office – RENIEC; Chairman of the General Elections Board; Head of the National Election Processes Office; National Police; Armed Forces; Prosecutors; Judges; Diplomatic Officials	All public officials
Legal Basis	Articles 92, 93, 117, 128 and 132 of the Constitution; Organic Law of the Constitutional Court – Law No. 28301; Organic Law of the National Control System and of the Comptroller General's Office – Law No. 27785; Organic Law of the Judiciary, Consolidated Text approved by Supreme Decree No. 017-93-JUS; Organic Law of the Attorney General's Office - Legislative Decree No. 052; Organic Law of the Ombudsman's Office – Law No. 26520; Organic Law of the National Council of the Judiciary – Law No. 26397; Reglamento del Congreso de la República Articles 24 and 25	Civil Service Law no. 30057 of 2013	Organic Law of the National System of Control and of the Comptroller General – Law no. 27785 of 2002 (as modified by Law no. 29622)	Organic Law of Regional Governments - Law No. 27867; Organic Law of Municipalities - Law No. 27972; Organic Law of the General Elections Board – Law No. 26486; Organic Law of Elections – Law No. 26487; Organic Law of the Civil Registry Office – RENIEC; Legislative Decree No. 1150 (National Police); Law No. 29131 (Armed Forces); Organic Law of the Attorney General's Office, Legislative Decree No. 052, and the Law of the National Council of the Judiciary, Law No. 26397 (Prosecutors); Organic Law of the Judiciary, Consolidated Text approved by Supreme Decree No. 017-93-JUS, and the Law of the National Council of the Judiciary, Law No. 26397 (judges); Law No. 28091 of the Diplomatic Service (Diplomatic Officials)	Criminal and Civil Codes

	Constitutional/Political Regime	Administrative Disciplinary Regimes (scope of analysis)		Specialised Regimes	Criminal and Civil Responsibility
		Administrative Disciplinary Regime	Administrative Functional Regime		
Responsible Body	Congress	Managers, HRM units, Minister of implicated organisation, Civil Service Tribunal (Tribunal del Servicio Civil)	Instructive and Sanctioning Organs (Órgano Instructor, Órgano Sancionador); Superior High Tribunal for Administrative Responsibilities (Tribunal Superior de Responsabilidades Administrativas)	National Council of the Judiciary; Municipal Council and General Elections Board; Regional and General Elections Board	Criminal and civil courts and appellate courts, law enforcement

Note: The columns presented in grey represent the scope of analysis of this review.

Source: Comptroller General's Office (Contraloría General de la República, CGR) - Responses to OECD Questionnaire; Constitution of Peru; Criminal and Civil Codes; Civil Service Law no. 30057 of 2013; Law no. 27785 of 2002.

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Chapter 9

Enhancing the Peruvian criminal justice system for enforcing integrity

This chapter describes criminal justice responses to integrity challenges in Peru, with a focus on practical issues of enforcement of sanctions on crimes against the public administration. It contains recommendations to enhance the effectiveness of this enforcement, with reference to good practices in other countries.

In the event that preventive and internal processes fail, Peru may be required to turn to the criminal justice system in order to address breaches of integrity. These breaches, such as crimes against the public administration may constitute criminal offences (Penal Code, Title XVIII). This category of Penal Code offences includes extortion, embezzlement, fraud, misappropriation, active and passive bribery of domestic and foreign public officials, misuse of office, trading in influence, and illegal enrichment. Peru has not yet enacted a criminal offence of private sector bribery.

This chapter examines the effectiveness of enforcement of crimes against the public administration, including an analysis of the role of each of the agencies involved.

Improving independence, co-operation and co-ordination

Clear written procedures or memorandums-of-understanding between the Attorney General’s Office, the police (DIRCOCOR), the Ministry of Justice, SERVIR and the Comptroller General’s Office could be adopted requiring and ensuring systematic and ongoing co-operation between relevant agencies on corruption cases under criminal jurisdiction

There are several agencies involved in Peru’s criminal justice system:

- Prosecutors (*fiscales*) within the Attorney General’s Office (Ministerio Público, or AGO) are responsible from the outset for the preliminary investigation and prosecution of Penal Code offences, including crimes against the public administration (Constitution, Art. 159; Criminal Procedure Code of 2004 (CPP), Art. 60). The AGO is headed by the Attorney General who is elected by the Board of Supreme Court Public Prosecutors and serves for a three-year term which may be renewed for an additional two terms upon re-election (Constitution, Art. 158). The AGO is made up of a range of regional and supra-regional units and offices, including units dedicated to the investigation and prosecution of corruption.
- The AGO prosecutor in charge of a case may direct officers from the National Police (Policía Nacional) to conduct investigative actions. The police do not have the authority to conduct investigations absent instructions from the AGO unless an officer encounters a crime in the process of being committed.
- While the AGO directs investigations, specialised lawyers (*procuradurías*) from each ministry represent the state in judicial proceedings. The *procuraduría* works independently and elaborates its own analysis and strategy for the case. The *procuraduría* has no power to open or close proceedings, but may claim for civil damages and challenge prosecutorial decisions to a higher prosecutor.
- Upon completion of the preliminary investigation by the AGO, the conclusions of the investigation are submitted to the Judiciary. Upon receipt of the investigative results, a judge will determine whether there are the necessary preconditions to open legal proceedings. Depending on the case, legal proceedings will take place in one of Peru’s 31 judicial districts.
- Judges, also at the request of prosecutors, may appoint experts (*peritos*) at the stage of a preliminary investigation where a case is particularly complex or knowledge of a specific discipline is required. The appointment of such experts will depend on budget and the need of the prosecutor or judge involved. The lack

of qualified experts was emphasised as a major problem in building cases at both a national and regional level.

- The Comptroller General’s Office (Contraloría General de la República, or CGR) supervises the acts of institutions subject to its control and has the power to conduct investigations and impose administrative sanctions in certain types of integrity breaches. National Civil Service Authority (Autoridad Nacional del Servicio Civil, or SERVIR), the civil service agency, also has jurisdiction over administrative disciplinary proceedings. The risks and challenges of a dual system for administrative sanctions are discussed in Chapter 8. These are exacerbated by the additional criminal jurisdiction arising from the offences against the public administration set out in the Criminal Code. In the short term, Peru should undertake both legal and operational measures, potentially based on the gravity of the offence, to clarify the concurrency between administrative and criminal/civil regimes and ensure that formal co-ordination mechanisms exist for consultation, information-sharing, and follow up and recognition of decisions reached. These measures should ideally be based around critical milestones of a case (i.e. outset of investigation, indictment, conviction/exoneration) in order to avoid potential lapses.

Proactive and positive co-operation and co-ordination between these agencies is important to ensure that investigations and prosecutions run smoothly and that relevant information is shared.

Some systems exist to promote co-ordination between the judiciary, the AGO and the Comptroller General’s Office on policy matters. The Tripartite Inter-Agency Co-operation Framework Agreement (Convenio Tripartido) is an example of such a system (see Box 9.1). The AGO also issued a Resolution (AGO Resolution No. 1423-2015-MP-FN) clarifying jurisdiction between the Special Prosecutor’s Office for Crimes against the Public Administration and other Specialised Prosecutor’s Offices, the judiciary, the National Police, Ombudsman’s Office and Comptroller General’s Office. As laid out in Chapter 2, the High-level Anti-Corruption Commission (Comisión de Alto Nivel Anticorrupción, or CAN) also serves as a co-ordinating body and platform for inter-agency policy development. Officials involved in investigating and prosecuting cases of crimes against the public administration should all be made aware of the requirements of the Tripartite Agreement and the AGO Resolution as part of regular training.

Box 9.1. Ensuring co-operation between agencies: The tripartite inter-agency co-operation framework agreement in Peru

On 2 November 2011, the judiciary, the Attorney General’s Office, and the Comptroller General’s Office entered into a Tripartite Inter-Agency Co-operation Agreement. The purpose of the agreement is to improve co-operation in order to reduce corruption and enhance confidence in state institutions. The Agreement sets out the roles of the three agencies in the detection, investigation, prosecution, trial and sanctioning of corruption offences. It sets up a framework for co-operation and information-sharing, as well as setting out specific tasks and objectives for each agency; for example, the Comptroller General’s Office is tasked with creating preventative strategies to combat corruption and developing software-based anti-corruption training programmes. According to discussions with the Peruvian authorities, at national level and for emblematic cases, the Agreement works very well and has proven to be effective in providing specialised expertise. However, the Agreement is reportedly less effective in serious corruption cases involving organised crime, where jurisdiction is transferred to the National Criminal Court.

Source: Tripartite Inter-Agency Co-operation Framework Agreement of 2011 between the judiciary, the Attorney-General’s Office, and the Comptroller General’s Office, www.oas.org/juridico/pdfs/mesicic4_per_cgr_conv2.pdf/.

On practical matters, within the AGO, the National Co-ordinator Appellate Prosecutor's Office is responsible for co-ordinating activities with the judiciary, the National Police and other relevant institutions. Peru notes that frequent meetings are held between the relevant units of the AGO and the National Police. However, according to individuals interviewed and a study commissioned by the CAN, there is a lack of co-ordination and trust between the AGO and the National Police. This situation has been exacerbated by the enactment of the 2004 Criminal Procedure Code (Código Procesal Penal, or CPP) which departs significantly from the previous system, giving the AGO primary responsibility for the conduct of criminal investigations. As a result of these changes, the National Police report that their role in investigations is now “minor”, and co-operation and collaboration have consequently decreased.

Officials interviewed during the fact-finding mission reported poor co-operation between prosecutors, the police, and the CGR. Adequate co-operation reportedly depends largely upon the individuals involved. As a result, some cases fail to progress for want of better co-operation. This dependence upon individuals to achieve consistent and ongoing co-operation is particularly concerning in light of high staff turnover in relevant agencies, including the police, as reported during on-site discussions with Peruvian authorities. It may be beneficial for Peru to consider adopting clear written procedures or memorandums-of-understanding between the AGO, the police, the Ministry of Justice, the CGR and SERVIR. Other countries may serve as models in this regard (see Boxes 9.2 and 9.3). Such documents could require and ensure systematic and ongoing co-operation between relevant agencies through regular meetings and information-sharing. This could also be achieved by updating the Tripartite Inter-agency Co-operation Framework Agreement and extending the Agreement to cover other interested agencies (including the police, the Ministry of Justice, and SERVIR). In particular, the document could clearly set out the different roles and obligations of each agency with regards to corruption cases and when and how information on cases will be shared. Furthermore, it could include a clear obligation for agencies to hold regular meetings to discuss general corruption-related issues, decide how new major allegations will be handled, and share information as necessary on ongoing cases.

Box 9.2. Memorandums of Understanding (MoU) between law enforcement agencies: Australian MoU between the Australian Securities and Investment Commission (ASIC) and the federal police

Memorandums of Understanding (MOUs) are a useful tool to improve co-operation and co-ordination through formal written agreement. Such tools are widely used by a range of OECD countries in the fight against corruption. Australia is one such country. In 2013 the Australian Federal Police entered into a MOU with the Australian Securities and Investment Commission (ASIC). The MOU sets out a framework for a collaborative working arrangement and was agreed by senior members of the agencies. The MOU expressly provides a mechanism for co-ordination of interagency information-sharing and corporate economic crime expertise to evaluate and investigate foreign bribery allegations. The MOU comprehensively covers co-operation on foreign bribery matters and improves the AFP's ability to take advantage of ASIC's experience and expertise in the context of foreign bribery.

Source: OECD (2015a), *Australia: Follow-up to the Phase 3 Report and Recommendations*, www.oecd.org/af/anti-bribery/.

Box 9.3. Inter-Agency teams for co-operation and information-sharing: The Israeli inter-ministerial team on foreign bribery

Following its accession to the OECD Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions, Israel established an Inter-Ministerial Team to co-ordinate cases of foreign bribery (i.e. the bribery of foreign public officials by Israeli individuals or companies). The Team is headed by the Director of the Department of Criminal Affairs in the State Attorney's Office and comprises representatives from the State Attorney's Office, the Israeli Police, the Ministry of Foreign Affairs, the Ministry of Defence, the Ministry of Justice, the Tax Authority, and the Money Laundering and Terrorist Financing Prohibition Authority, as well as specialised prosecutors from specific Attorney's Offices. The Team meets at least every three months, if not more often, and is also in regular contact via email. The role of the Team is to monitor foreign bribery allegations, investigations, and prosecutions to ensure they are handled appropriately and are actively pursued. The Team does not supersede the role of the investigative or prosecutorial agencies; rather it provides a practical co-ordination and advisory role. The Team is able to provide guidance on the course of action in foreign bribery cases. It also monitors Israel's response to foreign bribery-related mutual legal assistance and international co-operation, and generally examines ways of improving foreign bribery enforcement. The Team and its role is enshrined and formalised in the Attorney General Guidelines.

Source: OECD (2015b), *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Israel*, www.oecd.org/daf/anti-bribery/.

The 2004 Criminal Procedure Code could be promptly and consistently applied in all regions by enacting relevant implementing regulations and conducting training and awareness-raising activities for regional law enforcement authorities

In the Peruvian criminal justice system, inter-jurisdictional co-operation is further complicated by the inconsistent criminal procedures in place across the regions. In 2004 Peru enacted a new CPP and commenced implementing this code across the regions. However, over a decade later, the Code remains unimplemented in some judicial districts, including the ones pertaining to Lima (as of December 2016). Further inconsistencies exist from a substantive perspective, since Law 29574 of 2010 established the application of the new CPP in relation to all crimes committed by public officials.

The 2004 CPP is intended to move Peru from an inquisitorial towards an adversarial system and streamline the criminal process. In its 2013 review of Peru's anti-corruption framework, the Organisation for American States (OAS) recognised the implementation of the CPP as a positive move in the face of widespread dissatisfaction with judicial services, including the slow process (Mechanism for Follow-up on the Implementation of the Inter-American Convention Against Corruption, 2013). To take advantage of the Code's benefits and ensure inter-regional consistency, it should be promptly implemented across all regions. This requires not only modifications and enactment of implementing regulations, but also awareness-raising and training of regional law enforcement officials.

The Regional Anti-Corruption Commissions could be used to share knowledge and raise awareness between agencies and across regions on region-specific corruption risks and challenges

Regional Anti-Corruption Commissions have been established in each region as fora to co-ordinate actions and policies. This is a positive development to promote consistency and to share experiences. A forum with broader membership, including other relevant agencies (e.g. the National Police), could also be beneficial in light of the reportedly poor co-operation between relevant agencies (discussed above). Such a forum could not only improve co-operation and co-ordination, but also function as a knowledge-sharing and awareness-raising resource on regional corruption risks and schemes. Regional commissions could hold joint meetings or host experienced representatives from other regions in order to share experiences and best practices.

Monthly meetings between representatives of the AGO and the National Council of the Judiciary could be organised in order to allow their representatives to confidentially and privately discuss any concerns of political interference in judicial appointments or ongoing cases in order to ensure such conduct is detected and sanctioned

The independence of the judiciary and the AGO from undue influence, including political interference, is guaranteed in the Peruvian Constitution (Art. 139(2) and 158). Peru has taken the positive and relatively unusual approach of largely removing any formal political involvement from the appointment process. Many countries still have some level of political involvement, though with strict safeguards to prevent interference (see Box 9.4). In Peru, criminal court judges and prosecutors are selected, appointed, and confirmed by the National Council of the Judiciary (Consejo Nacional de la Magistratura, or CNM) following a public recruitment process and individual assessment (Constitution, Art. 150 and 154). The CNM is an independent constitutional body made up of seven senior apolitical and impartial individuals from the legal profession and academia. Prosecutors are appointed for an indefinite period and must be re-confirmed by the CNM every seven years.

While there is no statutory requirement for political involvement in the appointment process, judicial independence from political interference remains a concern in Peru. The concern was raised by the United States Department of State in 2013 and by the Business Anti-Corruption Portal (GAN Integrity Solutions, 2015). These concerns played out in practice: in 2013 various media outlets, including Human Rights Watch, reported that six constitutional court judges were nominated and appointed by Congress, which voted without considering the individual credentials of the nominees. Recordings indicated that “major political parties in Peru had agreed that each party would put forward candidates for these positions, and that all parties would vote in favour of them”. In response to public outcry, Congress carried out a new selection. Nonetheless, such political interference in the judicial appointment process is clearly concerning, and even more so if political interference also occurs in the appointment of judges in other courts and at other levels. The AGO could consider consulting regularly with the CNM to build trust and encourage the CNM to pass on any reports of attempted political interference in judicial appointments in order to allow the AGO to detect and sanction this conduct. This relationship could also be used to discuss any political interference in ongoing cases.

Box 9.4. Ensuring independent judicial appointments: Practices and procedures in countries with perceived low levels of corruption

An independent appointment process is the first step towards ensuring a free and impartial judiciary and reducing corruption. Many countries retain some political involvement in the judicial appointment process, though strict safeguards are typically imposed to prevent political interference.

New Zealand ranked first for judicial independence in the Global Competitiveness Index 2013-14 and second on the 2014 Transparency International Corruption Perceptions Index. In New Zealand, judges are appointed by the Governor-General (the apolitical representative of the monarch of New Zealand) on the advice of the Attorney General (a Government Minister and Chief Law Officer of New Zealand). To prevent political interference, constitutional convention requires that the Attorney-General act apolitically and receive advice from the Chief Justice of the Supreme Court and the Solicitor-General (an apolitical public servant).

Finland ranked second for judicial independence in the Global Competitiveness Index 2013-14 and third on the 2014 Transparency International Corruption Perceptions Index. In Finland, judges are appointed by the President on the recommendation of the Minister of Justice. The Minister receives advice from the Judicial Appointments Board which is made up of apolitical figures including members of the judiciary, legal profession, and academia. To prevent political interference, convention requires that the recommendations of the Judicial Appointments Board are followed by both the Minister of Justice and the President.

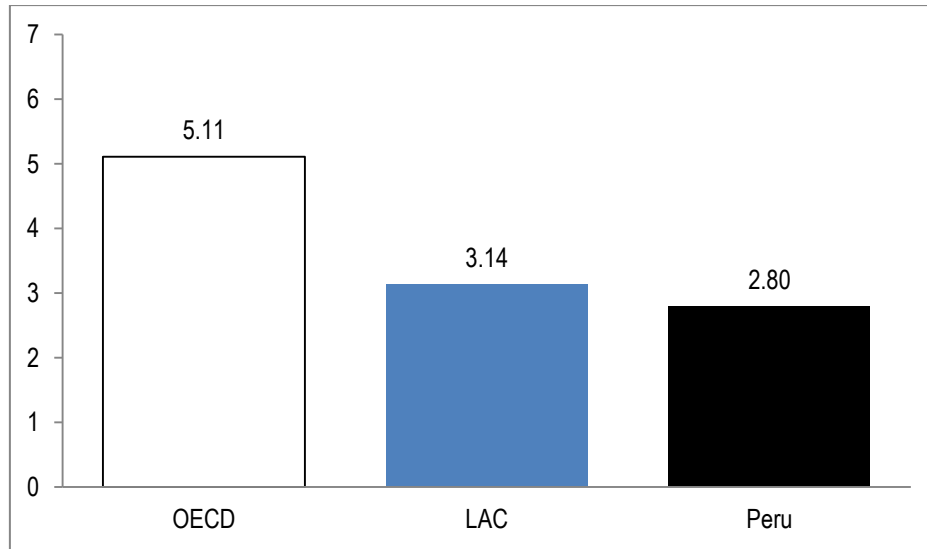
Denmark ranked eighth for judicial independence in the Global Competitiveness Index 2013-14 and first on the 2014 Transparency International Corruption Perceptions Index. In Denmark, judges are appointed by the reigning monarch following the recommendation of the Minister of Justice. Similar to the Finnish process, the Minister receives advice from a Judicial Appointment Council made up of judges and other apolitical persons. In practice, the advice of the Council has always been followed.

Sources: Courts of New Zealand, “Judicial Appointments”, www.courtsofnz.govt.nz (accessed 15 January 2015); Finnish Courts “Judicial Appointments Board”, www.oikeus.fi (accessed 15 January 2015); Courts of Denmark “The Judicial Appointments Council”, available at www.domstol.dk (accessed 15 January 2015).

Regular training and awareness-raising activities could be provided to the judiciary and other court staff on ethical conduct together with support mechanisms to seek information relating to corruption; such efforts should be complemented by open and ongoing support from the senior individuals within the government and the judiciary

Judicial independence from the undue influence of interested parties to cases is also a major concern in Peru (Figure 9.1), which has been raised by Transparency International (2013), the US Department of State (2013), and the Business Anti-Corruption Portal (GAN Integrity Solutions, 2015). Statutory safeguards exist to prevent conflict of interest in the judicial system (see also Chapter 3). Articles 53 and 54 of the CPP provide for the disqualification or recusal of judges where a conflict exists. The provisions cover a range of potential conflict situations, including the existence of a “direct or indirect interest in the process” or a “notorious friendship, obvious enmity or cronyism”. In addition, the disciplinary regime for judges is outlined in the Organic Law of the Judiciary (Art. 201 et seq.) and the Law of the National Council of the Judiciary.

Figure 9.1. Level of perceived judicial independence in Peru, compared with averages from OECD and Latin America and Caribbean (1-7, best)



Source: World Economic Forum, Global Competitiveness Report 2015-16, http://www3.weforum.org/docs/gcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf.

Beyond the statutory provisions in place, there is an Ethics Code for the judiciary which lists the principles of autonomy and judicial independence. The judiciary is supervised (with the exception of members of the Supreme Court of the Republic) by the Control Office of Judiciary (Oficina de Control de la Magistratura, or OCMA). OCMA is responsible for ensuring the ethical performance of the judiciary, as well as its compliance with legal and administrative regulations. OCMA can instigate a defended disciplinary proceeding and can impose sanctions such as a reprimand, fine, or suspension. OCMA can also recommend the dismissal of a judge to the CNM, which is an autonomous and independent agency with a constitutional mandate to select, appoint, confirm and remove judges and prosecutors deemed to have committed serious offences (Constitution, arts. 150 and 154). OCMA and the CNM use their disciplinary powers regularly. In January 2016 alone, OCMA issued 206 reprisals, 102 fines, two suspensions, and recommended dismissal twice. From 2010-15, the CNM dismissed 202 judges and 26 prosecutors. Despite these safeguards, there are several ongoing cases which indicate a high level of judicial corruption in Peru. These cases describe bribes reportedly paid to judges to guarantee a particular outcome and also to accelerate the process. On the basis of the VII National Survey of Perceptions of Corruption in Peru, the judiciary was perceived by 56% of those surveyed to be the most corrupt institution in Peru. In 2013, the OAS recommended that Peru strengthen internal and external oversight of the judiciary to increase public trust in the institution.

Peru's judiciary and other court staff could benefit from regular, tailor-made training (e.g. by OCMA or CNM) on ethical conduct, including their ethical obligations, the consequences of breaching these obligations (both individual and broader societal consequences), and what to do if they encounter corruption. Judicial training has proved effective in other countries (see Box 9.5). Such training should be provided by qualified experts to all staff upon commencement of their duties, with regular refresher courses organised on an annual basis. This training could be supplemented with ongoing

awareness-raising such as the distribution of regular memorandums to judges and court-staff on anti-corruption policies and procedures and reporting mechanisms. Other awareness-raising initiatives could include the establishment of anti-corruption days or weeks in which the judiciary and court staff are reminded of their anti-corruption obligations (including the individual and broader consequences of committing corruption) and informed of what to do if corruption occurs. In addition, the judiciary and court staff need to be supported to fight corruption, e.g. by providing a hotline for judges and court staff who encounter corruption or have a relevant query. To ensure buy-in, it is vital that these efforts have the open and prominent support of upper and middle management within the court system. In addition to these measures, Peru may wish to consider implementing other mechanisms to promote independence. Mechanisms seen in other countries include electronic case management systems, publishing and disseminating judicial decisions, enhancing public awareness of citizen rights in court proceedings and awareness of court procedures, and providing complaint mechanisms for the public and court staff to report judicial corruption (also see Box 9.6).

Box 9.5. Encouraging ethical conduct within the judiciary: Mongolia’s experience providing training to judges

In 2007, a study conducted in Mongolia revealed that confidence in the judiciary was very weak, with the majority of respondents considering that the courts favoured the wealthy as a result of corruption. As a result, Transparency International Mongolia implemented a range of projects with the goal of restoring trust in the judiciary. One such project was a nation-wide training programme for all judges. The training was undertaken with the support of the judiciary, and was led by three prominent judges alongside representatives from Transparency International Mongolia. In total, 26 training sessions were conducted across the country. The training covered the types of judicial corruption, the societal and individual impacts of corruption, and methods for combating corruption within the Mongolian judiciary.

Source: Dugersuren, Sukhee (2010) “Anti-corruption Training on Preventing Corruption in Public Procurement and Judicial Systems (for judges) and Improvement of the Judicial Code of Ethics” presented at 14th International Anti-Corruption Conference in Bangkok, Thailand.

Box 9.6. Encouraging ethical conduct within the judiciary: Chile’s experience promoting judicial independence

Chile has seen some success in reducing judicial corruption. Following the restoration of democracy in 1990, the Supreme Court faced several waves of reform. While not specifically geared towards improving independence, these reforms did reduce opportunities for bribery and corruption, particularly in the judiciary. In 1990 Chile created a Judicial Academy which was responsible for monitoring and controlling the recruitment of judges and their career progression. Later that decade, Chile commenced a move away from the inquisitorial system of justice towards an accusatorial system. This too contributed to reducing opportunities for judicial corruption. Judicial proceedings became open and transparent, major criminal cases were heard by three judges rather than one, and administrative procedures were modernised. Prior to these reforms, judicial functions were frequently delegated to court staff which created additional opportunities for corruption. Under the new procedures, actors’ roles were clearly delineated, with some functions abolished entirely, significantly reducing the room for delegating vital decisions.

Source: Harasic, D. (2007), “Chile’s Partial Success” in *Global Corruption Report 2007: Corruption in Judicial Systems*, Transparency International, Cambridge University Press, New York.

Statutory safeguards to ensure the independence of prosecutors are similar to those for the judiciary; for example, Article 60 of the CPP provides for the removal of a prosecutor where a conflict exists. The disciplinary regime for prosecutors is outlined in the Organic Law of the AGO (Art. 51 et seq.) and the Law of the National Council of the Judiciary. Nonetheless, independence concerns have arisen with respect to the Attorney General's Office. In May 2015, the media reported that the Attorney General was dismissed after a corruption investigation revealed ties with an organised criminal network. While prosecutors are typically appointed by the independent CNM, the Attorney General can appoint prosecutors on a provisional basis in order to fill a vacancy. The AGO's lack of resources has resulted in the appointment of a high number of provisional prosecutors; in certain regions up to 90% of prosecutors are provisional. This situation creates a serious independence risk, exacerbated by acknowledgements by AGO officials that “[p]ersons at the highest levels (ministers, parliamentarians) are protected by political privileges that may lead to impunity, as the Attorney General's Office cannot look into cases if not allowed by Congress.” Cases were also reportedly closed due to their “political nature”. The AGO should take steps to encourage prosecutors to investigate cases, in spite of political concerns, and to not close cases prematurely for fear of encountering complications due to political privileges.

Growing capacity through specialisation, resources, and training

Mechanisms could be introduced to ensure that case allocation takes into account the prosecutor's experience, expertise, and/or training while avoiding conflict-of-interest situations

Recent years have seen an increase in the creation of specialised anti-corruption law enforcement units (see Box 9.7). Consistent with this trend, Peru's institutional framework provides for a reasonably high degree of specialisation across its investigative, prosecutorial, and judicial agencies:

- At the regional level, the AGO has created specialised Provincial Prosecutor's Offices in almost all judicial districts to deal with corruption cases. These Offices have jurisdiction over cases in their district (AGO Resolution 1423-2015-MP-FN, art. 18 and 19).
- At the national level, the AGO has developed the Specialised National Appellate Prosecutor's Office and Specialised Corporate Supra-provincial Prosecutor's Office to handle corruption cases.
- The AGO may also create special case-based Prosecutor's Offices; for example, a special Office of the Ad Hoc Prosecutor was created for the Fujimori/Montesinos case.
- Within the National Police, there is a specific Anti-Corruption Bureau (Dirección contra la Corrupción de la Policía Nacional, or DIRCOCOR) which exists at the regional and national level.
- Specialised Anti-Corruption Courts exist within the judiciary at a regional level. At the supra-regional level, the National Criminal Court in Lima has jurisdiction over serious corruption offences.

- Judges and prosecutors seek the assistance of experts (*peritos*) in corruption cases (see earlier in this section) to provide specific expertise on certain issues (e.g. forensic accounting; voice/phonetic analysis; information technology).

Box 9.7. The growth of specialised anti-corruption law enforcement units

An increasing number of countries are creating specialised units to deal with corruption. In Germany, the regions (*Länder*) have established either specialised anti-corruption units or dedicated public prosecution offices that specialise in investigating economic crimes, with similarly specialised directorates in the police forces of the *Länder*. The United States also has longstanding units to deal with corruption investigations in the Federal Bureau of Investigation (FBI), the Department of Justice, and the Securities and Exchange Commission (SEC).

Some countries have even created further specialised units to deal with specific forms of corruption. For example, Canada has set up a specific Royal Canadian Mounted Police (RCMP) unit to investigate transnational bribery cases. In 2011 Korea established an inter-agency unit to gather information and intelligence to support the investigation of international crimes, including transnational corruption. The unit is made up of representatives from several ministries and the prosecuting authority.

Sources: OECD (2011b) *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Germany*, OECD Publishing, Paris, www.oecd.org/daf/anti-bribery/; OECD (2010) *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in the United States*, OECD Publishing, Paris, www.oecd.org/daf/anti-bribery/; OECD (2011a) *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Canada*, OECD Publishing, Paris, www.oecd.org/daf/anti-bribery/; OECD (Oct 2011c) *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Korea*, OECD Publishing, Paris, www.oecd.org/daf/anti-bribery/.

Within this system of specialisation, better use could be made of the knowledge and experience of individuals. The specialised AGO's offices are currently phasing in a system through which cases will be randomly assigned to prosecutors (AGO Resolution 1423-2015-MP-FN). It is unclear how random case allocation is occurring in practice and it is not guaranteed that such a system will strike the necessary balance between taking into account the relevance of the prosecutors' experience and expertise to the case and ensuring conflict of interest is avoided, which is important in light of independence concerns in Peru (discussed previously). To ensure prosecutors have the necessary experience, Peru could ensure that cases are assigned to a random prosecutor, selected from within a pool of prosecutors with relevant expertise and/or training. For example, where a case related to corruption in the context of public procurement, the responsible prosecutor could be randomly selected from a pool of prosecutors who have experience in procurement cases or have undergone training on such cases. This system could be supplemented and supported by the designation of specialised and experienced prosecutors who are available to provide training, share experience, and mentor less experienced prosecutors (see Box 9.8).

Box 9.8. Systems for allocating cases to experienced and independent prosecutors: The experience in South Africa

In South Africa, an inter-agency Anti-Corruption Task Team has oversight of corruption cases. The Team identified a gap in the absence of a specialised prosecutor for handling transnational bribery cases. To address this gap, the National Director of Public Prosecutions appointed a specialised prosecutor for handling all foreign bribery cases which fell under the ambit of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Anti-Bribery Convention).

The dedicated prosecutor is a senior specialist prosecutor with significant experience in the investigation and prosecution of complex international crimes, including in foreign bribery cases. To ensure independence and to the availability of necessary human resources, the dedicated prosecutor is not responsible for handling every foreign bribery case. Rather, they are able to use their expertise and experience to train other prosecutors on matters relating to foreign bribery, and to provide guidance and mentorship in foreign bribery cases. This increases the pool of prosecutors capable of handling foreign bribery cases to ensure each foreign bribery case is able to be dealt with by a prosecutor with relevant expertise and training.

Source: OECD (2016), *South Africa: Follow-up to the Phase 3 Report and Recommendations*, www.oecd.org/daf/anti-bribery/.

Peru could consider implementing a more flexible set of criteria or allowing some room for discretion in deciding which cases are transferred to the specialised national AGO offices and National Criminal Court

There may be reason for Peru to reconsider the system through which cases are assigned to the abovementioned specialised units. In order to qualify for transfer to the specialised national AGO units, the cases must be serious and complex and must have national implications. In mid-2015 an additional criterion was added following the enactment of the Law on Organised Crime. In order to be transferred, cases must now also involve organised crime. The same four criteria must be met for a case to be heard by the National Criminal Court in Lima. At the very least, consideration of these four criteria before referring a case is likely to add to procedural delays. At most, important corruption cases risk not being transferred to the national AGO units because they do not involve organised crime. There are mixed opinions among regional and national law enforcement agencies as to whether these criteria are too specific. While some countries have adopted case allocation practices that remove any discretion (see Box 9.9), in Peru's case, discretion may allow for specialisation and increased capacity. Peru should consider amending its legislation to allow for a more flexible set of criteria, or finding another means of introducing greater discretion in deciding which cases are transferred to the specialised national AGO offices and National Criminal Court. The allocation of cases should take into account seriousness and complexity, but also limitation periods and case priority, and should not be limited solely to cases involving organised crime.

Box 9.9. Criteria for allocating cases to specific courts: The experience of the United Kingdom

In the United Kingdom, there are two primary courts for criminal cases: the Magistrates' Court and the Crown Court. Case allocation is based primarily on the seriousness ("category") of the offence. Over 95% of criminal cases are heard by the Magistrates' Court. Summary offences (i.e. minor offences such as driving offences) fall squarely within the mandate of the Magistrates' Court. Either-way offences (i.e. middle-range offences which could be considered serious depending on the scale of harm caused) are subject to a preliminary hearing to determine whether the seriousness of the offence justifies transferal to the Crown Court. Indictable offences (i.e. more serious crimes) are always tried by the Crown Court; however, the first committal hearing is typically dealt with in the Magistrates' Court regardless of the seriousness of the offence. The categorisation of offences is determined by parliament and set out in statute; this limitation on discretion speeds up the pre-trial process, but increases the importance of the initial decision on charges as the nature of the offence will determine which court hears the case.

Source: Banakar, R. et al. (2005), *Case Allocation in England*, University of Westminster.

Considering that lack of resources may hamper the success of investigations, Peru could explore ways to ensure that cases are adequately resourced by the AGO

Almost all agencies and panellists agreed that the criminal enforcement of corruption laws suffered from a lack of human and financial resources across all concerned agencies. The budget of the AGO has increased significantly from PEN 70 795 191 (EUR 18 544 477) in 2008 to PEN 118 934 254 (EUR 31 154 284) in 2014 (see Box 9.10 for a comparison of prosecutorial funding across countries).

Box 9.10. Country comparison of prosecution service budgets

The budget and resources provided to a country's prosecution services and law enforcement agencies will depend on a wide range of factors, including the size of the country, type and level of offence, government priorities, the nature of the criminal justice system, and the institutional law enforcement structure. It is therefore difficult to draw any specific conclusions or insights from a comparison of prosecutorial and law enforcement funding. The information below is therefore intended merely to illustrate the range of funding that is provided to prosecutorial and law enforcement services across a cross-section of OECD countries.

Country	Agency	Budget (EUR)	Year
Estonia	Prosecution Service	9.7 million	2013
Latvia	Public Prosecution Service	21.8 million	2014
Mexico	Prosecutor General of the Republic	53.4 million	2015
Netherlands	Rijksrecherche (Police)	13.1 million	2012
New Zealand	Serious Fraud Office	6 million	2014
Slovenia	Prosecution Office	17.9 million	2014
United Kingdom	Serious Fraud Office	35.9 million	2011

Sources: OECD (2014d), *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Estonia*, www.oecd.org/daf/anti-bribery/; OECD (2015c), *Phase 2 Report on Implementing the OECD Anti-Bribery Convention in Latvia*, www.oecd.org/daf/anti-bribery/; Woody, Christopher (2015), "There's something conspicuously absent from Mexico's 2016 national budget" *Business Insider*, www.uk.businessinsider.com; OECD (2012a), *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in the Netherlands*, www.oecd.org/daf/anti-bribery/; OECD (2013), *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in New Zealand*, www.oecd.org/daf/anti-bribery/; OECD (2014e), *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Slovenia*, www.oecd.org/daf/anti-bribery/; OECD (2012b), *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in the United Kingdom*, www.oecd.org/daf/anti-bribery/.

According to Peru, “neither the prosecution nor administrative staff is sufficient, considering the investigation workload, which exceeds the average level to be taken on by each prosecutor”. This statement is supported by the data: for example, in 2014, the Prosecutors’ Offices in Ayacucho had a total of nine prosecutors for 500 cases (55 cases per prosecutor), while the Offices in Piura have nine prosecutors for 551 cases (61 cases per prosecutor). Police human resources are similarly insufficient; the DIRCOCOR units in Ayacucho and Piura each have seven officers. These resource levels are a cause for concern, given that the number of cases reported appears to be increasing dramatically; the AGO head office reported 1 861 cases in 2011 and 11 338 cases in 2014. These figures indicate a significant workload for prosecutors at both regional and national level. Peru reports that this lack of resources hampers investigations to the extent that it is one of the “main causes” of investigations failing to progress to prosecution. Peru could thus consider increasing human resources where possible.

One of the possible causes for this case overload is the criminalisation of administrative offences. According to the Peruvian authorities, the courts are often preoccupied with minor cases that could be dealt with solely at an administrative level. Peru could therefore benefit from a clear understanding of which cases will be pursued administratively, and which will be pursued criminally. Increased clarity, coherence and consistency amongst agencies as to the use of the appropriate regime could free up resources in both the criminal and administrative systems, both of which are reportedly overloaded. The extension of membership of the Tripartite Agreement could facilitate co-ordination in order to better assign and follow up on corruption cases.

Following the implementation of the 2004 CPP, the involvement of the police in cases has become more limited. Police representatives note that DIRCOCOR has the capacity to be more involved, and that police resources could be utilised more effectively by overwhelmed prosecutors. Prosecutors indicated that there is little trust in DIRCOCOR. Peru could consider activities to increase trust, including by implementing the recommendations contained in this chapter such as holding joint training sessions and adopting clear procedures and MOUs for co-operation.

This resource strain could also be alleviated to some extent through a more effective organisation and allocation of cases. The National Co-ordinator Appellate Prosecutor’s Office has the ability to organise the prosecution case load. In doing so, the Office considers, amongst other things, “workload” and “number of cases”. As discussed below, there are several specialised Offices which may have jurisdiction over corruption offences. If the National Co-ordinator Appellate Prosecutor’s Office has jurisdiction over all these offices, cases could be assigned or transferred between relevant Offices in an attempt to alleviate resource-strain. Case prioritisation based on factors such as the amounts involved, level of public officials implicated and potential damage could also contribute to more effective resolution of proceedings and allocation of resources. Limitation periods should also be taken into account.

Urgent measures are needed to reduce the number of vacant positions in both the judiciary and AGO, eliminate the use of provisional judges and prosecutors, and increase the continuity of investigative personnel for specific cases, including prosecutors and judges, to the greatest degree possible

Members of the judiciary who were interviewed noted a lack of judicial resources. However, as outlined in Box 9.11, the judiciary is not under-resourced in comparison to other jurisdictions. However, a perceived lack of resources has led to a high level of

provisional judges (e.g. 60% in Ayacucho). Provisional judges prevent the development and retention of institutional knowledge and expertise. In addition, they raise concerns of reduced independence, given that they are typically more vulnerable to influence as a result of a lack of protections and safeguards, such as income security and security of tenure.

Box 9.11. Comparison of funding for the judiciary

Several members of the Peruvian judiciary raised concerns about a lack of funding. Over the past ten years, the Peruvian judiciary has reportedly received an average of 1.4% of total government funding. While this figure is only an estimate, it can nonetheless be used to provide an approximate comparison with other jurisdictions. The below estimates are based on the national court allocation:

- United States 0.20%
- New Zealand: 0.85%
- Ireland: 0.17%

On the basis of this comparison, the Peruvian Judiciary receive comparatively more funding than in other jurisdictions. The focus should therefore be on better managing the available resources.

Sources: U.S. Government Publishing Office, “Budget of the United States Government”, www.gpo.gov (accessed 15 January 2016); The New Zealand Treasury, “Budget 2015”, www.treasury.govt.nz/budget/ (accessed 15 January 2015); The Department of Finance of Ireland, “Budget 2015”, www.budget.gov.ie (accessed 15 January 2015).

The OECD Working Group on Bribery has previously criticised the use of provisional judges and prosecutors on the basis that this practice can contribute to delays in investigations and court proceedings, as well as increase the risk of a lack of independence (see Box 9.12). While prosecutors are typically appointed by the CNM, there is some scope for the Attorney General to appoint prosecutors on a provisional basis in order to fill a vacancy before a prosecutor is formally appointed by the Council. The AGO’s lack of resource has resulted in the appointment of a high number of provisional prosecutors; in certain regions up to 90% of prosecutors are provisional. As with judges, provisional prosecutors create expertise and independence concerns.

Box 9.12. The OECD Working Group on Bribery comments on the use of provisional judges

The OECD Working Group on Bribery has made the following comments regarding the use of provisional judges and prosecutors:

“The Working Group has noted that widespread judicial vacancies and use of surrogate judges contribute to delay in the resolution of investigations and prosecutions. ... The Working Group has also noted that judicial vacancies and surrogate judges impinge upon judicial independence.”

“The Working Group further noted that the break in continuity of investigative personnel resulting from vacancies and appointment of surrogates also impact independence and delay.”

Source: OECD (2014b), *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Argentina*, www.oecd.org/daf/anti-bribery/.

Peru should take urgent measures to reduce the number of vacancies in both the judiciary and AGO and eliminate the use of provisional prosecutors and judges. It should increase the continuity of investigative personnel for particular cases, including prosecutors and judges, to the greatest degree possible.

Guidance and annual training could be provided to the judiciary and prosecutors on corruption offences, and relevant issues and subjects such as public procurement. Peru could also consider implementing an informal mentoring programme through which prosecutors and/or members of the judiciary are able to seek advice from other prosecutors or judges with experience in corruption cases

The Judicial Investigations Centre is primarily responsible for providing training to judges. Additional specialist training is provided in each Appellate Court of Justice and anti-corruption training has been provided by the Judicial Academy and CGR. Peru notes that a lack of adequate financial resources restricts the amount of training available. During an on-site visit, the judiciary reported a lack of adequate training. This problem is particularly pronounced due to the high number of provisional judges. Provisional or novice judges could benefit from training and mentorship from more experienced members of the judiciary. This could be achieved through a formal training programme, as well as a less formal mentoring programme.

For prosecutors, where resources allow, training is provided by the School of the AGO and other private institutions. A lack of resources at the School results in in-house training by the AGO, but the regional offices reported in Peru's responses to the questionnaire that "the training offered is insufficient to conduct complex corruption cases requiring knowledge of various specialties with specific regulations". This perception was confirmed during the fact-finding missions to the regions, when panellists stated that cases were closed due to a lack of required training and expertise.

In particular, Peruvian prosecutors noted a severe lack of in-house expertise or access to experts (*peritos*) specialised in the areas relevant to corruption, such as engineering, and public procurement. Knowledge of procurement practices and regulation is vital as many of Peru's ongoing corruption cases occur in the area of public procurement. The CGR, which has knowledge and experience in management and public procurement, is increasingly providing training to prosecutors in these areas. These training sessions could also focus on the criteria and procedures for the allocation or re-allocation of cases between the administrative and criminal systems to ensure a clear and consistent approach in the use of these separate but overlapping regimes, and to ensure there is not an overreliance on and overburdening of the criminal justice system.

Joint training and guidance could be provided to prosecutors and police on investigative techniques of relevance to corruption investigations, particularly to obtain and analyse tax and financial information; Peru could also take steps to reduce staff turnover in the police (specifically DIRCOCOR) in order to maintain expertise and capacity and build trust

When a corruption allegation or complaint emerges, it is the responsibility of the AGO to open an investigation (CPP, Art. 329). The CPP grants the prosecutor the power to order investigative actions, which must be undertaken by the police (CPP, Art. 65). A range of investigative techniques are available, including coercive measures, though these

must only be used with the approval of an investigative judge. Available investigative techniques are consistent with those commonly seen in other countries (see Box 9.13) and include search and seizure, interception of mail and communications, and obtaining tax and bank information.

Box 9.13. Investigative techniques for corruption cases

To effectively investigate corruption allegations, it is vital that police and prosecutors have access to a range of investigative techniques in order to obtain the required evidence. There is broad consistency between countries as to the investigative techniques available during corruption investigations. More coercive methods of investigation (e.g. search and seizure) typically require judicial approval.

In Israel, the Criminal Procedure Law sets out a range of measures available to the police in the investigation of corruption. These measures and techniques include investigating and collecting information from open sources, using undercover agents, using information from intelligence sources, shadowing suspects, executing search warrants (including search of computers), executing freezing orders (including freezing bank accounts and property), and using court orders to receive information from various authorities (including financial institutions such as banks and investment companies). Separate laws provide for further techniques including wire-tapping and executing communication data warrants. A court order is required for covert investigative measures such as data-interception, search warrants or seizure of bank account information.

In Latvia, the Criminal Procedure Law sets out investigative techniques including questioning and interrogation, consensual examination of a person, and consensual inspection of a place or object. With judicial approval, investigators may also inspect private places; examine a person by force; conduct search and seizure; intercept mail, communications, and electronic data; conduct audio, video and physical surveillance; and use undercover operations. The Law on the Corruption Prevention and Combating Bureau provides investigators with additional powers including the power to demand information from government bodies, companies and financial institutions. Finally, the Investigatory Operations Law bestows on investigators further powers of inspection, questioning, and examination of a person. Powers of entry, monitoring of correspondence, wiretapping, and access to computer information are also available under this law with judicial consent.

Sources: OECD (2014c), *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Brazil*, www.oecd.org/daf/anti-bribery/; OECD (2015b), *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Israel*, www.oecd.org/daf/anti-bribery/; OECD (2015c), *Phase 2 Report on Implementing the OECD Anti-Bribery Convention in Latvia*, www.oecd.org/daf/anti-bribery/.

In order for Peru to make full use of available investigative techniques, it is vital that prosecutors and police are trained in the conduct of investigations – including carrying out investigative techniques and the analysis of obtained evidence (see Box 9.14). Such training should be provided to all relevant staff upon commencement of duties and annually thereafter. Furthermore, prosecutors and police should be made aware of the availability of experts and in what circumstances they can and should be used. Prosecutors reported a lack of training in this area and a lack of accessibility of relevant experts, particularly at the regional level. For example, it was reported that in one region, only one accounting expert is available for the entire region. This is a cause for concern, given that corruption cases are often financially complex and require accounting expertise to analyse financial evidence and ensure effective investigation and prosecution. Experienced prosecutors with expertise in investigating corruption could be utilised to

provide training to officials in the regions on particular investigative techniques and methods, their experiences, and lessons learned.

The police suffer from a similar lack of training on the conduct of investigations. The training provided is reportedly “superficial” and no specific investigative training is provided. Training on investigative methods and relevant topics could be provided in conjunction with the prosecutors; this would build capacity and provide a platform for individuals to establish relationships and contacts between the relevant agencies and units. The problem of a lack of training and expertise is exacerbated by a reportedly high staff turnover, which leads to a loss of expertise and capacity.

Box 9.14. Training programmes for law enforcement agencies

In October 2013 the Mexican Prosecutor General’s Office (PGR) organised a training for prosecutors working on corruption cases, with law enforcement experts from the OECD and other member countries of the OECD Working Group on Bribery. The training focused on practical aspects of detection, investigation and prosecution of corruption cases, with reference to relevant Mexican laws. The Mexican Secretaría de la Función Pública (SFP), the agency responsible for Mexico’s new administrative corporate liability regime established in the 2012 Anti-Corruption Statute, also participated in the training to ensure cross-agency co-operation in cases that might have both administrative and criminal aspects. Similarly, in November 2013 the Brazilian Federal Prosecution Service and Comptroller General’s Office organised a training with OECD and United States experts on investigating and prosecuting foreign bribery cases. Both training sessions served to strengthen informal collaboration networks both between national law enforcement agencies and with foreign authorities. This is particularly useful for overcoming domestic co-ordination challenges and future international co-operation needs.

Source: OECD (2014a), *Mexico: Follow-up to the Phase 3 Report and Recommendations*, www.oecd.org/daf/anti-bribery/.

Proposals for action

An effective criminal justice system is vital to adequately combat corruption and crimes against the public administration. Peru has a sufficient institutional framework in place, with commendable institutional specialisation and some attempts to co-ordinate agencies’ activities. Nonetheless, co-operation and co-ordination between relevant agencies and between regions and capital leads to dramatic case overloads and may result in impunity due to expiration of limitation periods or insufficient resources. While expertise does exist at a national level, knowledge could be promoted and increased across all relevant agencies and units and at a regional and national level. Both human and financial resources could be increased or, if this is not possible, better efforts could be made to optimise existing resources. To aid in these endeavours, the following actions could be taken:

Improving independence, co-operation and co-ordination

- Clear written procedures or memorandums-of-understanding between the AGO, the police (DIRCOCOR), the Ministry of Justice, SERVIR and the Comptroller General’s Office could be adopted requiring and ensuring systematic and ongoing co-operation between relevant agencies on corruption cases under criminal jurisdiction.

- The 2004 Criminal Procedure Code could be promptly and consistently applied in all regions by enacting relevant implementing regulations and conducting training and awareness raising activities for regional law enforcement authorities.
- The Regional Anti-Corruption Commissions could be used to share knowledge and raise awareness between agencies and across regions on region-specific corruption risks and challenges.
- Monthly meetings between representatives of the AGO and the National Council of the Judiciary could be organised in order to allow their representatives to confidentially and privately discuss any concerns of political interference in judicial appointments or ongoing cases in order to ensure such conduct is detected and sanctioned.
- Regular training and awareness-raising activities could be provided to the judiciary and other court staff on ethical conduct together with support mechanisms to seek information relating to corruption; such efforts should be complemented by open and ongoing support from the senior individuals within the government and the judiciary.

Growing capacity through specialisation, resources, and training

- Mechanisms could be introduced to ensure that case allocation takes into account the prosecutor's experience, expertise, and/or training while avoiding conflict-of-interest situations.
- Peru could consider implementing a more flexible set of criteria or allowing some room for discretion in deciding which cases are transferred to the specialised national AGO offices and National Criminal Court.
- Considering that lack of resources may hamper the success of investigations, Peru could explore ways to ensure that cases are adequately resourced by the AGO.
- Urgent measures are needed to reduce the number of vacant positions in both the judiciary and AGO, eliminate the use of provisional judges and prosecutors, and increase the continuity of investigative personnel for specific cases, including prosecutors and judges, to the greatest degree possible.
- Guidance and annual training could be provided to the judiciary and prosecutors on corruption offences and on relevant issues and subjects such as public procurement. Peru could also consider implementing an informal mentoring programme through which prosecutors and/or members of the judiciary are able to seek advice from other prosecutors or judges with experience in corruption cases.
- Joint training and guidance could be provided to prosecutors and police on investigative techniques of relevance to corruption investigations, particularly to obtain and analyse tax and financial information; Peru could also take steps to reduce staff turnover in the police (specifically DIRCOCOR) in order to maintain expertise and capacity and build trust.

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